

EXPOSURE DRAFT

2022

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Telecommunications Legislation Amendment (Statutory Infrastructure Providers and Other Measures) Bill 2022

No. , 2022

(Infrastructure, Transport, Regional Development, Communications and the Arts)

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

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

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Telecommunications Legislation Amendment*
6 *(Statutory Infrastructure Providers and Other Measures) Act 2022*.

7 **2 Commencement**

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

No. , 2022 *Telecommunications Legislation Amendment (Statutory*
 Infrastructure Providers and Other Measures) Bill 2022 1

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Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	

2

Note: This table relates only to the provisions of this Act as originally enacted.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.

3

4

5

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

6

7

8

3 Schedules

9

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Telecommunications Legislation Amendment (Statutory Infrastructure Providers and Other Measures) Bill 2022 No. , 2022

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

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

3 **Part 1—Amendments**

4 *Competition and Consumer Act 2010*

5 **1 Paragraph 152BCCB(a)**

6 After “a standard determined”, insert “, or a benchmark set.”.

7 **2 Paragraph 152BDCB(a)**

8 After “a standard determined”, insert “, or a benchmark set.”.

9 **3 Subsection 152BEBH(1)**

10 After “a standard determined”, insert “, or a benchmark set.”.

11 **4 Paragraph 152CBID(a)**

12 After “a standard determined”, insert “, or a benchmark set.”.

13 *Telecommunications Act 1997*

14 **5 Section 360**

15 Omit “publish”, substitute “make available on its website”.

16 **6 Section 360A**

17 Insert:

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

19 *associate* has the meaning given by section 360AB.

20 *backhaul infrastructure* has the meaning generally accepted
21 within the telecommunications industry.

22 *building unit* has the same meaning as in Part 20A.

23 *compensation rules* means rules made under section 360VH.

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Schedule 1 Statutory infrastructure providers Part 1 Amendments

1 *compliance audit* has the meaning given by section 360XAH.

2 *control* has a meaning affected by section 360AC.

3 *designated compensable rule* has the meaning given by
4 subsection 360V(1B).

5 *designated compensable standard* has the meaning given by
6 subsection 360U(3B).

7 **7 Section 360A (definition of *designated day*)**

8 Repeal the definition.

9 **8 Section 360A (definition of *interim NBN service area*)**

10 Repeal the definition.

11 **9 Section 360A**

12 Insert:

13 *mobile network* means a telecommunications network that is used
14 principally to supply public mobile telecommunications services.

15 **10 Section 360A (definition of *nominated service area*)**

16 After “360H”, insert “, 360HB”.

17 **11 Section 360A (definition of *provisional interim NBN* 18 *service area*)**

19 Repeal the definition.

20 **12 Section 360A (definition of *provisional nominated service* 21 *area*)**

22 After “360H”, insert “or 360HB”.

23 **13 Section 360A**

24 Insert:

25 *radiocommunications fixed voice call* means a voice call provided
26 using a carriage service:

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

- 1 (a) supplied by means of a telecommunications network other
2 than a fixed-line telecommunications network; and
3 (b) marketed to customers, or potential customers, as a carriage
4 service that enables end-users to make and receive voice calls
5 at premises occupied or used by the end-users.

6 **14 Section 360A (definition of *request*)**

7 Omit “(in its capacity as a carriage service provider)”.

8 **15 Section 360A (definition of *request*)**

9 Omit “(in its capacity as a carrier)”.

10 **16 Section 360A (paragraph (a) of the definition of *statutory***
11 ***infrastructure provider*)**

12 Repeal the paragraph.

13 **17 Section 360A (after paragraph (c) of the definition of**
14 ***statutory infrastructure provider*)**

15 Insert:

- 16 (ca) for an anticipated service area—has the meaning given by
17 section 360KB; or

18 **18 At the end of subsection 360AA(2)**

19 Add:

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

22 **19 At the end of Division 1 of Part 19**

23 Add:

24 **360AB Associate**

25 (1) For the purposes of this Part, an *associate* of a person (the *first*
26 *person*) in relation to control of:

27 (a) a facility; or

28 (b) a company;

29 is:

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Schedule 1 Statutory infrastructure providers

Part 1 Amendments

- 1 (c) a partner of the first person; or
2 (d) if the first person or another person who is an associate of the
3 first person under another paragraph receives benefits or is
4 capable of benefiting under a trust—the trustee of the trust;
5 or
6 (e) a person (whether a company or not) who:
7 (i) acts, or is accustomed to act; or
8 (ii) under a contract or an arrangement or understanding
9 (whether formal or informal) is intended or expected to
10 act;
11 in accordance with the directions, instructions or wishes of,
12 or in concert with:
13 (iii) the first person; or
14 (iv) the first person and another person who is an associate
15 of the first person under another paragraph; or
16 (f) another company if:
17 (i) the other company is a related body corporate of the
18 first person for the purposes of the *Corporations Act*
19 *2001*; or
20 (ii) the first person, or the first person and another person
21 who is an associate of the first person under another
22 paragraph, is or are in a position to exercise control of
23 the other company.
- 24 (2) However, persons are not *associates* of each other if the ACMA is
25 satisfied that:
26 (a) they do not act together in any relevant dealings relating to
27 the facility or company; and
28 (b) neither of them is in a position to exert influence over the
29 business dealings of the other in relation to the facility or
30 company.

31 **360AC Control**

32 In this Part, *control* includes control as a result of, or by means of,
33 trusts, agreements, arrangements, understandings and practices,
34 whether or not having legal or equitable force and whether or not
35 based on legal or equitable rights.

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

1 **360AD Control of a company**

- 2 (1) For the purposes of this Part, the question of whether a person is in
3 a position to exercise control of a company is to be determined
4 under Schedule 1 to the *Broadcasting Services Act 1992*.
- 5 (2) However, in determining that question:
6 (a) the definition of *associate* in subsection 6(1) of the
7 *Broadcasting Services Act 1992* does not apply; and
8 (b) the definition of *associate* in section 360AB of this Act
9 applies instead.

10 **360AE When a person is in a position to exercise control of a facility**

- 11 (1) For the purposes of this Part, a person (the *first person*) is in a
12 position to exercise control of a facility if:
13 (a) the first person legally or beneficially owns the facility
14 (whether alone or together with one or more other persons);
15 or
16 (b) the first person is in a position, either alone or together with
17 an associate of the first person and whether directly or
18 indirectly:
19 (i) to exercise control of the operation of all or part of the
20 facility; or
21 (ii) to exercise control of the selection of the kinds of
22 services that are supplied using the facility; or
23 (iii) to exercise control of the supply of services using the
24 facility; or
25 (c) a company other than the first person legally or beneficially
26 owns the facility (whether alone or together with one or more
27 other persons), and:
28 (i) the first person is in a position, either alone or together
29 with an associate of the first person, to exercise control
30 of the company; or
31 (ii) the first person, either alone or together with an
32 associate of the first person, is in a position to veto any
33 action taken by the board of directors of the company;
34 or

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Schedule 1 Statutory infrastructure providers Part 1 Amendments

- 1 (iii) the first person, either alone or together with an
2 associate of the first person, is in a position to appoint or
3 secure the appointment of, or veto the appointment of,
4 at least half of the board of directors of the company; or
5 (iv) the first person, either alone or together with an
6 associate of the first person, is in a position to exercise,
7 in any other manner, whether directly or indirectly,
8 direction or restraint over any substantial issue affecting
9 the management or affairs of the company; or
10 (v) the company or more than 50% of its directors act, or
11 are accustomed to act, in accordance with the directions,
12 instructions or wishes of, or in concert with, the first
13 person, the first person and an associate of the first
14 person acting together, or the directors of the first
15 person; or
16 (vi) the company or more than 50% of its directors, under a
17 contract or an arrangement or understanding (whether
18 formal or informal), are intended or expected to act in
19 accordance with the directions, instructions or wishes
20 of, or in concert with, the first person, the first person
21 and an associate of the first person acting together, or
22 the directors of the first person.
- 23 (2) An employee is not, except through an association with another
24 person, to be regarded as being in a position to exercise control of a
25 facility under subsection (1) purely because of being an employee.
- 26 (3) More than one person may be in a position to exercise control of a
27 facility.

28 **20 Section 360B**

29 Repeal the section, substitute:

30 **360B Simplified outline of this Division**

- 31 • There are 4 types of service area, as follows:
32 (a) the general service area;
33 (b) a nominated service area;

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

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- (c) an anticipated service area;
- (d) a designated service area.
- NBN Co is the statutory infrastructure provider for the general service area.
- A nominated service area is an area that is attributable to:
 - (a) a declaration made by a carrier or carriage service provider; or
 - (b) certain carrier licence conditions declarations made by the Minister.
- The statutory infrastructure provider for a nominated service area that is attributable to a declaration made by a carrier or carriage service provider will be:
 - (a) the carrier or carriage service provider; or
 - (b) another carrier or carriage service provider declared by the Minister.
- The statutory infrastructure provider for a nominated service area that is attributable to a carrier licence conditions declaration will be:
 - (a) the carrier to whom the carrier licence conditions declaration applies; or
 - (b) another carrier declared by the Minister.
- An anticipated service area is an area that is attributable to a notice given by a carrier or carriage service provider.
- The statutory infrastructure provider for an anticipated service area that is attributable to a notice given by a carrier or carriage service provider will be:
 - (a) the carrier or carriage service provider; or
 - (b) another carrier or carriage service provider declared by the Minister.
- A designated service area is an area declared by the Minister.

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- The statutory infrastructure provider for a designated service area will be a carrier or carriage service provider declared by the Minister.
- Nominated service areas, anticipated service areas and designated service areas are excluded from the general service area.
- Designated service areas are excluded from nominated service areas.

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21 Section 360C

Repeal the section, substitute:

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360C Service area

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

- (a) the general service area; or
- (b) a nominated service area; or
- (c) an anticipated service area; or
- (d) a designated service area.

17

22 Subdivision A of Division 2 of Part 19

18

Repeal the Subdivision.

19

23 Subdivision B of Division 2 of Part 19 (heading)

20

Repeal the heading, substitute:

21

Subdivision B—Service areas and statutory infrastructure providers

22

23

24 Section 360F

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26

Omit “For the purposes of the application of this Part after the start of the designated day, the”, substitute “(1) For the purposes of this Part, the”.

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

1 **25 After paragraph 360F(a)**

2 Insert:

- 3 (aa) a pending area (see subsection (2)); or
4 (ab) an anticipated service area; or

5 **26 At the end of section 360F**

6 Add:

7 (2) For the purposes of this section, if:

- 8 (a) an area (the *notice area*) is specified in a notice under
9 section 360HA or 360HC; and
10 (b) the notice area neither consists of, nor is included in:
11 (i) a nominated service area; or
12 (ii) a designated service area;

13 then:

- 14 (c) if NBN Co provides qualifying carriage services to end-users
15 at one or more premises in the area—so much of the notice
16 area as does not include those premises is a *pending area*; or
17 (d) in any other case—the notice area is a *pending area*.

18 **27 Section 360G**

19 Omit “For the purposes of the application of this Part after the start of
20 the designated day,”, substitute “For the purposes of this Part,”.

21 **28 Subdivision C of Division 2 of Part 19 (heading)**

22 Repeal the heading.

23 **29 Paragraph 360H(1)(a)**

24 After “this section”, insert “or section 360HB”.

25 **30 Paragraph 360H(2)(a)**

26 After “whole”, insert “or a part”.

27 **31 After paragraph 360H(2)(a)**

28 Insert:

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1 (aa) the carrier is not already the statutory infrastructure provider
2 for a service area that consists of, or includes, the project
3 area; and

4 **32 After paragraph 360H(2)(b)**

5 Insert:

6 (ba) the infrastructure is not backhaul infrastructure; and

7 **33 Paragraph 360H(2)(d)**

8 After “whole”, insert “or the part, as the case requires,”.

9 **34 At the end of subsection 360H(3)**

10 Add:

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

13 **35 At the end of subsection 360H(3A)**

14 Add:

15 Note 1: For variation and revocation, see subsection 33(3) of the *Acts*
16 *Interpretation Act 1901*.

17 Note 2: See also section 360M.

18

19 **36 Paragraph 360H(4)(a)**

20 After “whole”, insert “or a part”.

21 **37 After paragraph 360H(4)(a)**

22 Insert:

23 (aa) the carrier is not already the statutory infrastructure provider
24 for a service area that consists of, or includes, the project
25 area; and

26 **38 After paragraph 360H(4)(b)**

27 Insert:

28 (ba) the infrastructure is not backhaul infrastructure; and

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1 **39 Paragraph 360H(4)(d)**

2 After “whole”, insert “or the part, as the case requires,”.

3 **40 At the end of subsection 360H(5)**

4 Add:

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

7 **41 At the end of subsection 360H(5A)**

8 Add:

9 Note 1: For variation and revocation, see subsection 33(3) of the *Acts*
10 *Interpretation Act 1901*.

11 Note 2: See also section 360N.

12 **42 Paragraph 360H(6)(a)**

13 After “area”, insert “(the *relevant area*)”.

14 **43 After paragraph 360H(6)(a)**

15 Insert:

16 (aa) the carrier is not already the statutory infrastructure provider
17 for a service area that consists of, or includes, the relevant
18 area; and

19 **44 Paragraphs 360H(6)(b) and (d)**

20 Omit “the area”, substitute “the relevant area”.

21 **45 After paragraph 360H(6)(d)**

22 Insert:

23 (da) the infrastructure is not backhaul infrastructure; and

24 **46 Subsection 360H(6)**

25 Omit “that the area”, substitute “that the relevant area”.

26 **47 At the end of subsection 360H(7)**

27 Add:

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

3 **48 Subsection 360H(8)**

4 Repeal the subsection, substitute:

5 *Declaration to be made available*

6 (8) If a declaration made by a carrier is in force under this section, the
7 carrier must make a copy of the declaration available on its
8 website.

9 **49 At the end of subsection 360H(11)**

10 Add:

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

13 **50 Subsection 360H(12)**

14 After “revoked”, insert “except under subsection (12A)”.

15 **51 After subsection 360H(12)**

16 Insert:

17 (12A) The ACMA may, by writing, revoke a declaration made under this
18 section.

19 **52 Subsections 360H(14), (15), (16) and (17)**

20 Repeal the subsections, substitute:

21 (14) A carrier may, by writing, vary a declaration made by the carrier
22 under this section, so long as the ACMA has approved the
23 variation under subsection (15).

24 (15) The ACMA may, on application made by a carrier, approve the
25 variation of a declaration made by the carrier under this section.

26 (16) An application under subsection (15) must:
27 (a) be in writing; and
28 (b) be in accordance with the form approved in writing by the
29 ACMA; and

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- 1 (c) be accompanied by such information (if any) as is specified
2 under subsection (17); and
3 (d) be accompanied by such documents (if any) as are specified
4 under subsection (17).

- 5 (17) The ACMA may, by legislative instrument:
6 (a) specify the information that must accompany an application
7 under subsection (15); or
8 (b) specify the documents that must accompany an application
9 under subsection (15).

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

- 12 (17A) If, under subsection (14), a carrier varies a declaration made by the
13 carrier under this section, the carrier must give the ACMA a copy
14 of the variation.

15 **53 Subsection 360H(18) (heading)**

16 After “*Declaration*”, insert “, *revocation*”.

17 **54 After subsection 360H(18)**

18 Insert:

- 19 (18A) A revocation under subsection (12A) is not a legislative
20 instrument.

21 **55 Paragraph 360HA(1)(a)**

22 After “whole”, insert “or a part”.

23 **56 Paragraph 360HA(1)(b)**

24 After “whole”, insert “or the part, as the case requires,”.

25 **57 Subparagraph 360HA(1)(c)(ii)**

26 After “specifies”, insert “the whole or the part, as the case requires, of”.

27 **58 Paragraph 360HA(2)(a)**

28 After “whole”, insert “or a part”.

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Schedule 1 Statutory infrastructure providers Part 1 Amendments

1 **59 Paragraph 360HA(2)(c)**

2 After “whole”, insert “or the part, as the case requires,”.

3 **60 Subparagraph 360HA(2)(d)(ii)**

4 After “specifies”, insert “the whole or the part, as the case requires, of”.

5 **61 Paragraph 360HA(3)(a)**

6 After “whole”, insert “or a part”.

7 **62 Paragraph 360HA(3)(b)**

8 After “whole”, insert “or the part, as the case requires,”.

9 **63 Subparagraph 360HA(3)(c)(ii)**

10 After “specifies”, insert “the whole or the part, as the case requires, of”.

11 **64 Paragraph 360HA(4)(a)**

12 After “whole”, insert “or a part”.

13 **65 Paragraph 360HA(4)(c)**

14 After “whole”, insert “or the part, as the case requires,”.

15 **66 Subparagraph 360HA(4)(d)(ii)**

16 After “specifies”, insert “the whole or the part, as the case requires, of”.

17 **67 At the end of section 360HA**

18 Add:

19 *Variation of notice*

20 (5) A carrier may, by writing, vary a notice given by the carrier under
21 this section, so long as the ACMA has approved the variation
22 under subsection (6).

23 (6) The ACMA may, on application made by a carrier, approve the
24 variation of a notice given by the carrier under this section.

25 (7) An application under subsection (6) must:
26 (a) be in writing; and

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- 1 (b) be in accordance with the form approved in writing by the
2 ACMA; and
3 (c) be accompanied by such information (if any) as is specified
4 under subsection (8); and
5 (d) be accompanied by such documents (if any) as are specified
6 under subsection (8).
- 7 (8) The ACMA may, by legislative instrument:
8 (a) specify the information that must accompany an application
9 under subsection (6); or
10 (b) specify the documents that must accompany an application
11 under subsection (6).
- 12 Note: For variation and revocation, see subsection 33(3) of the *Acts*
13 *Interpretation Act 1901*.
- 14 (9) If, under subsection (5), a carrier varies a notice given by the
15 carrier under this section, the carrier must give the ACMA a copy
16 of the variation.

68 After section 360HA

17
18 Insert:

360HB Nominated service area—declaration made by a carriage service provider

- 19
20
21 (1) For the purposes of this Part, if a provisional nominated service
22 area is attributable to a declaration under this section, so much of
23 the provisional nominated service area as is not:
24 (a) the whole or a part of a provisional nominated service area
25 that is attributable to a subsequent declaration under this
26 section or section 360H; or
27 (b) the whole or a part of a designated service area;
28 is a *nominated service area*.

29 *Provisional nominated service area—real estate development*
30 *project*

- 31 (2) If:

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Schedule 1 Statutory infrastructure providers Part 1 Amendments

- 1 (a) a facility has been installed in, or in proximity to, the project
2 area of a real estate development project; and
3 (b) there is no nominated service area that:
4 (i) consists of, or includes, the project area; and
5 (ii) is attributable to a declaration under section 360H or
6 this section; and
7 (c) at a time (the *relevant time*) on or after 1 July 2023, a
8 carriage service provider (the *first carriage service provider*)
9 commences to use the facility:
10 (i) to supply carriage services to end-users at premises in
11 the whole or a part of the project area; or
12 (ii) to supply an eligible service to another carriage service
13 provider in order that the other carriage service provider
14 can provide carriage services to end-users at premises in
15 the whole or a part of the project area; and
16 (d) any of the following conditions is satisfied:
17 (i) the first carriage service provider is in a position to
18 exercise control of the facility;
19 (ii) the first carriage service provider is an associate of a
20 person who is in a position to exercise control of the
21 facility;
22 (iii) the first carriage service provider has entered into a
23 contract, arrangement or understanding with a person
24 who is in a position to exercise control of the facility,
25 where the contract, arrangement or understanding
26 relates to the facility; and
27 (e) the conditions specified in an instrument under subsection (3)
28 are satisfied;
29 the first carriage service provider must:
30 (f) by written instrument, declare that the whole or the part, as
31 the case requires, of the project area is a *provisional*
32 *nominated service area* for the purposes of this Part; and
33 (g) do so within 10 business days after the relevant time.

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

- 35 (3) The Minister may, by legislative instrument, specify conditions for
36 the purposes of paragraph (2)(e).

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

3 (4) The Minister may, by legislative instrument, exempt a specified
4 real estate development project from subsection (2).

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

7 (5) Paragraph (2)(c) does not apply in the circumstances specified in a
8 determination under subsection 360Q(4).

9 *Provisional nominated service area—building redevelopment*
10 *project*

11 (6) If:

12 (a) a facility has been installed in, or in proximity to, the project
13 area of a building redevelopment project; and

14 (b) there is no nominated service area that:

15 (i) consists of, or includes, the project area; and

16 (ii) is attributable to a declaration under section 360H or
17 this section; and

18 (c) at a time (the **relevant time**) on or after 1 July 2023, a
19 carriage service provider (the **first carriage service provider**)
20 commences to use the facility:

21 (i) to supply carriage services to end-users at premises in
22 the whole or a part of the project area; or

23 (ii) to supply an eligible service to another carriage service
24 provider in order that the other carriage service provider
25 can provide carriage services to end-users at premises in
26 the whole or a part of the project area; and

27 (d) any of the following conditions is satisfied:

28 (i) the first carriage service provider is in a position to
29 exercise control of the facility;

30 (ii) the first carriage service provider is an associate of a
31 person who is in a position to exercise control of the
32 facility;

33 (iii) the first carriage service provider has entered into a
34 contract, arrangement or understanding with a person
35 who is in a position to exercise control of the facility,

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- 1 where the contract, arrangement or understanding
2 relates to the facility; and
3 (e) the conditions specified in an instrument under subsection (3)
4 are satisfied;
5 the first carriage service provider must:
6 (f) by written instrument, declare that the whole or the part, as
7 the case requires, of the project area is a *provisional*
8 *nominated service area* for the purposes of this Part; and
9 (g) do so within 10 business days after the relevant time.

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

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

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

- 15 (8) The Minister may, by legislative instrument, exempt a specified
16 building redevelopment project from subsection (6).

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

- 19 (9) Paragraph (6)(c) does not apply in the circumstances specified in a
20 determination under subsection 360Q(4).

21 *Declaration to be made available etc.*

- 22 (10) If a declaration made by a carriage service provider is in force
23 under this section, the carriage service provider must make a copy
24 of the declaration available on its website.

- 25 (11) A carriage service provider must give a copy of a declaration made
26 by it under this section to the ACMA.

27 *Principles*

- 28 (12) In making a declaration under this section, a carriage service
29 provider must comply with any principles determined under
30 subsection (13).

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

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

5 *Revocation*

6 (14) A declaration made under this section cannot be revoked except
7 under subsection (15).

8 (15) The ACMA may, by writing, revoke a declaration made under this
9 section.

10 *Variation*

11 (16) A declaration made under this section cannot be varied except
12 under subsection (17).

13 (17) A carriage service provider may, by writing, vary a declaration
14 made by the carriage service provider under this section, so long as
15 the ACMA has approved the variation under subsection (18).

16 (18) The ACMA may, on application made by a carriage service
17 provider, approve the variation of a declaration made by the
18 carriage service provider under this section.

19 (19) An application under subsection (18) must:

20 (a) be in writing; and

21 (b) be in accordance with the form approved in writing by the
22 ACMA; and

23 (c) be accompanied by such information (if any) as is specified
24 under subsection (20); and

25 (d) be accompanied by such documents (if any) as are specified
26 under subsection (20).

27 (20) The ACMA may, by legislative instrument:

28 (a) specify the information that must accompany an application
29 under subsection (18); or

30 (b) specify the documents that must accompany an application
31 under subsection (18).

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

3 (21) If, under subsection (17), a carriage service provider varies a
4 declaration made by the carriage service provider under this
5 section, the carriage service provider must give the ACMA a copy
6 of the variation.

7 *Declaration, revocation and variation are not legislative*
8 *instruments*

9 (22) A declaration made under this section is not a legislative
10 instrument.

11 (23) A revocation under subsection (15) is not a legislative instrument.

12 (24) A variation under subsection (17) is not a legislative instrument.

13 **360HC Nominated service area—anticipatory notice to be given to** 14 **the ACMA by a carriage service provider**

15 *Nominated service area—real estate development project*

16 (1) If:

- 17 (a) a facility has been, is being, or is to be, installed in, or in
18 proximity to, the project area of a real estate development
19 project; and
20 (b) there is no nominated service area that:
21 (i) consists of, or includes, the project area; and
22 (ii) is attributable to a declaration under section 360H or
23 360HB; and
24 (c) at a time (the *relevant time*) on or after 1 July 2023, a
25 carriage service provider (the *first carriage service provider*)
26 formulates a proposal to use the facility:
27 (i) to supply carriage services to end-users at premises in
28 the whole or a part of the project area; or
29 (ii) to supply an eligible service to another carriage service
30 provider in order that the other carriage service provider
31 can provide carriage services to end-users at premises in
32 the whole or a part of the project area; and

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1 (d) when the first carriage service provider commences to use the
2 facility as mentioned in paragraph (c), the first carriage
3 service provider will be required, by subsection 360HB(2), to
4 declare that the whole or the part, as the case requires, of the
5 project area is a provisional nominated service area for the
6 purposes of this Part;

7 the first carriage service provider must:

8 (e) give the ACMA a written notice that:

9 (i) states that the first carriage service provider has
10 formulated the proposal; and

11 (ii) specifies the whole or the part, as the case requires, of
12 the project area; and

13 (iii) describes the facility; and

14 (iv) sets out the first carriage service provider's estimate of
15 the time when the first carriage service provider is likely
16 to commence to use the facility as mentioned in
17 paragraph (c); and

18 (f) do so within 10 business days after the relevant time.

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

20 *Nominated service area—building redevelopment project*

21 (2) If:

22 (a) a facility has been, is being, or is to be, installed in, or in
23 proximity to, the project area of a building redevelopment
24 project; and

25 (b) there is no nominated service area that:

26 (i) consists of, or includes, the project area; and

27 (ii) is attributable to a declaration under section 360H or
28 360HB; and

29 (c) at a time (the *relevant time*) on or after 1 July 2023, a
30 carriage service provider (the *first carriage service provider*)
31 formulates a proposal to use the facility:

32 (i) to supply carriage services to end-users at premises in
33 the whole or a part of the project area; or

34 (ii) to supply an eligible service to another carriage service
35 provider in order that the other carriage service provider

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- 1 can provide carriage services to end-users at premises in
2 the whole or a part of the project area; and
3 (d) when the first carriage service provider commences to use the
4 facility as mentioned in paragraph (c), the first carriage
5 service provider will be required, by subsection 360HB(6), to
6 declare that the whole or the part, as the case requires, of the
7 project area is a provisional nominated service area for the
8 purposes of this Part;
9 the first carriage service provider must:
10 (e) give the ACMA a written notice that:
11 (i) states that the first carriage service provider has
12 formulated the proposal; and
13 (ii) specifies the whole or the part, as the case requires, of
14 the project area; and
15 (iii) describes the facility; and
16 (iv) sets out the first carriage service provider's estimate of
17 the time when the first carriage service provider is likely
18 to commence to use the facility as mentioned in
19 paragraph (c); and
20 (f) do so within 10 business days after the relevant time.

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

22 *Variation of notice*

- 23 (3) A carriage service provider may, by writing, vary a notice given by
24 the carriage service provider under this section, so long as the
25 ACMA has approved the variation under subsection (4).
26 (4) The ACMA may, on application made by a carriage service
27 provider, approve the variation of a notice given by the carriage
28 service provider under this section.
29 (5) An application under subsection (4) must:
30 (a) be in writing; and
31 (b) be in accordance with the form approved in writing by the
32 ACMA; and
33 (c) be accompanied by such information (if any) as is specified
34 under subsection (6); and

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1 (d) be accompanied by such documents (if any) as are specified
2 under subsection (6).

3 (6) The ACMA may, by legislative instrument:

4 (a) specify the information that must accompany an application
5 under subsection (4); or

6 (b) specify the documents that must accompany an application
7 under subsection (4).

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

10 (7) If, under subsection (3), a carriage service provider varies a notice
11 given by the carriage service provider under this section, the
12 carriage service provider must give the ACMA a copy of the
13 variation.

14 **69 Section 360J**

15 Before “For the purposes of this Part,” insert “(1)”.

16 **70 At the end of section 360J**

17 Add:

18 (2) Subsection (1) has effect subject to subsections (3) and (4).

19 (3) The Minister may, by legislative instrument, declare that a
20 specified development area mentioned in subsection (1) is not a
21 ***nominated service area*** for the purposes of this Part.

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

24 (4) The Minister may, by legislative instrument, declare that:

25 (a) a specified development area mentioned in subsection (1) is
26 not a ***nominated service area*** for the purposes of this Part;
27 and

28 (b) a specified area is a ***nominated service area*** for the purposes
29 of this Part.

30 Note 1: For variation and revocation, see subsection 33(3) of the *Acts*
31 *Interpretation Act 1901*.

32 Note 2: For the format of the description of the area, see section 360LA.

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- 1 (5) An area must not be specified in a declaration in accordance with
2 paragraph (4)(b) unless at least one point in the area is also a point
3 in the development area specified in the declaration in accordance
4 with paragraph (4)(a).

71 At the end of subsection 360K(2)

5 Add:

6 Note: For variation and revocation, see subsection 33(3) of the *Acts*
7 Interpretation Act 1901.
8

72 After subsection 360K(1)

9 Insert:

10 *Nominated service area covered by a declaration under*
11 *section 360HB*
12

13 (1A) For the purposes of this Part, if:

14 (a) an area is a provisional nominated service area because of a
15 declaration made by a carriage service provider under
16 section 360HB; and

17 (b) the whole or a part of the provisional nominated service area
18 is a nominated service area;

19 the carriage service provider is the *statutory infrastructure*
20 *provider* for the nominated service area.

21 (1B) The Minister may, by legislative instrument, declare that:

22 (a) subsection (1A) does not apply to a specified nominated
23 service area; and

24 (b) a specified carriage service provider is the *statutory*
25 *infrastructure provider* for the nominated service area for the
26 purposes of this Part.

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

73 Paragraph 360K(3)(b)

29 Omit “section 360J”, substitute “subsection 360J(1)”.
30

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1 **74 At the end of subsection 360K(4)**

2 Add:

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

5 **75 At the end of section 360K**

6 Add:

7 (5) If an area is a nominated service area because of a declaration
8 made by the Minister under subsection 360J(4), the Minister may,
9 by legislative instrument, declare that a specified carrier is the
10 ***statutory infrastructure provider*** for the nominated service area,
11 for the purposes of this Part.

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

14 **76 After section 360K**

15 Insert:

16 **360KA Anticipated service area**

17 *Area specified in an anticipatory notice given by a carrier*

18 (1) If:

- 19 (a) a notice is in force under subsection 360HA(1) in relation to
20 the whole or a part of the project area of a real estate
21 development project; and
22 (b) the project involves the construction of one or more building
23 units in the area specified in the notice; and
24 (c) the following conditions are satisfied in relation to at least
25 one of those building units:
26 (i) the construction of the building unit has been
27 completed;
28 (ii) the building unit is occupied; and
29 (d) the area specified in the notice does not consist of, and is not
30 included in:
31 (i) a nominated service area; or

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1 (ii) a designated service area;
2 the area specified in the notice is an *anticipated service area* for
3 the purposes of this Part.

4 *Area specified in an anticipatory notice given by a carriage service*
5 *provider*

- 6 (2) If:
- 7 (a) a notice is in force under subsection 360HC(1) in relation to
8 the whole or a part of the project area of a real estate
9 development project; and
 - 10 (b) the project involves the construction of one or more building
11 units in the area specified in the notice; and
 - 12 (c) the following conditions are satisfied in relation to at least
13 one of those building units:
 - 14 (i) the construction of the building unit has been
15 completed;
 - 16 (ii) the building unit is occupied; and
 - 17 (d) the area specified in the notice does not consist of, and is not
18 included in:
 - 19 (i) a nominated service area; or
 - 20 (ii) a designated service area;
- 21 the area specified in the notice is an *anticipated service area* for
22 the purposes of this Part.

23 **360KB Statutory infrastructure provider for an anticipated service** 24 **area**

25 *Area specified in an anticipatory notice given by a carrier*

- 26 (1) For the purposes of this Part, if:
- 27 (a) an area is specified in a notice given by a carrier under
28 subsection 360HA(1) in relation to a real estate development
29 project; and
 - 30 (b) the area is an anticipated service area;
- 31 the carrier is the *statutory infrastructure provider* for the
32 anticipated service area.

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- 1 (2) The Minister may, by legislative instrument, declare that:
2 (a) subsection (1) does not apply to a specified anticipated
3 service area; and
4 (b) a specified carrier is the *statutory infrastructure provider* for
5 the anticipated service area for the purposes of this Part.

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

8 *Area specified in an anticipatory notice given by a carriage service*
9 *provider*

- 10 (3) For the purposes of this Part, if:
11 (a) an area is specified in a notice given by a carriage service
12 provider under subsection 360HC(1) in relation to a real
13 estate development project; and
14 (b) the area is an anticipated service area;
15 the carriage service provider is the *statutory infrastructure*
16 *provider* for the anticipated service area.

- 17 (4) The Minister may, by legislative instrument, declare that:
18 (a) subsection (3) does not apply to a specified anticipated
19 service area; and
20 (b) a specified carriage service provider is the *statutory*
21 *infrastructure provider* for the anticipated service area for
22 the purposes of this Part.

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

25 **77 Section 360L**

26 Before “The Minister”, insert “(1)”.

27 **78 Paragraph 360L(b)**

28 After “carrier”, insert “or carriage service provider”.

29 **79 Section 360L (before the note)**

30 Insert:

31 Note 1: For variation and revocation, see subsection 33(3) of the *Acts*
32 *Interpretation Act 1901*.

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1 **80 Section 360L (note)**

2 After “Note”, insert “2”.

3 **81 At the end of section 360L**

4 Add:

5 *Designated service area—multiple statutory infrastructure*
6 *providers*

- 7 (2) The Minister may, by legislative instrument, declare that:
8 (a) a specified area is a designated service area for the purposes
9 of this Part; and
10 (b) each of 2 or more specified persons is a **statutory**
11 **infrastructure provider** for the designated service area for
12 the purposes of this Part.

13 Note 1: For variation and revocation, see subsection 33(3) of the *Acts*
14 *Interpretation Act 1901*.

15 Note 2: For the format of the description of the area, see section 360LA.

- 16 (3) The Minister must not specify a person in a declaration under
17 subsection (2) unless the person is a carrier or carriage service
18 provider.

- 19 (4) If:
20 (a) an obligation is imposed by or under this Part on a statutory
21 infrastructure provider for a designated service area; and
22 (b) there are 2 or more statutory infrastructure providers for the
23 designated service area;
24 then:
25 (c) that obligation is imposed on each of those statutory
26 infrastructure providers, but may be discharged by any of
27 those statutory infrastructure providers; and
28 (d) if the obligation is complied with by any of those statutory
29 infrastructure providers—the obligation is taken to have been
30 complied with by the other statutory infrastructure provider
31 or providers.

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1 **82 Paragraphs 360LA(1)(a) and (b)**

2 Repeal the paragraphs.

3 **83 Paragraph 360LA(1)(f)**

4 Repeal the paragraph, substitute:

- 5 (f) subsection 360HB(2); or
6 (fa) subsection 360HB(6); or
7 (fb) subsection 360J(3); or
8 (fc) subsection 360J(4); or
9 (fd) subsection 360L(1); or
10 (fe) subsection 360L(2);

11 **84 Paragraphs 360LA(1)(g) and (h)**

12 Repeal the paragraphs, substitute:

- 13 (g) using:
14 (i) if no coordinate system is determined under
15 subsection (2A)—the GDA94 coordinate system; or
16 (ii) if a coordinate system is determined under
17 subsection (2A)—the coordinate system determined
18 under subsection (2A); and
19 (h) if a format is determined under subsection (3)—in that
20 format; and
21 (i) if no format is determined under subsection (3)—in a TAB
22 vector format.

23 **85 After paragraph 360LA(2)(d)**

24 Insert:

- 25 or (da) subsection 360HC(1); or
26 (db) subsection 360HC(2);

27 **86 Paragraphs 360LA(2)(e) and (f)**

28 Repeal the paragraphs, substitute:

- 29 (e) using:
30 (i) if no coordinate system is determined under
31 subsection (2A)—the GDA94 coordinate system; or

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- 1 (ii) if a coordinate system is determined under
2 subsection (2A)—the coordinate system determined
3 under subsection (2A); and
4 (f) if a format is determined under subsection (3)—in that
5 format; and
6 (g) if no format is determined under subsection (3)—in a TAB
7 vector format.

87 After subsection 360LA(2)

- 9 Insert:
10 (2A) The ACMA may, by legislative instrument, determine a coordinate
11 system for the purposes of paragraphs (1)(g) and (2)(e).
12 Note: For variation and revocation, see subsection 33(3) of the *Acts*
13 *Interpretation Act 1901*.
14 (2B) If a coordinate system is determined under subsection (2A), the
15 determination does not apply to a declaration made, or a notice
16 given, before the commencement of the determination.

88 At the end of subsection 360LA(3)

- 18 Add:
19 Note: For variation and revocation, see subsection 33(3) of the *Acts*
20 *Interpretation Act 1901*.

89 At the end of section 360LA

- 22 Add:
23 (4) If a format is determined under subsection (3), the determination
24 does not apply to a declaration made, or a notice given, before the
25 commencement of the determination.

90 At the end of Division 2 of Part 19

- 27 Add:

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1 **Subdivision E—Exempt projects**

2 **360M Exempt real estate development projects**

3 *Projects to be supplied with public mobile telecommunications*
4 *services*

- 5 (1) A real estate development project is exempt from
6 subsection 360H(2) if:
- 7 (a) there is telecommunications network infrastructure installed
8 within any part of, or in proximity to, the project area of the
9 project that will enable the supply of eligible services to
10 premises in the whole of the project area of the project; and
 - 11 (b) the telecommunications network infrastructure was fully
12 installed on or after 1 July 2020; and
 - 13 (c) the telecommunications network infrastructure was installed
14 in accordance with a contractual arrangement that:
 - 15 (i) was entered into by a carrier and the person responsible
16 for the real estate development project; and
 - 17 (ii) does not require the carrier to supply qualifying carriage
18 services within all or any part of the project area of the
19 project; and
 - 20 (d) at the time of installation, the telecommunications network
21 infrastructure formed part of a mobile network owned or
22 operated by the carrier.

23 *Projects to be served by radiocommunications fixed voice calls*

- 24 (2) A real estate development project is exempt from
25 subsection 360H(2) if:
- 26 (a) there is telecommunications network infrastructure installed
27 within any part of, or in proximity to, the project area of the
28 project that will enable the supply of eligible services to
29 premises in the whole of the project area of the project; and
 - 30 (b) the telecommunications network infrastructure was fully
31 installed on or after 1 July 2020; and
 - 32 (c) the telecommunications network infrastructure was installed
33 in accordance with a contractual arrangement that:

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- 1 (i) was entered into by a carrier and the person responsible
2 for the real estate development project; and
3 (ii) does not require the carrier to supply qualifying carriage
4 services within all or any part of the project area of the
5 project; and
6 (d) the telecommunications network infrastructure is capable of
7 being used to supply, to end-users at premises in the project
8 area of the project, carriage services that enable those
9 end-users to make and receive radiocommunications fixed
10 voice calls.

11 **360N Exempt building redevelopment projects**

12 *Projects to be supplied with public mobile telecommunications*
13 *services*

- 14 (1) A building redevelopment project is exempt from
15 subsection 360H(4) if:
16 (a) there is telecommunications network infrastructure installed
17 within any part of, or in proximity to, the project area of the
18 project that will enable the supply of eligible services to
19 premises in the whole of the project area of the project; and
20 (b) the telecommunications network infrastructure was fully
21 installed on or after 1 July 2020; and
22 (c) the telecommunications network infrastructure was installed
23 in accordance with a contractual arrangement that:
24 (i) was entered into by a carrier and the person responsible
25 for the building redevelopment project; and
26 (ii) does not require the carrier to supply qualifying carriage
27 services within all or any part of the project area of the
28 project; and
29 (d) at the time of installation, the telecommunications network
30 infrastructure formed part of a mobile network owned or
31 operated by the carrier.

32 *Projects to be served by radiocommunications fixed voice calls*

- 33 (2) A building redevelopment project is exempt from
34 subsection 360H(4) if:

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- 1 (a) there is telecommunications network infrastructure installed
2 within any part of, or in proximity to, the project area of the
3 project that will enable the supply of eligible services to
4 premises in the whole of the project area of the project; and
5 (b) the telecommunications network infrastructure was fully
6 installed on or after 1 July 2020; and
7 (c) the telecommunications network infrastructure was installed
8 in accordance with a contractual arrangement that:
9 (i) was entered into by a carrier and the person responsible
10 for the building redevelopment project; and
11 (ii) does not require the carrier to supply qualifying carriage
12 services within all or any part of the project area of the
13 project; and
14 (d) the telecommunications network infrastructure is capable of
15 being used to supply, to end-users at premises in the project
16 area of the project, carriage services that enable those
17 end-users to make and receive radiocommunications fixed
18 voice calls.

19 **360NA Contractual arrangement**

20 For the purposes of this Subdivision, *contractual arrangement*
21 includes a deed, contract, undertaking or any other form of legally
22 binding arrangement.

23 **360NB Proximity to a project area**

24 For the purposes of this Subdivision, telecommunications network
25 infrastructure forming part of a mobile network is in proximity to a
26 project area if, and only if, once fully deployed and operational, the
27 infrastructure is technically capable of being used to supply
28 carriage services within the whole of the project area.

29 **91 At the end of subsection 360P(3)**

30 Add:

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

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1 **92 At the end of subsection 360P(5)**

2 Add:

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

5 **93 Paragraph 360P(8)(c)**

6 Omit “published”, substitute “made available”.

7 **94 Subparagraph 360P(8)(d)(ii)**

8 Omit “published”, substitute “made available”.

9 **95 Subsection 360P(8) (note)**

10 Omit “For publication, see”, substitute “See also”.

11 **96 Subsection 360P(9)**

12 Omit “published”, substitute “made available”.

13 **97 Subsection 360P(9) (note)**

14 Omit “For publication, see”, substitute “See also”.

15 **98 At the end of subsection 360P(10)**

16 Add:

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

19 **99 At the end of subsection 360P(11B)**

20 Add:

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

23 **100 Paragraph 360Q(1)(b)**

24 Omit “published”, substitute “made available”.

25 **101 Subsection 360Q(1) (note)**

26 Omit “For publication, see”, substitute “See also”.

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1 **102 Subsections 360Q(2) and (2A)**

2 Repeal the subsections.

3 **103 At the end of subsection 360Q(4)**

4 Add:

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

7 **104 At the end of subsection 360Q(6)**

8 Add:

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

11 **105 Paragraph 360Q(9)(c)**

12 Omit “published”, substitute “made available”.

13 **106 Subparagraph 360Q(9)(d)(ii)**

14 Omit “published”, substitute “made available”.

15 **107 Subsection 360Q(9) (note)**

16 Omit “For publication, see”, substitute “See also”.

17 **108 Subsection 360Q(10)**

18 Omit “published”, substitute “made available”.

19 **109 Subsection 360Q(10) (note)**

20 Omit “For publication, see”, substitute “See also”.

21 **110 At the end of section 360Q**

22 Add:

23 *Response to request*

24 (11) If a carriage service provider makes a request as mentioned in
25 subsection (1):

26 (a) the statutory infrastructure provider must:

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- 1 (i) notify the carriage service provider that the statutory
2 infrastructure provider will fulfil the request; or
3 (ii) refuse the request; and
4 (b) do so within:
5 (i) 10 business days after receiving the request; or
6 (ii) if a longer period is specified under subsection (12)—
7 that longer period.

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

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

12 *Notification of refusal of request*

- 13 (13) If:
14 (a) a carriage service provider makes a request as mentioned in
15 subsection (1); and
16 (b) the fulfilment of the request would affect an end-user at
17 particular premises; and
18 (c) the statutory infrastructure provider refuses the request;
19 then:
20 (d) the statutory infrastructure provider must:
21 (i) give written notice of the refusal to the carriage service
22 provider; and
23 (ii) do so within 5 business days after the refusal; and
24 (e) if the carriage service provider receives the notice—the
25 carriage service provider must:
26 (i) give a copy of the notice to the end-user; and
27 (ii) do so within 5 business days after receiving the notice.

28 **111 Subsection 360R(1)**

29 Omit “carrier (the *first carrier*)”, substitute “person (the *first person*)”.

30 **112 After paragraph 360R(1)(a)**

31 Insert:

- 32 (aa) an anticipated service area; or
-

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1 **113 Subsection 360R(2)**

2 Omit “carrier” (first occurring), substitute “person”.

3 **114 Subsection 360R(2)**

4 Omit “it will”, substitute “the first person will”.

5 **115 Subsection 360R(2)**

6 Omit “its”, substitute “the first person’s”.

7 **116 Subsection 360R(2)**

8 Omit “carrier” (second occurring), substitute “person”.

9 **117 Paragraph 360R(2)(b)**

10 Repeal the paragraph, substitute:

11 (b) do so:

12 (i) if it is reasonably practicable for the notice to be given
13 at least 90 days before the time when the first person
14 will become no longer able to fulfil the first person’s
15 obligations under section 360P or 360Q—at least 90
16 days before that time; or

17 (ii) in any other case—not later than 10 business days after
18 the time when the first person becomes no longer able to
19 fulfil the first person’s obligations under section 360P or
20 360Q.

21 **118 After subsection 360R(2)**

22 Insert:

23 (2A) A notice under subsection (2) must be in accordance with the form
24 approved in writing by the ACMA.

25 **119 Paragraph 360R(3)(b)**

26 Omit “carrier” (first occurring), substitute “person”.

27 **120 Paragraph 360R(3)(b)**

28 Omit “carrier” (second occurring), substitute “person (being a carrier or
29 carriage service provider)”.

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1 **121 Subsection 360R(3)**

2 Omit “carrier” (third occurring), substitute “person”.

3 **122 Paragraph 360R(3)(d)**

4 Repeal the paragraph, substitute:

5 (d) do so:

- 6 (i) if it is reasonably practicable for the notice to be given
7 at least 90 days before the time when the other person
8 becomes the statutory infrastructure provider for the
9 area—at least 90 days before that time; or
10 (ii) in any other case—not later than 10 business days after
11 the time when the other person becomes the statutory
12 infrastructure provider for the area.

13 **123 At the end of section 360R**

14 Add:

- 15 (4) A notice under subsection (3) must be in accordance with the form
16 approved in writing by the ACMA.

17 **124 After section 360R**

18 Insert:

19 **360RA Statutory infrastructure provider must have a website**

20 A statutory infrastructure provider must have a website.

21 **125 Paragraph 360U(1)(a)**

22 After “terms or conditions”, insert “(whether or not relating to price or a
23 method of ascertaining price)”.

24 **126 At the end of subsection 360U(1)**

25 Add:

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

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1 **127 After subsection 360U(3A)**

2 Insert:

3 (3B) A determination under subsection (1) may declare that a specified
4 standard set out in the determination is a designated compensable
5 standard for the purposes of this Part.

6 (3C) Subsection (1) does not, by implication, limit the power to make
7 rules under subsection 360V(1).

8 **128 At the end of subsection 360U(6)**

9 Add:

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

12 **129 Subsection 360U(9) (heading)**

13 Omit “*minimum*”, substitute “*performance*”.

14 **130 At the end of section 360U**

15 Add:

- 16 (10) However, a statutory infrastructure provider is not required to
17 comply with a benchmark set under subsection (6) to the extent
18 that the benchmark is inconsistent with an access agreement to
19 which the statutory infrastructure provider is a party, so long as:
20 (a) the agreement was entered into before the commencement of
21 the benchmark; and
22 (b) the agreement has not been varied after the commencement
23 of the benchmark.

24 *Other benchmarks*

- 25 (11) The Minister may, by legislative instrument, set minimum
26 benchmarks that must be complied with by statutory infrastructure
27 providers in relation to either or both of the following matters:
28 (a) the supply or proposed supply of an eligible service to a
29 carriage service provider in order that the carriage service
30 provider can provide qualifying carriage services to an
31 end-user at premises in a relevant service area;

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1 (b) the connection of premises in a relevant service area to a
2 qualifying telecommunications network in order that a
3 carriage service provider can provide qualifying carriage
4 services to an end-user at the premises.

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

7 (12) An instrument under subsection (11) may be of general application
8 or may be limited as provided in the instrument.

9 (13) Subsection (12) does not, by implication, limit subsection 33(3A)
10 of the *Acts Interpretation Act 1901*.

11 (14) Benchmarks set under subsection (11) may make provision for or
12 in relation to a matter by conferring a power on the ACMA to
13 make a legislative instrument.

14 *Provider must meet or exceed other benchmarks*

15 (15) A statutory infrastructure provider must meet or exceed a
16 minimum benchmark set by an instrument under subsection (11).

17 (16) However, a statutory infrastructure provider is not required to
18 comply with a benchmark set under subsection (11) to the extent
19 that the benchmark is inconsistent with an access agreement to
20 which the statutory infrastructure provider is a party, so long as:
21 (a) the agreement was entered into before the commencement of
22 the benchmark; and
23 (b) the agreement has not been varied after the commencement
24 of the benchmark.

25 **131 After paragraph 360V(1)(a)**

26 Insert:

27 (aa) the terms and conditions (whether or not relating to price or a
28 method of ascertaining price) of the supply of an eligible
29 service to a carriage service provider in order that the
30 carriage service provider can provide qualifying carriage
31 services to an end-user at premises in a relevant service area;

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1 **132 At the end of subsection 360V(1)**

2 Add:

3 ; (e) giving the ACMA information or a report in relation to a
4 matter mentioned in any of the above paragraphs.

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

7 **133 After subsection 360V(1)**

8 Insert:

9 (1AA) Rules under subsection (1) may be of general application or may
10 be limited as provided in the rule.

11 (1AB) Subsection (1AA) of this section does not, by implication, limit
12 subsection 33(3A) of the *Acts Interpretation Act 1901*.

13 **134 After subsection 360V(1A)**

14 Insert:

15 (1B) Rules under subsection (1) may declare that a specified rule set out
16 in those rules is a designated compensable rule for the purposes of
17 this Part.

18 (1C) Subsection (1) does not, by implication, limit the power to
19 determine standards under subsection 360U(1).

20 **135 After Division 4 of Part 19**

21 Insert:

22 **Division 4A—Compensation**

23 **Subdivision A—Introduction**

24 **360VA Simplified outline**

25 The following is a simplified outline of this Division:

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- If a statutory infrastructure provider contravenes a designated compensable standard determined under subsection 360U(1), the statutory infrastructure provider is liable to pay damages to the customer for the contravention.

- If a statutory infrastructure provider contravenes a designated compensable rule made under subsection 360V(1), the statutory infrastructure provider is liable to pay damages to the customer for the contravention.

- The Telecommunications Industry Ombudsman may issue an evidentiary certificate in relation to:
 - (a) a contravention of a designated compensable standard determined under subsection 360U(1); or
 - (b) a contravention of a designated compensable rule made under subsection 360V(1).

15 **360VB Definitions**

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In this Division:

customer includes prospective customer.

damages includes punitive damages.

19 **360VC Meaning of certain expressions**

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In determining the meaning that the expressions *customer* and *damages* have when used in:

(a) a provision of this Act other than this Division; or

(b) a provision of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*;

section 360VB is to be disregarded.

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1 **Subdivision B—Damages for breach of standards or rules by**
2 **statutory infrastructure providers**

3 **360VD Damages for breach of a designated compensable standard**
4 **or designated compensable rule**

5 (1) If:

6 (a) a statutory infrastructure provider contravenes a designated
7 compensable standard; and

8 (b) the standard is determined under subsection 360U(1); and

9 (c) the contravention relates to a particular customer;

10 the statutory infrastructure provider is liable to pay damages to the
11 customer for the contravention.

12 (2) If:

13 (a) a statutory infrastructure provider contravenes a designated
14 compensable rule; and

15 (b) the rule is made under subsection 360V(1); and

16 (c) the contravention relates to a particular customer;

17 the statutory infrastructure provider is liable to pay damages to the
18 customer for the contravention.

19 (3) The amount of damages payable under subsection (1) or (2) for a
20 particular contravention is ascertained in accordance with the
21 compensation rules.

22 (4) However, if:

23 (a) the statutory infrastructure provider:

24 (i) credits an amount to an account that the customer has
25 with the provider; or

26 (ii) pays an amount to the customer; and

27 (b) the credit or payment was made as a result of a right or
28 remedy that:

29 (i) was available to the customer otherwise than under this
30 Division; and

31 (ii) arose out of the same event or transaction as the
32 contravention;

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- 1 the amount of damages payable for the contravention is to be
2 reduced (but not below zero) by the amount of the credit or
3 payment.
- 4 (5) The customer may recover the amount of the damages by action
5 against the statutory infrastructure provider in a court of competent
6 jurisdiction.
- 7 (6) The liability of the statutory infrastructure provider under this
8 section may be discharged:
9 (a) by giving the customer a credit in an account the customer
10 has with the statutory infrastructure provider; or
11 (b) in any other manner agreed between the statutory
12 infrastructure provider and the customer.
- 13 (7) An action under this section must be instituted within 2 years after:
14 (a) in the case of a contravention that continued throughout a
15 period—the time when the contravention began; or
16 (b) in any other case—the time when the contravention occurred.
- 17 (8) If the customer is an individual and the customer dies, a reference
18 in this section to the *customer* includes a reference to the legal
19 personal representative of the customer.

20 **360VE Time for payment of damages**

21 *Decision whether to accept liability for damages*

- 22 (1) If, at a particular time, a statutory infrastructure provider first has
23 reason to believe that an event has occurred that is reasonably
24 likely to result in the statutory infrastructure provider being liable
25 to pay damages to a particular customer under section 360VD,
26 then, within 14 days after that time, the statutory infrastructure
27 provider must decide whether to accept that liability.
- 28 (2) In making a decision under subsection (1), the statutory
29 infrastructure provider must have regard to whether there is any
30 reasonable basis for the statutory infrastructure provider to dispute
31 the liability.

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1 (3) If a statutory infrastructure provider makes a decision under
2 subsection (1) not to accept a liability to pay damages to a
3 particular customer, the statutory infrastructure provider must give
4 the customer written notification of the decision within 14 weeks
5 after the decision is made.

6 *Crediting customer account*

7 (4) If:

8 (a) a statutory infrastructure provider makes a decision under
9 subsection (1) to accept a liability to pay damages to a
10 particular customer; and

11 (b) the liability is to be discharged by giving the customer a
12 credit in an account the customer has with the statutory
13 infrastructure provider;

14 the liability must be discharged within the period of 14 weeks after
15 the decision is made and:

16 (c) if it is practicable for the statutory infrastructure provider to
17 give the customer the credit within that 14-week period and
18 in time for the customer to be notified of the credit in the first
19 bill sent to the customer during that period—by giving the
20 customer the credit in time for the customer to be notified of
21 the credit in that bill; or

22 (d) if paragraph (c) does not apply, but it is practicable for the
23 statutory infrastructure provider to give the customer the
24 credit within that 14-week period and in time for the
25 customer to be notified of the credit in the second bill sent to
26 the customer during that period—by giving the customer the
27 credit in time for the customer to be notified of the credit in
28 that bill.

29 *Other manner of discharging liability*

30 (5) If:

31 (a) a statutory infrastructure provider makes a decision under
32 subsection (1) to accept a liability to pay damages to a
33 particular customer; and

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1 (b) the liability is not to be discharged by giving the customer a
2 credit in an account the customer has with the statutory
3 infrastructure provider;
4 the liability must be discharged within 14 weeks after the decision
5 is made.

6 *Customer*

7 (6) If the customer is an individual and the customer dies, a reference
8 in this section to the *customer* includes a reference to the legal
9 personal representative of the customer.

10 **360VF Evidentiary certificate issued by the Telecommunications** 11 **Industry Ombudsman**

- 12 (1) The Telecommunications Industry Ombudsman may:
- 13 (a) issue a written certificate that:
- 14 (i) states that a specified statutory infrastructure provider
15 has contravened a designated compensable standard
16 determined under subsection 360U(1); and
17 (ii) sets out particulars of that contravention; or
- 18 (b) issue a written certificate that:
- 19 (i) states that a specified statutory infrastructure provider
20 has contravened a designated compensable rule made
21 under subsection 360V(1); and
22 (ii) sets out particulars of that contravention.
- 23 (2) In any proceedings under this Division, a certificate under
24 subsection (1) is prima facie evidence of the matters in the
25 certificate.
- 26 (3) A document purporting to be a certificate under subsection (1)
27 must, unless the contrary is established, be taken to be a certificate
28 and to have been properly given.
- 29 (4) Subsection (1) does not apply to the Telecommunications Industry
30 Ombudsman unless the Telecommunications Industry Ombudsman
31 gives the Minister a written notice consenting to the conferral of
32 the powers conferred by that subsection.

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

12 **Subdivision C—Miscellaneous**

13 **360VG Savings of other laws and remedies**

- 14 (1) This Division is not intended to exclude or limit the concurrent
15 operation of any law of a State or Territory.
- 16 (2) This Division does not limit, restrict or otherwise affect any right
17 or remedy a person would have if this Division had not been
18 enacted.
- 19 (3) This Division does not limit, restrict or otherwise affect the
20 operation of the Telecommunications Industry Ombudsman
21 scheme. In particular, this Division does not affect a customer's
22 right to complain to the Telecommunications Industry
23 Ombudsman.
- 24 (4) Subsection (3) does not, by implication, limit subsection (2).

25 **360VH Compensation rules**

26 The Minister may, by legislative instrument, make rules
27 (**compensation rules**) prescribing matters required or permitted by
28 this Division to be prescribed by the compensation rules.

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

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1 **136 Division 5 of Part 19 (heading)**

2 Omit “Publication of offers”, substitute “Offers to be made
3 available”.

4 **137 Section 360W (heading)**

5 Omit “Publication of offer”, substitute “Offer to be made available”.

6 **138 Subsection 360W(1)**

7 Omit “publish”, substitute “make available”.

8 **139 Subsection 360W(4)**

9 Omit “published”, substitute “made available”.

10 **140 Section 360X (heading)**

11 Omit “Publication of offer”, substitute “Offer to be made available”.

12 **141 Subsection 360X(1)**

13 Omit “publish”, substitute “make available”.

14 **142 Subsection 360X(4)**

15 Omit “published”, substitute “made available”.

16 **143 After Division 5 of Part 19**

17 Insert:

18 **Division 5A—Information-gathering powers**

19 **360XAA Secretary may obtain information and documents from**
20 **carriers and carriage service providers**

21 *Scope*

22 (1) This section applies to a carrier or carriage service provider if the
23 Secretary has reason to believe that the carrier or carriage service
24 provider has information or a document that is relevant to the
25 exercise of the Minister’s powers under section 360L.

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1 *Requirement*

- 2 (2) The Secretary may, by written notice given to the carrier or
3 carriage service provider, require the carrier or carriage service
4 provider:
5 (a) to give to the Secretary, within the period and in the manner
6 and form specified in the notice, any such information; or
7 (b) to produce to the Secretary, within the period and in the
8 manner specified in the notice, any such documents; or
9 (c) to make copies of any such documents and to produce to the
10 Secretary, within the period and in the manner specified in
11 the notice, those copies.
- 12 (3) A period specified under subsection (2) must not be shorter than 14
13 days after the notice is given.

14 *Compliance*

- 15 (4) A carrier or carriage service provider must comply with a
16 requirement under subsection (2) to the extent that the carrier or
17 carriage service provider is capable of doing so.

18 **360XAB Copying documents—compensation**

19 A carrier or carriage service provider is entitled to be paid by the
20 Commonwealth reasonable compensation for complying with a
21 requirement covered by paragraph 360XAA(2)(c).

22 **360XAC Copies of documents**

- 23 (1) The Secretary may:
24 (a) inspect a document or copy produced under
25 subsection 360XAA(2); and
26 (b) make and retain copies of, or take and retain extracts from,
27 such a document.
- 28 (2) The Secretary may retain possession of a copy of a document
29 produced in accordance with a requirement covered by
30 paragraph 360XAA(2)(c).

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1 **360XAD Secretary may retain documents**

- 2 (1) The Secretary may take, and retain for as long as is necessary,
3 possession of a document produced under subsection 360XAA(2).
- 4 (2) The carrier or carriage service provider otherwise entitled to
5 possession of the document is entitled to be supplied, as soon as
6 practicable, with a copy certified by the Secretary to be a true copy.
- 7 (3) The certified copy must be received in all courts and tribunals as
8 evidence as if it were the original.
- 9 (4) Until a certified copy is supplied, the Secretary must, at such times
10 and places as the Secretary thinks appropriate, permit the carrier or
11 carriage service provider otherwise entitled to possession of the
12 document, or a person authorised by that carrier or carriage service
13 provider, to inspect and make copies of, or take extracts from, the
14 document.

15 **360XAE Law relating to legal professional privilege not affected**

16 This Division does not affect the law relating to legal professional
17 privilege.

18 **360XAF Disclosure of information to the ACMA**

19 *Scope*

- 20 (1) This section applies to information that:
21 (a) was obtained by the Secretary under section 360XAA; or
22 (b) is contained in a document, or a copy of a document, that was
23 produced to the Secretary under section 360XAA.

24 *Disclosure*

- 25 (2) The Secretary may disclose the information to the ACMA if the
26 Secretary is satisfied that the information will enable or assist the
27 ACMA to perform or exercise:
28 (a) any of its functions or powers; or

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- 1 (b) any functions or powers delegated to it under a law of the
2 Commonwealth.

3 **360XAG Delegation by the Secretary**

- 4 (1) The Secretary may, in writing, delegate any or all of the
5 Secretary's powers under this Division to:
6 (a) the ACMA; or
7 (b) an SES employee, or acting SES employee, in the
8 Department.

9 Note: The expressions *SES employee* and *acting SES employee* are defined
10 in section 2B of the *Acts Interpretation Act 1901*.

- 11 (2) In exercising a delegated power, the delegate must comply with
12 any written directions of the Secretary.

13 **144 Before section 360XA**

14 Insert:

15 **360XAH Compliance audits**

- 16 (1) The ACMA may conduct an audit of a statutory infrastructure
17 provider for the purpose of determining whether the statutory
18 infrastructure provider is complying, or has complied, with this
19 Part.
- 20 (2) An audit conducted under subsection (1) is to be known as a
21 *compliance audit*.
- 22 (3) If a compliance audit of a statutory infrastructure provider is being
23 conducted by the ACMA, the statutory infrastructure provider
24 must:
25 (a) cooperate fully with the ACMA in relation to the compliance
26 audit; and
27 (b) provide the ACMA with all reasonable facilities and
28 assistance in relation to the compliance audit.
- 29 (4) This section does not limit any of the ACMA's other powers or
30 functions.

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1 **360XAI Additional functions of the ACMA**

- 2 (1) The Minister may, by legislative instrument, make rules to be
3 complied with by the ACMA in relation to any or all of the
4 following matters:
5 (a) the making available on the ACMA’s website of information
6 or reports given to the ACMA in accordance with rules made
7 under subsection 360V(1);
8 (b) giving the Minister copies of such information or reports;
9 (c) the making available on the ACMA’s website of information,
10 or explanatory material, that is likely to assist statutory
11 infrastructure providers in complying with this Part.

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

- 14 (2) This section does not limit any of the ACMA’s other powers or
15 functions.

16 **145 At the end of subsection 360XA(1)**

17 Add:

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

20 **146 Subsection 360XA(5)**

21 After “limit”, insert “subsection 360V(1), section 360XAA or”.

22 **147 At the end of subsection 360Y(3)**

23 Add:

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

26 **148 Paragraph 360Z(1)(c)**

27 Before “a copy”, insert “subject to subsections (4) and (5),”.

28 **149 Paragraph 360Z(1)(c)**

29 After “a carrier”, insert “or carriage service provider”.

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1 **150 At the end of paragraph 360Z(1)(c)**

2 Add:
3 ; or (v) subsection 360HC(1); or
4 (vi) subsection 360HC(2).

5 **151 At the end of section 360Z**

6 Add:
7 (4) If an area specified in a notice given under a provision mentioned
8 in paragraph (1)(c) consists of, or is included in, a nominated
9 service area, the ACMA may:
10 (a) annotate the copy of the notice that is included in the
11 Register with a statement to the effect that the area specified
12 in the notice consists of, or is included in, a specified
13 nominated service area; or
14 (b) remove the notice from the Register.
15 (5) If an area specified in a notice given under a provision mentioned
16 in paragraph (1)(c) consists of, or is included in, an anticipated
17 service area, the ACMA may:
18 (a) annotate the copy of the notice that is included in the
19 Register with a statement to the effect that the area specified
20 in the notice consists of, or is included in, a specified
21 anticipated service area; or
22 (b) remove the notice from the Register.

23 **152 Paragraph 360ZA(1)(a)**

24 Repeal the paragraph.

25 **153 After paragraph 360ZA(1)(e)**

26 Insert:
27 (ea) subsection 360HB(3);
28 (eb) subsection 360HB(7);
29 (ec) subsection 360K(1B);
30 (ed) subsection 360K(2);
31 (ee) subsection 360K(4);
32 (ef) subsection 360K(5);

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- 1 (eg) subsection 360KB(2);
- 2 (eh) subsection 360KB(4);
- 3 (ei) subsection 360L(1);
- 4 (ej) subsection 360L(2);

154 Subsections 360ZA(3) and (4)

6 Repeal the subsections, substitute:

7 *Sub-delegation by the ACMA*

- 8 (3) The ACMA may, by writing, delegate to:
 - 9 (a) a member of the ACMA; or
 - 10 (b) a person who is:
 - 11 (i) a member of the staff of the ACMA; and
 - 12 (ii) an SES employee or acting SES employee; or
 - 13 (c) a person who:
 - 14 (i) is a member of the staff of the ACMA; and
 - 15 (ii) holds, or is acting in, an Executive Level 1 or 2, or
 - 16 equivalent, position;

17 any or all of the powers that have been delegated by the Minister to

18 the ACMA under subsection (1).
- 19 (4) If the ACMA delegates to a person (the *second delegate*) a power
- 20 that has been delegated by the Minister to the ACMA under
- 21 subsection (1), then that power, when exercised by the second
- 22 delegate, is taken for the purposes of this Act to have been
- 23 exercised by the Minister.
- 24 (5) If the ACMA is subject to directions in relation to the exercise of a
- 25 power delegated by the Minister to the ACMA under
- 26 subsection (1), then:
 - 27 (a) the ACMA must give corresponding written directions to the
 - 28 second delegate; and
 - 29 (b) the ACMA may give other written directions (not
 - 30 inconsistent with those corresponding directions) to the
 - 31 second delegate in relation to the exercise of that power.

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1 (6) In exercising a delegated power, the second delegate must comply
2 with any directions of the ACMA.

3 *Delegation to SES employees, or acting SES employees, in the*
4 *Department*

5 (7) The Minister may, by writing, delegate any or all of the Minister's
6 powers under the provisions mentioned in subsection (1) to an SES
7 employee, or an acting SES employee, in the Department.

8 (8) In exercising a delegated power, the delegate must comply with
9 any written directions of the Minister.

10 ***Telecommunications (Consumer Protection and Service***
11 ***Standards) Act 1999***

12 **155 After subsection 128(5)**

13 Insert:

14 (5A) The scheme may also provide for the Telecommunications Industry
15 Ombudsman to:

16 (a) investigate; and

17 (b) make determinations relating to; and

18 (c) give directions relating to;

19 complaints about the connection of premises to a qualifying
20 telecommunications network, where the connection is:

21 (d) by a statutory infrastructure provider for a service area; and

22 (e) in order that a carriage service provider can provide
23 qualifying carriage services to an end-user at premises in the
24 service area.

25 (5B) For the purposes of subsection (5A), the following expressions
26 have the same meaning as in Part 19 of the *Telecommunications*
27 *Act 1997*:

28 (a) ***qualifying carriage service***;

29 (b) ***qualifying telecommunications network***;

30 (c) ***service area***;

31 (d) ***statutory infrastructure provider***.

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Schedule 1 Statutory infrastructure providers

Part 1 Amendments

1 **156 At the end of subsection 129(2)**

2 Add:

3 ; (d) whether the carrier or provider is a statutory infrastructure
4 provider (within the meaning of Part 19 of the
5 *Telecommunications Act 1997*).

6 **157 At the end of subsection 130(3)**

7 Add:

8 ; (d) whether the provider is a statutory infrastructure provider
9 (within the meaning of Part 19 of the *Telecommunications*
10 *Act 1997*).

11 **158 At the end of subsection 131(3)**

12 Add:

13 ; (d) whether members of that class are statutory infrastructure
14 providers (within the meaning of Part 19 of the
15 *Telecommunications Act 1997*).

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Statutory infrastructure providers **Schedule 1**
Transitional **Part 2**

1 **Part 2—Transitional**

2 **159 Transitional—determination made under**
3 **subsection 360LA(3) of the *Telecommunications Act***
4 **1997**

5 The amendments of section 360LA of the *Telecommunications Act*
6 *1997* made by this Schedule do not affect the continuity of a
7 determination made under subsection 360LA(3) of the
8 *Telecommunications Act 1997* before the commencement of this item.

9 **160 Transitional—rules made under subsection 360V(1) of**
10 **the *Telecommunications Act 1997***

11 Subsections 360V(1AA) and (1AB) of the *Telecommunications Act*
12 *1997* (as amended by this Schedule) do not, by implication, affect the
13 application of subsection 33(3A) of the *Acts Interpretation Act 1901* to
14 rules made under subsection 360V(1) of the *Telecommunications Act*
15 *1997* before the commencement of this item.

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Schedule 2 Deployment of optical fibre

1 **Schedule 2—Deployment of optical fibre**
2

3 *Telecommunications Act 1997*

4 **1 Section 7**

5 Insert:

6 *remedial notice* means a notice under subsection 372JA(2).

7 **2 After Subdivision B of Division 3 of Part 20A**

8 Insert:

9 **Subdivision C—Remedial notices**

10 **372JA Remedial notices**

11 *Scope*

- 12 (1) This section applies if the ACMA reasonably believes that a
13 person:
14 (a) is contravening a designated civil penalty provision; or
15 (b) has contravened a designated civil penalty provision in
16 circumstances that make it likely that the contravention will
17 continue or be repeated; or
18 (c) is likely to contravene a designated civil penalty provision.

19 Note: For *designated civil penalty provision*, see section 372JH.

20 *Remedial notice*

- 21 (2) The ACMA may give the person a written notice requiring the
22 person to:
23 (a) remedy the contravention; or
24 (b) prevent the likely contravention from occurring; or
25 (c) remedy the things or operations causing the contravention or
26 likely contravention.
- 27 (3) A notice under subsection (2) is to be known as a *remedial notice*.

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Deployment of optical fibre Schedule 2

372JB Contents of remedial notices

- (1) A remedial notice given to a person by the ACMA must state:
- (a) that the ACMA reasonably believes that the person:
 - (i) is contravening a designated civil penalty provision; or
 - (ii) has contravened a designated civil penalty provision in circumstances that make it likely that the contravention will continue or be repeated; or
 - (iii) is likely to contravene a designated civil penalty provision; and
 - (b) the provision the ACMA believes is being, has been, or is likely to be, contravened; and
 - (c) briefly, how the provision is being, has been, or is likely to be, contravened; and
 - (d) the period within which the person must comply with the notice.

Note: For *designated civil penalty provision*, see section 372JH.

- (2) The remedial notice may include directions concerning the measures to be taken to:
- (a) remedy the contravention; or
 - (b) prevent the likely contravention from occurring; or
 - (c) remedy the things or operations causing the contravention or likely contravention.
- (3) The period stated for compliance with the remedial notice must be reasonable in all the circumstances.

372JC Compliance with remedial notice

- (1) A person must comply with a remedial notice.

Ancillary contraventions

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

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Schedule 2 Deployment of optical fibre

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

7 *Civil penalty provisions*

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

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

11 **372JD Extension of time for compliance with remedial notices**

12 *Scope*

- 13 (1) This section applies if a person has been given a remedial notice.

14 *Extension of compliance period*

- 15 (2) The ACMA may, by written notice given to the person, extend the
16 compliance period for the remedial notice.
17 (3) However, the ACMA may extend the compliance period only if the
18 period has not ended.
19 (4) In this section, *compliance period* means the period stated in the
20 remedial notice under section 372JB, and includes that period as
21 extended under this section.

22 **372JE Variation of remedial notices**

23 *Scope*

- 24 (1) This section applies if a person has been given a remedial notice.

25 *Variation*

- 26 (2) The ACMA may, by written notice given to the person, vary the
27 notice.

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Deployment of optical fibre Schedule 2

- 1 (3) The ACMA may also, in accordance with section 372JD, extend
2 the compliance period for a remedial notice.

3 372JF Revocation of remedial notices

- 4 (1) If:
5 (a) a person has been given a remedial notice; and
6 (b) at a time during the compliance period for the notice, the
7 ACMA forms a reasonable belief that the notice is no longer
8 required for the purposes of requiring the person to:
9 (i) remedy a contravention of a designated civil penalty
10 provision; or
11 (ii) prevent a likely contravention of a designated civil
12 penalty provision from occurring; or
13 (iii) remedy the things or operations causing a contravention,
14 or likely contravention, of a designated civil penalty
15 provision;
16 the ACMA must, by written notice given to the person, revoke the
17 notice.
- 18 (2) In this section, *compliance period* means the period stated in the
19 remedial notice under section 372JB, and includes that period as
20 extended under section 372JD.

21 372JG Formal irregularities or defects in remedial notices

- 22 A remedial notice is not invalid only because of:
23 (a) a formal defect or irregularity in the notice unless the defect
24 or irregularity causes or is likely to cause substantial
25 injustice; or
26 (b) a failure to use the correct name of the person to whom the
27 notice is issued if the notice sufficiently identifies the person.

28 372JH Designated civil penalty provision

- 29 For the purposes of this Subdivision, each of the following
30 provisions is a *designated civil penalty provision*:
31 (a) subsection 372E(2);

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Schedule 2 Deployment of optical fibre

- 1 (b) subsection 372F(2);
- 2 (c) subsection 372G(2);
- 3 (d) subsection 372G(2A);
- 4 (e) subsection 372G(3);
- 5 (f) subsection 372G(4);
- 6 (g) subsection 372G(4A);
- 7 (h) subsection 372G(5).

3 After paragraph 1(o) of Schedule 4

9 Insert:

- 10 (oa) a decision to give a remedial notice under section 372JA;
- 11 (ob) a decision under section 372JE to vary a remedial notice;
- 12 (oc) a decision to under section 372JF to refuse to revoke a
- 13 remedial notice;

Schedule 3—Disclosure of information

Australian Communications and Media Authority Act 2005

1 After subsection 59B(1)

Insert:

(1A) For the purpose of advising the Minister, an ACMA official must, if requested to do so by:

(a) the Secretary of the Department; or

(b) an APS employee in the Department who is authorised, in writing, by the Secretary of the Department for the purposes of this subsection;

disclose authorised disclosure information to the Secretary of the Department or the APS employee, as the case requires.

2 Subsection 59B(3)

After “(1)”, insert “or (1A)”.

3 After section 59D

Insert:

59DA Disclosure of information that relates to the affairs of a carriage service provider

(1) An ACMA official may disclose authorised disclosure information if the authorised disclosure information:

(a) relates to the affairs of a carrier or carriage service provider; and

(b) relates to any of the following matters:

(i) customer complaints;

(ii) customers experiencing financial hardship;

(iii) customer service;

(iv) faults and service difficulties;

(v) rectification of faults and service difficulties;

(vi) service activation and provisioning;

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Schedule 3 Disclosure of information

- 1 (vii) service connection;
2 (viii) performance characteristics of services;
3 (ix) customer appointment keeping;
4 (x) a matter determined under subsection (4).
- 5 (2) An ACMA official may disclose summaries of authorised
6 disclosure information if:
7 (a) the authorised disclosure information relates to the affairs of
8 a carrier or carriage service provider; and
9 (b) the summaries relate to any of the following matters:
10 (i) customer complaints;
11 (ii) customers experiencing financial hardship;
12 (iii) customer service;
13 (iv) faults and service difficulties;
14 (v) rectification of faults and service difficulties;
15 (vi) service activation and provisioning;
16 (vii) service connection;
17 (viii) performance characteristics of services;
18 (ix) customer appointment keeping;
19 (x) a matter determined under subsection (4).
- 20 (3) An ACMA official may disclose statistics derived from authorised
21 disclosure information if:
22 (a) the authorised disclosure information relates to the affairs of
23 a carrier or carriage service provider; and
24 (b) the statistics relate to any of the following matters:
25 (i) customer complaints;
26 (ii) customers experiencing financial hardship;
27 (iii) customer service;
28 (iv) faults and service difficulties;
29 (v) rectification of faults and service difficulties;
30 (vi) service activation and provisioning;
31 (vii) service connection;
32 (viii) performance characteristics of services;
33 (ix) customer appointment keeping;
34 (x) a matter determined under subsection (4).
-

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Disclosure of information **Schedule 3**

1 (4) The Minister may, by legislative instrument, determine one or
2 more matters for the purposes of subparagraphs (1)(b)(x), (2)(b)(x)
3 and (3)(b)(x).

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

6 (5) A disclosure under subsection (1), (2) or (3) may involve
7 disclosing the identity of a carrier or carriage service provider.

8 (6) Subsection (5) does not, by implication, limit what can be
9 disclosed under a provision of this Part other than this section.

10 (7) Subsections (1), (2) and (3) do not authorise the disclosure of
11 anything that is likely to enable the identification of a customer.

12 (8) For the purposes of this section:

13 (a) an ACMA official is taken to disclose information if the
14 information is published on the ACMA's website; and

15 (b) an ACMA official is taken to disclose summaries or statistics
16 if the summaries or statistics are published on the ACMA's
17 website.

18 (9) Subsection (8) is enacted for the avoidance of doubt.

19 (10) For the purposes of this section, *customer* includes prospective
20 customer.

21 **4 Section 59G**

22 Before "An ACMA official", insert "(1)".

23 **5 At the end of section 59G**

24 Add:

25 (2) For the purposes of this section, an ACMA official is taken to
26 disclose summaries or statistics if the summaries or statistics are
27 published on the ACMA's website.

28 (3) Subsection (2) is enacted for the avoidance of doubt.

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Schedule 4 Technical corrections

1 **Schedule 4—Technical corrections**
2

3 *Telecommunications Act 1997*

4 **1 Subparagraph 87(3)(a)(iii)**

5 Repeal the subparagraph.

6 *Telecommunications (Consumer Protection and Service*
7 *Standards) Act 1999*

8 **2 Subsection 76A(5)**

9 After “section 22”, insert “of the *Telecommunications Act 1997*”.

10 **3 Subsection 76A(5)**

11 After “30”, insert “of that Act”.