Telstra Corporation and Other Legislation Amendment Act 2021

No. 140, 2021

An Act to amend legislation relating to Telstra, and for other purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (https://www.legislation.gov.au/)

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Telstra Corporation and Other Legislation Amendment Act 2021

No. 140, 2021

An Act to amend legislation relating to Telstra, and for other purposes

[*Assented to 13 December 2021*]

The Parliament of Australia enacts:

1 Short title

This Act is the *Telstra Corporation and Other Legislation Amendment Act 2021*.

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2 Commencement

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

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	13 December 2021
2. Schedule 1	The day after this Act receives the Royal Assent.	14 December 2021
3. Schedules 2 and 3	At the earliest time when any of the property of Telstra Corporation Limited (ACN 051 775 556) is transferred to and vested in Telstra Limited (ACN 086 174 781) by virtue of an order of the Federal Court of Australia made in accordance with section 413 of the *Corporations Act 2001*. However, the provisions do not commence at all if none of the property of Telstra Corporation Limited (ACN 051 775 556) is transferred to and vested in Telstra Limited (ACN 086 174 781) by virtue of an order of the Federal Court of Australia made in accordance with section 413 of the *Corporations Act 2001*. The Minister must announce, by notice published on the Department's website, the commencement of the provisions.	
4. Schedules 4 and 5	The day after this Act receives the Royal Assent.	14 December 2021

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

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(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.

3 Schedules

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.

Note 1: The provisions of the *Telstra Corporation (Ownership—Interests in Shares) Regulations 2018* amended or inserted by this Act, and any other provisions of those regulations, may be amended or repealed by regulations made under section 42 of the *Telstra Corporation Act 1991* (see subsection 13(5) of the *Legislation Act 2003*).

Note 2: The provisions of the *A Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities* amended or inserted by this Act, and any other provisions of that Code, may be amended or repealed by an instrument made under subclause 37(1) of Schedule 1 to the *Telecommunications Act 1997* (see subsection 13(5) of the *Legislation Act 2003*).

Note 3: The provisions of the *Telecommunications (Arbitration) Regulations 2018* amended or inserted by this Act, and any other provisions of those regulations, may be amended or repealed by regulations made under section 594 of the *Telecommunications Act 1997* (see subsection 13(5) of the *Legislation Act 2003*).

Note 4: The provisions of the *Telecommunications (Carrier Licence Conditions - Telstra Corporation Limited) Declaration 2019* amended or inserted by this Act, and any other provisions of that declaration, may be varied by an instrument made under subsection 63(5) of the *Telecommunications Act 1997*, or revoked by an instrument made under subsection 63(6) of that Act (see subsection 13(5) of the *Legislation Act 2003*).

Note 5: The provisions of the *Telecommunications (Emergency Call Persons) Determination 2019* amended or inserted by this Act, and any other provisions of that determination, may be amended or repealed by an instrument made under paragraph 19(1)(b) of the *Telecommunications Act 1997* (see subsection 13(5) of the *Legislation Act 2003*).

Note 6: The provisions of the *Telecommunications (Emergency Call Service) Determination 2019* amended or inserted by this Act, and any other provisions of that determination, may be amended or repealed by an instrument made under subsection 147(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (see subsection 13(5) of the *Legislation Act 2003*).

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Note 7: The provisions of the *Telecommunications (Statutory Infrastructure Providers—Exempt Real Estate Development Projects and Building Redevelopment Projects) Determination (No.1) 2020* amended or inserted by this Act, and any other provisions of that instrument, may be amended or repealed by an instrument made under subsection 360H(3A) or (5A), or both, of the *Telecommunications Act 1997* (see subsection 13(5) of the *Legislation Act 2003*).

Note 8: The provisions of the *Legislation (Exemptions and Other Matters) Regulation 2015* amended or inserted by this Act, and any other provisions of those regulations, may be amended or repealed by regulations made under section 62 of the *Legislation Act 2003* (see subsection 13(5) of that Act).

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Schedule 1—Amendments commencing on the day after Royal Assent

Part 1—Amendments

Telecommunications Act 1997

1 Section 7

Insert:

demerged Telstra company has the meaning given by section 581J.

designated Telstra successor company: see section 581G.

Telstra successor company: see section 581F.

2 Before subsection 577BA(11)

Insert:

(10C) If:

(a) a contract, arrangement or understanding (the ***first contract, arrangement or understanding***) is covered by another subsection of this section; and

(b) the first contract, arrangement or understanding was in force immediately before the commencement of this subsection; and

(c) one or more designated Telstra successor companies and one or more NBN corporations enter into to another contract, arrangement or understanding; and

(d) the sole purpose of the other contract, arrangement or understanding is to do any or all of the following:

(i) provide that an obligation imposed on Telstra under the first contract, arrangement or understanding extends to one or more designated Telstra successor companies;

(ii) provide that a right conferred on Telstra under the first contract, arrangement or understanding extends to one or more designated Telstra successor companies;

(iii) provide that an obligation that an NBN corporation owes to Telstra under the first contract, arrangement or

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understanding extends so that the obligation is also owed to one or more designated Telstra successor companies;

(iv) provide that a right that an NBN corporation has against Telstra under the first contract, arrangement or understanding extends so that the right is also against one or more designated Telstra successor companies;

then:

(d) the entering into of the other contract, arrangement or understanding; and

(e) conduct engaged in by:

(i) a designated Telstra successor company; or

(ii) an NBN corporation; or

(iii) a body corporate that is a related body corporate (within the meaning of the *Corporations Act 2001*) of a designated Telstra successor company; or

(iv) a body corporate that is a related body corporate (within the meaning of the *Corporations Act 2001*) of an NBN corporation;

in order to give effect to the other contract, arrangement or understanding;

is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*.

3 After Part 34

Insert:

Part 34A—Telstra successor companies and designated Telstra successor companies

Division 1—Introduction

581A Simplified outline of this Part

- This Part sets out a mechanism for identifying Telstra successor companies and designated Telstra successor companies.

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- If a Telstra successor company or a designated Telstra successor company transfers the whole or part of a telecommunications business, the company must notify the ACMA of the transfer.
- If a Telstra successor company or a designated Telstra successor company proposes to transfer the whole or part of a prescribed business and the transferee is not a constitutional corporation, the company must notify the ACMA of the proposed transfer.
- If a Telstra successor company or a designated Telstra successor company transfers a telecommunications asset, the company must notify the ACMA of the transfer.
- If a Telstra successor company or a designated Telstra successor company proposes to transfer a prescribed asset and the transferee is not a constitutional corporation, the company must notify the ACMA of the proposed transfer.

Note: Certain telecommunications laws impose obligations on, or in relation to, Telstra successor companies or designated Telstra successor companies.

581B Object of this Part

The object of this Part, when read together with various other provisions of telecommunications laws that refer to a Telstra successor company or a designated Telstra successor company, is to achieve regulatory equivalence between:

(a) Telstra as it stood at the end of July 2021; and

(b) companies that are the successors (whether immediate or otherwise) of Telstra.

581C Company

For the purposes of this Part, ***company*** means a body corporate.

581D Telecommunications law

For the purposes of this Part, ***telecommunications law*** means:

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(a) this Act; or
(b) the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; or
(c) Part XIB of the *Competition and Consumer Act 2010*; or
(d) Part XIC of the *Competition and Consumer Act 2010*; or
(e) the *Telstra Corporation Act 1991*; or
(f) an instrument made under or for the purposes of:
  (i) this Act; or
  (ii) the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; or
  (iii) Part XIB of the *Competition and Consumer Act 2010*; or
  (iv) Part XIC of the *Competition and Consumer Act 2010*; or
  (v) the *Telstra Corporation Act 1991*.

581E Prescribed telecommunications law

For the purposes of this Part, ***prescribed telecommunications law*** means:
(a) the *Telstra Corporation Act 1991*; or
(b) this Part; or
(c) an instrument made under or for the purposes of:
  (i) the *Telstra Corporation Act 1991*; or
  (ii) this Part.

Division 2—Telstra successor company and designated Telstra successor company

581F Telstra successor company

(1) For the purposes of each prescribed telecommunications law, ***Telstra successor company*** means a demerged Telstra company.

Note: For ***demerged Telstra company***, see section 581J.

(2) Subsection (1) has effect subject to subsections (6), (7) and (8).

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Declarations—extended meaning of Telstra successor company

(3) The Minister may, by legislative instrument, declare that a specified company (other than a demerged Telstra company) is a Telstra successor company for the purposes of each prescribed telecommunications law.

Note 1: For criteria, see section 581H.

Note 2: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

(4) The Minister may, by legislative instrument, declare that a specified company (other than a demerged Telstra company) is a Telstra successor company for the purposes of one or more specified prescribed telecommunications laws.

Note 1: For criteria, see section 581H.

Note 2: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

(5) The Minister may, by legislative instrument, declare that a specified company (other than a demerged Telstra company) is a Telstra successor company for the purposes of one or more specified provisions of one or more prescribed telecommunications laws.

Note 1: For criteria, see section 581H.

Note 2: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

Declarations—excluded company

(6) The Minister may, by legislative instrument, declare that a specified company is not a Telstra successor company for the purposes of each prescribed telecommunications law.

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

(7) The Minister may, by legislative instrument, declare that a specified company is a not a Telstra successor company for the purposes of one or more specified prescribed telecommunications laws.

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

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(8) The Minister may, by legislative instrument, declare that a specified company is a not a Telstra successor company for the purposes of one or more specified provisions of one or more prescribed telecommunications laws.

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

Declaration is irrevocable

(9) A declaration under subsection (6), (7) or (8) is irrevocable.

(10) Subsection (9) does not prevent a declaration from being disallowed under the *Legislation Act 2003*.

Declarations may be unconditional or conditional

(11) A declaration under this section may be unconditional or subject to such conditions (if any) as are specified in the declaration.

581G Designated Telstra successor company

(1) For the purposes of each telecommunications law, ***designated Telstra successor company*** means a demerged Telstra company.

Note: For ***demerged Telstra company***, see section 581J.

(2) Subsection (1) has effect subject to subsections (6), (7) and (8).

Declarations—extended meaning of designated Telstra successor company

(3) The Minister may, by legislative instrument, declare that a specified company (other than a demerged Telstra company) is a designated Telstra successor company for the purposes of each telecommunications law.

Note 1: For criteria, see section 581H.

Note 2: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

(4) The Minister may, by legislative instrument, declare that a specified company (other than a demerged Telstra company) is a designated Telstra successor company for the purposes of one or more specified telecommunications laws.

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Note 1: For criteria, see section 581H.

Note 2: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

(5) The Minister may, by legislative instrument, declare that a specified company (other than a demerged Telstra company) is a designated Telstra successor company for the purposes of one or more specified provisions of one or more telecommunications laws.

Note 1: For criteria, see section 581H.

Note 2: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

Declarations—excluded company

(6) The Minister may, by legislative instrument, declare that a specified company is not a designated Telstra successor company for the purposes of each telecommunications law.

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

(7) The Minister may, by legislative instrument, declare that a specified company is a not a designated Telstra successor company for the purposes of one or more specified telecommunications laws.

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

(8) The Minister may, by legislative instrument, declare that a specified company is a not designated Telstra successor company for the purposes of one or more specified provisions of one or more telecommunications laws.

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

Declaration is irrevocable

(9) A declaration under subsection (6), (7) or (8) is irrevocable.

(10) Subsection (9) does not prevent a declaration from being disallowed under the *Legislation Act 2003*.

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Declarations may be unconditional or conditional

(11) A declaration under this section may be unconditional or subject to such conditions (if any) as are specified in the declaration.

581H Declarations—criteria

(1) In deciding whether to specify a company (the ***relevant company***) in a declaration under subsection 581F(3), (4) or (5) or 581G(3), (4) or (5), the Minister must have regard to the following matters:
   (a) the object set out in section 581B;
   (b) the compliance burden (if any) that would result for the relevant company if the declaration were made;
   (c) whether a Telstra successor company or a designated Telstra successor company has transferred the whole or a part of a telecommunications business to the relevant company;
   (d) whether a Telstra successor company or a designated Telstra successor company has transferred a telecommunications asset to the relevant company;
   (e) such other matters (if any) as the Minister considers relevant.

(2) The Minister must not specify a company in a declaration under subsection 581F(3), (4) or (5) or 581G(3), (4) or (5) unless the company:
   (a) is a constitutional corporation; or
   (b) carries on a telecommunications business covered by paragraph 581L(1)(a), (b) or (c).

581J Demerged Telstra company

For the purposes of this Act, each of the following companies is a ***demerged Telstra company***:
   (a) Telstra Group Limited (ACN 650 620 303), as the company exists from time to time (even if its name is later changed);
   (b) Telstra Infraco Limited (ACN 051 775 556), as the company exists from time to time (even if its name is later changed);
   (c) Amplitel Pty Ltd (ACN 648 133 073), as the company exists from time to time (even if its name is later changed);
   (d) Telstra Limited (ACN 086 174 781), as the company exists from time to time (even if its name is later changed).

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Note: See also section 581U (transitional—references in legislation to Telstra Infraco Limited).

581K ACMA to maintain register of Telstra successor companies and designated Telstra successor companies etc.

(1) The ACMA is to maintain a Register in which the ACMA includes:

(a) for each company that is a Telstra successor company for the purposes of each prescribed telecommunications law because of subsection 581F(1)—the name and ACN of that company; and

(b) for each company that is a Telstra successor company for the purposes of each prescribed telecommunications law because of a declaration under subsection 581F(3):

(i) the name and ACN of that company; and

(ii) the details of the declaration; and

(c) for each company that is a Telstra successor company for the purposes of one or more prescribed telecommunications laws because of a declaration under subsection 581F(4):

(i) the name and ACN of that company; and

(ii) the details of the declaration; and

(d) for each company that is a Telstra successor company for the purposes of one or more provisions of one or more prescribed telecommunications laws because of a declaration under subsection 581F(5):

(i) the name and ACN of that company; and

(ii) the details of the declaration; and

(e) for each company that is covered by a declaration under subsection 581F(6), (7) or (8):

(i) the name and ACN of that company; and

(ii) the details of the declaration; and

(f) for each company that is a designated Telstra successor company for the purposes of each telecommunications law because of subsection 581G(1)—the name and ACN of that company; and

(g) for each company that is a designated Telstra successor company for the purposes of each telecommunications law because of a declaration under subsection 581G(3):

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(i) the name and ACN of that company; and
(ii) the details of the declaration; and

(h) for each company that is a designated Telstra successor company for the purposes of one or more telecommunications laws because of a declaration under subsection 581G(4):
(i) the name and ACN of that company; and
(ii) the details of the declaration; and

(i) for each company that is a designated Telstra successor company for the purposes of one or more provisions of one or more telecommunications laws because of a declaration under subsection 581G(5):
(i) the name and ACN of that company; and
(ii) the details of the declaration; and

(j) for each company that is covered by a declaration under subsection 581G(6), (7) or (8):
(i) the name and ACN of that company; and
(ii) the details of the declaration.

(2) The Register is to be maintained by electronic means.

(3) The Register is to be made available for inspection on the ACMA's website.

(4) The Register is not a legislative instrument.

Division 3—Transfer of business

581L Telecommunications business

(1) For the purposes of this Part, ***telecommunications business*** means:
(a) a business that consists of or includes the supply of a listed carriage service; or
(b) a business that consists of or includes the supply of a service that facilitates the supply of a listed carriage service; or
(c) a business that consists of or includes installing, maintaining, operating or providing access to:
(i) a telecommunications network; or
(ii) a facility;

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used to supply a listed carriage service; or

(d) a business that is covered by a declaration under subsection (2);

but does not include a business that is covered by a declaration under subsection (3).

(2) The Minister may, by legislative instrument, declare that a specified business is a telecommunications business for the purposes of this Part.

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

(3) The Minister may, by legislative instrument, declare that a specified business is not a telecommunications business for the purposes of this Part.

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

581M Notification of transfer of telecommunications business

(1) If:

(a) after the commencement of Schedule 2 to the *Telstra Corporation and Other Legislation Amendment Act 2021*, a Telstra successor company or a designated Telstra successor company transfers the whole or a part of a telecommunications business; and

(b) the transfer is not covered by a declaration under subsection (2); and

(c) the telecommunications business is not covered by a declaration under subsection (3); and

(d) the conditions (if any) declared under subsection (4) have been satisfied; and

(e) a declaration is in force under subsection (5);

the company must:

(f) notify the ACMA in writing of the transfer; and

(g) do so within 5 business days after the transfer.

(2) The Minister may, by legislative instrument, declare that a specified transfer is exempt from subsection (1).

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

(3) The Minister may, by legislative instrument, declare that a specified telecommunications business is exempt from subsection (1).

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

(4) The Minister may, by legislative instrument, declare one or more conditions for the purposes of paragraph (1)(d).

(5) The Minister may, by legislative instrument, declare that subsection (1) is active.

(6) Subsection (1) is a civil penalty provision.

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

(7) If the ACMA receives a notification under subsection (1), the ACMA must give a copy of the notification to the Minister.

581MA Notification of proposed transfer of prescribed business

(1) If:

(a) a company is:

(i) a Telstra successor company or a designated Telstra successor company; and

(ii) a constitutional corporation; and

(b) the company proposes to transfer the whole or a part of a prescribed business after the commencement of Schedule 2 to the *Telstra Corporation and Other Legislation Amendment Act 2021*; and

(c) the proposed transferee is a not a constitutional corporation;

the company must:

(d) notify the ACMA in writing of the proposed transfer; and

(e) do so at least 30 days before the proposed transfer date.

(2) Subsection (1) is a civil penalty provision.

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

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(3) If the ACMA receives a notification under subsection (1), the ACMA must give a copy of the notification to the Minister.

(4) For the purposes of this section, ***prescribed business*** means a business in a prescribed class of businesses.

(5) The Minister may, by legislative instrument, declare that one or more specified classes of businesses are prescribed classes of businesses for the purpose of subsection (4).

Division 4—Transfer of assets

581N Telecommunications asset

(1) For the purposes of this Part, ***telecommunications asset*** means:
  (a) a telecommunications network used, or to be used, to supply a listed carriage service; or
  (b) a facility used, or to be used, to supply a listed carriage service; or
  (c) an asset covered by a declaration under subsection (2);

but does not include an asset that is covered by a declaration under subsection (3).

(2) The Minister may, by legislative instrument, declare that a specified asset is a telecommunications asset for the purposes of this Part.

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

(3) The Minister may, by legislative instrument, declare that a specified asset is not a telecommunications asset for the purposes of this Part.

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

581P Notification of transfer of telecommunications asset

(1) If:
  (a) after the commencement of Schedule 2 to the *Telstra Corporation and Other Legislation Amendment Act 2021*, a

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Telstra successor company or a designated Telstra successor company transfers a telecommunications asset; and

(b) the transfer is not covered by a declaration under subsection (2); and

(c) the telecommunications asset is not covered by a declaration under subsection (3); and

(d) the conditions (if any) declared under subsection (4) have been satisfied; and

(e) a declaration is in force under subsection (5);

the company must:

(f) notify the ACMA in writing of the transfer; and

(g) do so within 5 business days after the transfer.

(2) The Minister may, by legislative instrument, declare that a specified transfer is exempt from subsection (1).

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

(3) The Minister may, by legislative instrument, declare that a specified telecommunications asset is exempt from subsection (1).

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

(4) The Minister may, by legislative instrument, declare one or more conditions for the purposes of paragraph (1)(d).

(5) The Minister may, by legislative instrument, declare that subsection (1) is active.

(6) Subsection (1) is a civil penalty provision.

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

(7) If the ACMA receives a notification under subsection (1), the ACMA must give a copy of the notification to the Minister.

581PA Notification of proposed transfer of prescribed asset

(1) If:

(a) a company is:

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(i) a Telstra successor company or a designated Telstra successor company; and
(ii) a constitutional corporation; and
(b) the company proposes to transfer a prescribed asset after the commencement of Schedule 2 to the *Telstra Corporation and Other Legislation Amendment Act 2021*; and
(c) the proposed transferee is a not a constitutional corporation;

the company must:

(d) notify the ACMA in writing of the proposed transfer; and
(e) do so at least 30 days before the proposed transfer date.

(2) Subsection (1) is a civil penalty provision.

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

(3) If the ACMA receives a notification under subsection (1), the ACMA must give a copy of the notification to the Minister.

(4) For the purposes of this section, ***prescribed asset*** means an asset in a prescribed class of assets.

(5) The Minister may, by legislative instrument, declare that one or more specified classes of assets are prescribed classes of assets for the purpose of subsection (4).

(6) The Minister must not specify a class of assets under subsection (5) unless each asset in the class is, or was, used by a Telstra successor company or a designated Telstra successor company:
(a) in connection with the fulfillment of any of the obligations imposed on the company by or under a telecommunications law; or
(b) in order to maintain the company's capability (including the technical, operational or organisational capability) to comply with obligations imposed on the company by or under a telecommunications law.

581Q Transfer of an asset

For the purposes of this Part, a transfer of an asset occurs if:

(a) the legal ownership of the asset is transferred in whole or in part; or

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(b) the beneficial ownership of the asset is transferred in whole or in part (whether by way of a declaration of trust or in any other way); or
(c) if the asset is the subject of a lease—the lease is transferred.

Division 5—Consultation relating to declarations

581R Consultation relating to declarations

(1) Before making or varying a declaration under this Part (other than Division 2), the Minister must:
(a) make a copy of the draft declaration or variation available on the Department's website; and
(b) publish a notice on the Department's website:
(i) stating that the Minister has prepared the draft; and
(ii) inviting interested persons to give written comments about the draft to the Minister within the period specified in the notice.

(2) The period specified in the notice must run for at least 30 days after the publication of the notice.

(3) If interested persons have given comments in accordance with a notice under subsection (1), the Minister must have due regard to those comments in making or varying the declaration.

Division 6—Directions

581TA Facilitation of compliance with a direction given by the ACMA

(1) If:
(a) a designated Telstra successor company (the ***first designated Telstra successor company***) is subject to a direction (the ***first direction***) given by the ACMA under this Act or the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; and
(b) the ACMA is satisfied that the first designated Telstra successor company has failed, is failing, or is likely to fail, to comply with the first direction;

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the ACMA may give:

(c) another designated Telstra successor company; or

(d) a body corporate that is a related body corporate (within the meaning of the *Corporations Act 2001*) of the first designated Telstra successor company;

a written direction to take specified action.

(2) The ACMA must not give a direction to a body corporate under subsection (1) unless:

(a) the ACMA is satisfied that the action specified in the direction will facilitate the first designated Telstra successor company complying with the first direction; and

(b) the ACMA is satisfied that the body corporate:

(i) has the capability (including the technical, operational and organisational capability) to comply with the direction; or

(ii) could reasonably acquire the capability (including the technical, operational and organisational capability) to comply with the direction; and

(c) the body corporate:

(i) is a constitutional corporation; or

(ii) carries on a telecommunications business covered by paragraph 581L(1)(a), (b) or (c).

Compliance with requirement

(3) A body corporate must comply with a direction under subsection (1).

Civil penalty

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

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

Consultation

(5) Before the ACMA gives or varies a direction under subsection (1), the ACMA must consult the ACCC.

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(6) Before giving or varying a direction under subsection (1), the ACMA must:
  (a) make a copy of the draft direction or variation available on the ACMA's website; and
  (b) publish a notice on the ACMA's website:
    (i) stating that the ACMA has prepared the draft; and
    (ii) inviting interested persons to give written comments about the draft to the ACMA within the period specified in the notice.

(7) The period specified in the notice must run for at least 30 days after the publication of the notice.

(8) If interested persons have given comments in accordance with a notice under subsection (6), the ACMA must have due regard to those comments in giving or varying the direction.

581TB Facilitation of obligations imposed on a named designated Telstra successor company

(1) If:
  (a) an obligation (the ***relevant obligation***) is imposed on a named designated Telstra successor company (the ***first designated Telstra successor company***) by or under a telecommunication law; and
  (b) the Minister is satisfied that the first designated Telstra successor company has failed, is failing, or is likely to fail, to fulfil the relevant obligation;

  the Minister may give:
  (c) another designated Telstra successor company; or
  (d) a body corporate that is a related body corporate (within the meaning of the *Corporations Act 2001*) of the first designated Telstra successor company;

  a written direction to take specified action.

(2) The Minister must not give a direction to a body corporate under subsection (1) unless:
  (a) the Minister is satisfied that the action specified in the direction will assist the first designated Telstra successor company to fulfil the relevant obligation; and

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(b) the Minister is satisfied that the body corporate:
  (i) has the capability (including the technical, operational and organisational capability) to comply with the direction; or
  (ii) could reasonably acquire the capability (including the technical, operational and organisational capability) to comply with the direction; and
(c) the body corporate:
  (i) is a constitutional corporation; or
  (ii) carries on a telecommunications business covered by paragraph 581L(1)(a), (b) or (c).

Compliance with requirement

(3) A body corporate must comply with a direction under subsection (1).

Civil penalty

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

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

Consultation

(5) Before giving or varying a direction under subsection (1), the Minister must:
  (a) make a copy of the draft direction or variation available on the Minister's website; and
  (b) publish a notice on the Minister's website:
    (i) stating that the Minister has prepared the draft; and
    (ii) inviting interested persons to give written comments about the draft to the Minister within the period specified in the notice.

(6) Subject to subsection (7), the period specified in the notice must run for at least 30 days after the publication of the notice.

(7) The period specified in the notice may be shorter than 30 days if the Minister is satisfied that the shorter period is necessary due to urgent circumstances.

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(8) If interested persons have given comments in accordance with a notice under subsection (5), the Minister must have due regard to those comments in giving or varying the direction.

Division 7—Transitional

581U Transitional—references in legislation to Telstra Infraco Limited

Scope

(1) This section applies if, as at the commencement of this section, the name of Telstra Corporation Limited (ACN 051 775 556) had not been changed to Telstra Infraco Limited.

Transitional

(2) Until the name of Telstra Corporation Limited (ACN 051 775 556) is changed to Telstra Infraco Limited, a reference to Telstra Infraco Limited in a telecommunications law is to be read as a reference to Telstra Corporation Limited.

5 At the end of subclause 17(1) of Schedule 1

Add:

Note: See also section 581Y.

6 At the end of subclause 33(1) of Schedule 1

Add:

Note: See also section 581ZD.

Telstra Corporation Act 1991

9 Section 3 (paragraph (b) of the definition of *Telstra*)

Omit “1993.”, substitute “1993;”.

10 Section 3 (at the end of the definition of *Telstra*, after paragraph (b))

Add:

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as the company exists from time to time (even if its name is later changed).

11 Section 3

Insert:

Telstra successor company: see section 581F of the *Telecommunications Act 1997*.

12 Part 2A (heading)

Omit "**Telstra**", substitute "**Telstra successor companies**".

13 Section 8BD (paragraph beginning "Telstra is subject to")

Omit "Telstra", substitute "A Telstra successor company".

14 Section 8BD (paragraph beginning "Telstra's head office")

Omit "Telstra's", substitute "A Telstra successor company's".

15 Section 8BD (paragraph beginning "Telstra's Chairperson")

Repeal the paragraph, substitute:

- A Telstra successor company's Chairperson, and a majority of a Telstra successor company's directors, must be Australian citizens.

16 Section 8BE (note 1)

Omit "Telstra" (wherever occurring), substitute "a Telstra successor company".

17 Section 8BE (note 2A)

Omit "Telstra", substitute "a Telstra successor company".

18 Section 8BG

Omit "Telstra" (first occurring), substitute "a Telstra successor company".

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19 Paragraphs 8BG(a) and (b)

Omit "Telstra", substitute "the Telstra successor company".

20 Section 8BG (note 1)

Omit "Telstra", substitute "a Telstra successor company".

21 Paragraph 8BH(b)

Omit "Telstra" (first occurring), substitute "a Telstra successor company".

22 Subparagraph 8BH(b)(i)

Omit "Telstra", substitute "the Telstra successor company".

23 Subparagraphs 8BH(b)(ii) and (iii)

Omit "Telstra" (wherever occurring), substitute "the Telstra successor company".

24 Section 8BH (note)

Omit "Telstra", substitute "a Telstra successor company".

25 Section 8BI (heading)

Omit "**Telstra**", substitute "**Telstra successor companies**".

26 Subsection 8BI(1)

Omit "Telstra" (first occurring), substitute "A Telstra successor company".

27 Subsection 8BI(1)

Omit "Telstra" (second occurring), substitute "the Telstra successor company".

28 Subsection 8BI(2)

Omit "Telstra", substitute "A Telstra successor company".

29 Paragraph 8BI(2)(a)

Omit "Telstra", substitute "the Telstra successor company".

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30 Subsection 8BJ(1)

Omit "Telstra" (first occurring), substitute "a Telstra successor company".

31 Subsection 8BJ(1)

Omit "Telstra" (second occurring), substitute "the Telstra successor company".

32 Paragraph 8BM(1)(c)

Omit "Telstra", substitute "a Telstra successor company".

33 Paragraph 8BN(1)(c)

Omit "Telstra", substitute "a Telstra successor company".

34 Subsection 8BN(5)

Omit "Telstra" (first occurring), substitute "a Telstra successor company".

35 Subsection 8BN(5)

Omit "Telstra" (second occurring), substitute "the Telstra successor company".

36 Paragraphs 8BN(6)(a) and (b)

Omit "Telstra", substitute "a Telstra successor company".

37 Division 8 of Part 2A (heading)

Omit "**Telstra**", substitute "**a Telstra successor company**".

38 Subsection 8BQ(1)

Omit "Telstra" (first occurring), substitute "A Telstra successor company".

39 Subsection 8BQ(1)

Omit "Telstra" (second occurring), substitute "the Telstra successor company".

40 Subsection 8BR(1)

Omit "Telstra", substitute "A Telstra successor company".

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41 Subsection 8BR(2)

Omit "Telstra's", substitute "a Telstra successor company's".

42 Section 8BS (heading)

Omit "**Telstra**", substitute "**Telstra successor companies**".

43 Subsection 8BS(1)

Omit "Telstra", substitute "A Telstra successor company".

44 Division 9 of Part 2A (heading)

Omit "**Telstra**", substitute "**Telstra successor companies**".

45 Subsection 8BT(1)

Omit "Telstra", substitute "A Telstra successor company".

46 Subsection 8BU(1)

Omit "Telstra", substitute "A Telstra successor company".

47 Subsection 8BUA(1)

Omit "Telstra", substitute "A Telstra successor company".

48 Section 8BY (heading)

Omit "**Telstra**", substitute "**Telstra successor companies**".

49 Section 8BY

Omit "Telstra", substitute "a Telstra successor company".

50 Section 8CC

Omit "to Telstra unless Telstra", substitute "in relation to a Telstra successor company unless the Telstra successor company".

51 After paragraph 8CC(a)

Insert:

(aa) is a holding company (within the meaning of the *Corporations Act 2001*) of a body corporate that is a corporation to which paragraph 51(xx) of the Constitution applies; or

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52 At the end of section 8CC

Add:

; or (c) carries on a business that consists of or includes the supply of a service that facilitates the supply of a carriage service (within the meaning of the *Telecommunications Act 1997*); or

(d) carries on a business that consists of or includes installing, maintaining, operating or providing access to:

(i) a telecommunications network (within the meaning of the *Telecommunications Act 1997*); or

(ii) a facility (within the meaning of the *Telecommunications Act 1997*);

used to supply a carriage service (within the meaning of the *Telecommunications Act 1997*); or

(e) is a holding company (within the meaning of the *Corporations Act 2001*) of a body corporate that carries on a business covered by paragraph (b), (c) or (d).

53 Subsection 8CCA(1)

Omit "Telstra" (first occurring), substitute "A Telstra successor company".

54 Subsection 8CCA(1)

Omit "Telstra" (second and third occurring), substitute "the Telstra successor company".

55 Part 2B (heading)

Omit "**relating to Telstra**".

56 Subsections 8CD(2) and (4)

Omit "Telstra", substitute "a Telstra successor company".

57 Subclause 12(4A) of the Schedule

Omit "Telstra" (first occurring), substitute "a Telstra successor company".

58 Subclause 12(4A) of the Schedule

Omit "Telstra" (second occurring), substitute "the Telstra successor company".

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59 Subclause 12(4AA) of the Schedule

Omit "Telstra", substitute "a Telstra successor company".

60 Paragraph 12(4AB)(a) of the Schedule

Omit "Telstra", substitute "a Telstra successor company".

61 Subclause 12(6) of the Schedule

Omit "Telstra" (first occurring), substitute "a Telstra successor company".

62 Paragraphs 12(6)(a), (b) and (c) of the Schedule

Omit "Telstra", substitute "the Telstra successor company".

Telstra Corporation (Ownership—Interests in Shares) Regulations 2018

63 Section 5 (after paragraph (c) of the note)

Insert:

(ca) Telstra successor company;

64 Subsection 8(1)

Omit "Telstra" (first occurring), substitute "A Telstra successor company".

65 Subsection 8(1)

Omit "Telstra" (second occurring), substitute "the Telstra successor company".

66 Paragraphs 8(1)(a) and (b)

Omit "Telstra", substitute "the Telstra successor company".

66A Paragraphs 8(3)(b) and (c)

Omit "Telstra", substitute "the Telstra successor company".

67 Subsection 9(1)

Omit "Telstra" (first occurring), substitute "a Telstra successor company".

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68 Subsection 9(1)

Omit "Telstra" (second occurring), substitute "the Telstra successor company".

69 Subsection 9(3)

Omit "Telstra", substitute "The Telstra successor company".

70 Subsection 14(1)

Omit "Telstra", substitute "a Telstra successor company".

71 Section 15 (heading)

Omit "**Telstra**", substitute "**Telstra successor company**".

72 Paragraph 15(1)(a)

Omit "Telstra", substitute "a Telstra successor company".

73 Paragraph 15(1)(b)

Omit "Telstra", substitute "the Telstra successor company".

74 Subsection 16(1)

Omit "Telstra", substitute "a Telstra successor company".

75 Subsection 17(1)

Omit "Telstra", substitute "a Telstra successor company".

76 Paragraphs 17(2)(a) and (b)

Omit "Telstra", substitute "the Telstra successor company".

77 Subsection 17(4)

Omit "Telstra", substitute "the Telstra successor company".

78 Subsection 18(2)

Omit "Telstra", substitute "a Telstra successor company".

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Part 2—Transitional

78A Interpretation

Transitional period

(1) For the purposes of this Part, ***transitional period*** means the period:
  (a) beginning at the commencement of this item; and
  (b) ending at the earliest of the following times:
    (i) the commencement of Schedule 2 to this Act;
    (ii) the end of the relevant post-commencement period.

(2) For the purposes of subitem (1), the ***relevant post-commencement period*** means:
  (a) the 6-month period that began at the commencement of this item; or
  (b) if the Minister, by legislative instrument, specifies the 9-month period that began at the commencement of this item—that period.

Telecommunications law

(3) For the purposes of Part 34A of the *Telecommunications Act 1997*, this Part is taken to be a telecommunications law.

ACCC

(4) In this Part, ***ACCC*** means the Australian Competition and Consumer Commission.

Telstra Limited

(5) In this Part, ***Telstra Limited*** means Telstra Limited (ACN 086 174 781), as the company exists from time to time (even if its name is later changed).

NBN Co

(6) In this Part, ***NBN Co*** means NBN Co Limited (ACN 136 533 741), as the company exists from time to time (even if its name is later changed).

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79 Transitional—undertakings about structural separation

Scope

(1) This item applies if an undertaking is in force under section 577A of the *Telecommunications Act 1997*.

Note: Section 577A of the *Telecommunications Act 1997* deals with undertakings about structural separation.

Conduct of a designated Telstra successor company

(2) If a designated Telstra successor company (the ***first designated Telstra successor company***) has engaged in conduct during the transitional period in order to facilitate another designated Telstra successor company complying with the undertaking after the commencement of Schedule 2 to this Act:

(a) the conduct is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*; and

(b) in performing a function, or exercising a power, under Part XIB of the *Competition and Consumer Act 2010* in relation to the first designated Telstra successor company, the ACCC must have regard to the conduct to the extent that the conduct is relevant.

80 Transitional—contracts, arrangements and understandings

Scope

(1) This item applies to a contract, arrangement or understanding that is covered by a subsection of section 577BA of the *Telecommunications Act 1997*.

Conduct

(2) If:

(a) a designated Telstra successor company (the ***first designated Telstra successor company***); or

(b) a body corporate that is a related body corporate (within the meaning of the *Corporations Act 2001*) of the first designated Telstra successor company;

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has engaged in conduct during the transitional period in order to facilitate another designated Telstra successor company giving effect to a provision of the contract, arrangement or understanding after the commencement of Schedule 2 to this Act:

(c) the conduct is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*; and

(d) in performing a function, or exercising a power, under Part XIB of the *Competition and Consumer Act 2010* in relation to the first designated Telstra successor company, the ACCC must have regard to the conduct to the extent that the conduct is relevant.

81 Transitional—variation of contracts, arrangements and understandings

If:

(a) a contract, arrangement or understanding (the ***relevant contract, arrangement or understanding***) is covered by a subsection of section 577BA of the *Telecommunications Act 1997*; and

(b) before the commencement of Schedule 2 to this Act, a demerged Telstra company or NBN Co:

(i) enters into a variation of the relevant contract, arrangement or understanding; or

(ii) engages in negotiations, or arrives at an understanding, in relation to a proposed variation of the relevant contract, arrangement or understanding; and

(c) the purpose of the variation or proposed variation is to ensure that the relevant contract, arrangement or understanding has effect as if:

(i) a demerged Telstra company were substituted for Telstra as a party to the relevant contract, arrangement or understanding; and

(ii) obligations imposed on Telstra by the relevant contract, arrangement or understanding were imposed instead on the demerged Telstra company; and

(d) the variation or proposed variation is subject to a condition precedent, namely, any of the property of Telstra being transferred to and vesting in Telstra Limited by virtue of an

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order of the Federal Court made in accordance with section 413 of the *Corporations Act 2001*;

then:

(e) each of the following:

(i) the entering into of the variation;

(ii) the engaging in the negotiations;

(iii) arriving at the understanding first mentioned in subparagraph (b)(ii);

is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*; and

(f) conduct engaged in by:

(i) a demerged Telstra company; or

(ii) NBN Co; or

(iii) a body corporate that is a related body corporate (within the meaning of the *Corporations Act 2001*) of a demerged Telstra company; or

(iv) a body corporate that is a related body corporate (within the meaning of the *Corporations Act 2001*) of an NBN Co;

in order to give effect to the variation is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*.

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Schedule 2—Amendments contingent on the implementation of an approved scheme of arrangement

Part 1—Main amendments

Division 1—Amendments

Competition and Consumer Act 2010

1 Subsection 4(1)

Insert:

> ***designated Telstra successor company***: see section 581G of the *Telecommunications Act 1997*.

2 Paragraph 151BU(4)(f)

Omit "regulation of Telstra's charges", substitute "the regulation of the charges of designated Telstra successor companies".

3 Subparagraph 151BUA(2)(b)(iv)

Omit "regulation of Telstra's charges", substitute "the regulation of the charges of designated Telstra successor companies".

4 Subparagraph 151BUB(2)(b)(iv)

Omit "regulation of Telstra's charges", substitute "the regulation of the charges of designated Telstra successor companies".

5 Subparagraph 151BUC(2)(b)(iv)

Omit "regulation of Telstra's charges", substitute "the regulation of the charges of designated Telstra successor companies".

6 Division 15 of Part XIB (heading)

After "**Voluntary undertakings**", insert "**originally**".

7 Before section 151CQ

Insert:

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151CMD Voluntary undertakings originally given by Telstra

Scope

(1) This section applies if an undertaking is in force under section 577A of the *Telecommunications Act 1997*.

Note: Section 577A of the *Telecommunications Act 1997* deals with undertakings about structural separation.

Commission must have regard to the conduct of a designated Telstra successor company

(2) If a designated Telstra successor company has engaged, or is required to engage, in conduct in order to comply with the undertaking, then, in performing a function, or exercising a power, under this Part in relation to the designated Telstra successor company, the Commission must have regard to the conduct to the extent that the conduct is relevant.

8 Subsection 151CQ(1)

Omit "577A,".

9 Subsection 151CQ(1) (note 1)

Repeal the note.

10 After paragraph 152AR(4)(d)

Insert:

(da) preventing a designated Telstra successor company from complying with an undertaking in force under section 577A of the *Telecommunications Act 1997*;

11 Paragraph 152AR(4)(e)

Omit "577A,".

12 Paragraph 152AR(4)(f)

Omit "Telstra", substitute "a designated Telstra successor company".

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12A Subsection 152BCB(3A)

After "If a final migration plan is in force", insert "and imposes obligations or prohibitions on a designated Telstra successor company".

13 Subsection 152BCB(3A)

Omit "Telstra", substitute "the designated Telstra successor company".

13A Section 152BCCA

After "If a final migration plan is in force", insert "and imposes obligations or prohibitions on a designated Telstra successor company".

14 Paragraphs 152BCCA(a) and (b)

Omit "Telstra", substitute "the designated Telstra successor company".

14A Subsection 152BDA(3A)

After "If a final migration plan is in force", insert "and imposes obligations or prohibitions on a designated Telstra successor company".

15 Subsection 152BDA(3A)

Omit "Telstra", substitute "the designated Telstra successor company".

15A Section 152BDCA

After "If a final migration plan is in force", insert "and imposes obligations or prohibitions on a designated Telstra successor company".

16 Paragraphs 152BDCA(a) and (b)

Omit "Telstra", substitute "the designated Telstra successor company".

17 After section 152EQ

Insert:

152EQA Voluntary undertakings originally given by Telstra

Scope

(1) This section applies if an undertaking is in force under section 577A of the *Telecommunications Act 1997*.

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Note: Section 577A of the *Telecommunications Act 1997* deals with undertakings about structural separation.

Commission must have regard to the conduct of a designated Telstra successor company

(2) If a designated Telstra successor company has engaged, or is required to engage, in conduct in order to comply with the undertaking, then, in performing a function, or exercising a power, under this Part in relation to the designated Telstra successor company, the Commission must have regard to the conduct to the extent that the conduct is relevant.

Commission must not prevent a designated Telstra successor company from complying with the undertaking

(3) The Commission must not perform a function, or exercise a power, under this Part so as to prevent a designated Telstra successor company from complying with the undertaking.

18 Subsection 152ER(1)

Omit "577A,".

19 Subsection 152ER(1) (note 1)

Repeal the note.

Telecommunications Act 1997

20 Section 7

Insert:

Telstra Infraco Limited means Telstra Infraco Limited (ACN 051 775 556), as the company exists from time to time (even if its name is later changed).

Telstra Limited means Telstra Limited (ACN 086 174 781), as the company exists from time to time (even if its name is later changed).

21 After section 56

Insert:

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56AA Deemed carrier licence—designated Telstra successor company

Scope

(1) This section applies to a body corporate if:
  (a) either of the following conditions are satisfied in relation to a particular time (the ***relevant time***):
    (i) the relevant time occurs immediately after the commencement of this section, and the body corporate is a designated Telstra successor company at the relevant time;
    (ii) the relevant time occurs after the commencement of this section, and the body corporate becomes a designated Telstra successor company at the relevant time; and
  (b) the body corporate does not hold a carrier licence at the relevant time; and
  (c) the body corporate is a constitutional corporation at the relevant time; and
  (d) the body corporate is the owner, or one of the owners, of a network unit at the relevant time; and
  (e) no nominated carrier declaration is in force in relation to that network unit at the relevant time.

Deemed carrier licence

(2) The ACMA is taken to have granted a carrier licence (the ***deemed carrier licence***) to the body corporate under section 56 immediately after the relevant time.

Application for carrier licence

(3) The body corporate must:
  (a) apply under section 52 for a carrier licence; and
  (b) do so within 5 business days after the relevant time.

(4) If the body corporate fails to comply with subsection (3), the body corporate is taken, at the end of the period of 5 business days, to have applied under section 52 for a carrier licence.

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(5) The application mentioned in subsection (3) or (4) is exempt from charge imposed by Part 2 of the *Telecommunications (Carrier Licence Charges) Act 1997*.

(6) The ACMA must decide the application mentioned in subsection (3) or (4) as if the deemed carrier licence did not exist.

Duration of deemed carrier licence

(7) The deemed carrier licence remains in force until:
  (a) the ACMA grants a carrier licence to the body corporate in response to the application mentioned in subsection (3) or (4); or
  (b) if the ACMA refuses to grant a carrier licence to the body corporate in response to the application mentioned in subsection (3) or (4)—the latest of the following times:
    (i) the end of the 28-day period beginning when the body corporate is informed by the ACMA of the refusal;
    (ii) if, during that 28-day period, the body corporate applies under section 558 for the ACMA to reconsider the refusal—the end of the 28-day period beginning when the ACMA makes its decision on reconsideration of the refusal;
    (iii) if, during the 28-day period last mentioned in subparagraph (ii), the body corporate makes an application under section 562 to the Administrative Appeals Tribunal for review of the refusal decision—the end of the 28-day period beginning when the application is finally determined;
    (iv) if, during the 28-day period last mentioned in subparagraph (iii), the body corporate appeals to the Federal Court under section 44 of the *Administrative Appeals Tribunal Act 1975* from the decision of the Administrative Appeals Tribunal on the application mentioned in subparagraph (iii)—when the appeal is determined.

Section 56A does not apply

(8) Section 56A does not apply to the deemed carrier licence.

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22 After section 63

Insert:

63A Conditions of a carrier licence held by Telstra Limited

(1) Until the first occasion after the commencement of this section on which a declaration under subsection 63(2) takes effect in relation to a carrier licence held by Telstra Limited:

(a) the carrier licence is subject to the conditions set out in sections 7, 8, 9, 10, 12, 13, 14, 15, 16, 17 and 18 of the *Telecommunications (Carrier Licence Conditions - Telstra Corporation Limited) Declaration 2019* as in force immediately before the commencement of this section; and

(b) for that purpose, a reference in those sections (and Schedule 1 to that declaration) to the licensee is to be read as a reference to Telstra Limited.

(2) Until the first occasion after the commencement of this section on which a declaration under subsection 63(2) takes effect in relation to a carrier licence held by Telstra Limited:

(a) the carrier licence is subject to the conditions set out in section 11 of the *Telecommunications (Carrier Licence Conditions - Telstra Infraco Limited) Declaration 2019*; and

(b) for that purpose, a reference in that section to the licensee is to be read as a reference to Telstra Limited.

(3) If:

(a) a carrier licence held by a particular Telstra company (the ***first Telstra company***) is (whether in accordance with subsection (2) of this section or otherwise) subject to a condition set out in section 11 of the *Telecommunications (Carrier Licence Conditions - Telstra Infraco Limited) Declaration 2019*; and

(b) a carrier licence held by another Telstra company is also subject to the condition (whether in accordance with subsection (2) of this section or otherwise); and

(c) the other Telstra company complies with the condition;

the first Telstra company is taken to have complied with the condition.

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(4) Until the first occasion after the commencement of this section on which a declaration under subsection 63(2) takes effect in relation to a carrier licence held by Telstra Limited:
  (a) the carrier licence is subject to:
    (i) the conditions set out in an interim Telstra carrier licence condition declaration; and
    (ii) the interim conditions set out in the *Telecommunications (Carrier Licence Conditions - Telstra Infraco Limited) Declaration 2019*; and
  (b) for that purpose, a reference in those conditions to the licensee is to be read as a reference to Telstra Limited.

(5) If:
  (a) a carrier licence held by a particular Telstra company (the ***first Telstra company***) is (whether in accordance with subsection (4) of this section or otherwise) subject to:
    (i) a condition set out in an interim Telstra carrier licence condition declaration; or
    (ii) an interim condition set out in the *Telecommunications (Carrier Licence Conditions - Telstra Infraco Limited) Declaration 2019*; and
  (b) a carrier licence held by another Telstra company is also subject to the condition (whether in accordance with subsection (4) of this section or otherwise); and
  (c) the other Telstra company complies with the condition;

  the first Telstra company is taken to have complied with the condition.

(6) For the purposes of this section, ***Telstra company*** means:
  (a) Telstra Infraco Limited; or
  (b) Telstra Limited.

Note: See also section 581U (transitional—references in legislation to Telstra Infraco Limited).

(7) For the purposes of this section, ***interim Telstra carrier licence condition declaration*** means a declaration under subsection 63(2) that:

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(a) relates to a carrier licence held by Telstra Infraco Limited; and

(b) came into force during the period:

(i) beginning at the start of the day on which the Bill for the Act that inserted this section was introduced into the Parliament; and

(ii) ending immediately before the commencement of this section.

Note: See also section 581U (transitional—references in legislation to Telstra Infraco Limited).

(8) For the purposes of this section, an ***interim condition*** set out in the *Telecommunications (Carrier Licence Conditions - Telstra Infraco Limited) Declaration 2019* means a condition inserted in that declaration (when the declaration was known as the *Telecommunications (Carrier Licence Conditions - Telstra Corporation Limited) Declaration 2019*) during the period:

(a) beginning at the start of the day on which the Bill for the Act that inserted this section was introduced into the Parliament; and

(b) ending immediately before the commencement of this section.

23 Subsection 69(5A) (note)

After “given”, insert “, or originally given,”.

24 Before paragraph 69AA(4)(a)

Insert:

(aa) preventing a designated Telstra successor company from complying with an undertaking in force under section 577A; or

25 Paragraph 69AA(4)(a)

Omit “577A,”.

26 Paragraph 69AA(4)(b)

Omit “Telstra”, substitute “a designated Telstra successor company”.

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27 Subsection 70(2A) (note)

After "given", insert ", or originally given,".

28 Section 104

Omit "Telstra", substitute "a designated Telstra successor company".

29 Section 105C (heading)

Omit "**Telstra**", substitute "**a designated Telstra successor company**".

30 Subsection 105C(1)

Omit "Telstra", substitute "a designated Telstra successor company".

31 Subsection 285(2) (paragraph (a) of the definition of *integrated public number database*)

Omit "Telstra", substitute "Telstra Limited".

32 Subsection 285A(2) (paragraph (a) of the definition of *integrated public number database*)

Omit "Telstra", substitute "Telstra Limited".

33 Subsection 291A(3) (paragraph (a) of the definition of *integrated public number database*)

Omit "Telstra", substitute "Telstra Limited".

34 Subsections 472(1) and (5)

Omit "Telstra", substitute "Telstra Limited".

35 Subsection 564(3) (note 1A)

After "given", insert ", or originally given,".

36 Subsection 571(3) (note 1A)

After "given", insert ", or originally given,".

37 Part 33 (heading)

After "**Voluntary undertakings**", insert "**originally**".

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38 Section 577 (after the paragraph beginning "Telstra may give")

Insert:

> • An undertaking about structural separation applies to certain designated Telstra successor companies.

39 At the end of section 577

Add:

Note: An undertaking under section 577A about structural separation came into force on 6 March 2012.

40 At the end of section 577AB

Add:

Note: An undertaking under section 577A about structural separation came into force on 6 March 2012.

41 After section 577AC

Insert:

577ACA Repointing of undertaking about structural undertaking to certain designated Telstra successor companies

(1) If an undertaking is in force under section 577A, the undertaking has effect as if:

(a) each obligation imposed on Telstra by the undertaking were imposed instead on each of the following designated Telstra successor companies:

(i) Telstra Infraco Limited;

(ii) Telstra Limited;

(iii) a designated Telstra successor company specified in an instrument under subsection (2); and

(b) each prohibition applicable to Telstra under the undertaking were applicable instead to each of the following designated Telstra successor companies:

(i) Telstra Infraco Limited;

(ii) Telstra Limited;

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(iii) a designated Telstra successor company specified in an instrument under subsection (2).

Note: See also section 581U (transitional—references in legislation to Telstra Infraco Limited).

(2) The Minister may, by legislative instrument, specify one or more designated Telstra successor companies for the purposes of subparagraphs (1)(a)(iii) and (b)(iii).

(3) Subsection (1) has effect subject to subsection (4).

(4) The Minister may, by legislative instrument, determine either or both of the following:

(a) that paragraph (1)(a) does not result in the imposition of one or more specified obligations on one or more specified designated Telstra successor companies;

(b) that paragraph (1)(b) does not result in one or more specified prohibitions being applicable to one or more specified designated Telstra successor companies.

577ACB Directions—facilitation of undertaking about structural separation

(1) If:

(a) an undertaking is in force under section 577A; and

(b) the Minister is satisfied that a designated Telstra successor company (the ***first designated Telstra successor company***) has failed, is failing, or is likely to fail, to fulfil an obligation imposed on it by the undertaking;

the Minister may give:

(c) another designated Telstra successor company; or

(d) a body corporate that is a related body corporate (within the meaning of the *Corporations Act 2001*) of the first designated Telstra successor company;

a written direction to take specified action.

(2) The Minister must not give a direction to a body corporate under subsection (1) unless:

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(a) the Minister is satisfied that the action specified in the direction will assist the first designated Telstra successor company to fulfil its obligations under the undertaking; and
(b) the Minister is satisfied that the body corporate:
(i) has the capability (including the technical, operational and organisational capability) to comply with the direction; or
(ii) could reasonably acquire the capability (including the technical, operational and organisational capability) to comply with the direction; and
(c) the body corporate:
(i) is a constitutional corporation; or
(ii) carries on a telecommunications business covered by paragraph 581L(1)(a), (b) or (c).

Compliance with requirement

(3) A body corporate must comply with a direction under subsection (1).

Civil penalty

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

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

Consultation

(5) Before giving or varying a direction under subsection (1), the Minister must:
(a) make a copy of the draft direction or variation available on the Minister's website; and
(b) publish a notice on the Minister's website:
(i) stating that the Minister has prepared the draft; and
(ii) inviting interested persons to give written comments about the draft to the Minister within the period specified in the notice.

(6) Subject to subsection (7), the period specified in the notice must run for at least 30 days after the publication of the notice.

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(7) The period specified in the notice may be shorter than 30 days if the Minister is satisfied that the shorter period is necessary due to urgent circumstances.

(8) If interested persons have given comments in accordance with a notice under subsection (5), the Minister must have due regard to those comments in giving or varying the direction.

42 Section 577AD

Omit "given by Telstra".

43 Section 577AD

Omit ", Telstra must", substitute "and imposes obligations or prohibitions on a designated Telstra successor company, the designated Telstra successor company must".

44 Subsection 577B(1)

Omit "given by Telstra".

45 Subsection 577B(2)

Omit "Telstra", substitute "If the undertaking imposes obligations or prohibitions on a designated Telstra successor company, the designated Telstra successor company".

47 Subsection 577BA(2)

After "The giving by Telstra", insert ", before the commencement of section 577ACA,".

48 After subsection 577BA(2)

Insert:

(2A) The giving by a designated Telstra successor company of:

(a) a variation of an undertaking in force under section 577A; or

(b) a variation of a final migration plan;

is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*.

49 Subsection 577BA(6)

Omit "Telstra", substitute "a designated Telstra successor company".

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50 Paragraph 577BA(7)(a)

Omit "Telstra", substitute "a designated Telstra successor company".

51 Paragraph 577BA(7)(b)

Omit "Telstra" (wherever occurring), substitute "the designated Telstra successor company".

52 Paragraph 577BA(8)(a)

After "Telstra", insert "or a designated Telstra successor company".

53 Paragraphs 577BA(8)(b) and (c)

After "Telstra", insert "or the designated Telstra successor company".

54 Paragraph 577BA(8)(e)

After "Telstra", insert "or a designated Telstra successor company".

54A After paragraph 577BA(8)(f)

Insert:

and (g) conduct engaged in by a designated Telstra successor company in order to facilitate Telstra or a designated Telstra successor company giving effect to a provision of the contract, arrangement or understanding;

55 Paragraph 577BA(9)(a)

Omit "given by Telstra".

56 Paragraph 577BA(9)(b)

After "Telstra", insert "or a designated Telstra successor company".

57 Subsection 577BA(9)

After "Telstra" (last occurring), insert "or the designated Telstra successor company".

57A Paragraph 577BA(10)(c)

Omit "Telstra", substitute "a designated Telstra successor company".

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58 At the end of subsection 577BE(1)

Add:

Note: A final migration plan came into force on 7 March 2012.

59 After section 577BE

Insert:

577BEA Repointing of final migration plan to certain designated Telstra successor companies

(1) If a final migration plan is in force, the final migration plan has effect as if:

(a) each obligation imposed on Telstra by the final migration plan were imposed instead on each of the following designated Telstra successor companies:

(i) Telstra Infraco Limited;

(ii) Telstra Limited;

(iii) a designated Telstra successor company specified in an instrument under subsection (2); and

(b) each prohibition applicable to Telstra under the final migration plan were applicable instead to each of the following designated Telstra successor companies:

(i) Telstra Infraco Limited;

(ii) Telstra Limited;

(iii) a designated Telstra successor company specified in an instrument under subsection (2).

Note: See also section 581U (transitional—references in legislation to Telstra Infraco Limited).

(2) The Minister may, by legislative instrument, specify one or more designated Telstra successor companies for the purposes of subparagraphs (1)(a)(iii) and (b)(iii).

(3) Subsection (1) has effect subject to subsection (4).

(4) The Minister may, by legislative instrument, determine either or both of the following:

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(a) that paragraph (1)(a) does not result in the imposition of one or more specified obligations on one or more specified designated Telstra successor companies;
(b) that paragraph (1)(b) does not result in one or more specified prohibitions being applicable to one or more specified designated Telstra successor companies.

577BEB Directions—facilitation of final migration plan

(1) If:
(a) a final migration plan is in force; and
(b) the Minister is satisfied that a designated Telstra successor company (the ***first designated Telstra successor company***) has failed, is failing, or is likely to fail, to fulfil an obligation imposed on it by the plan;

the Minister may give:
(c) another designated Telstra successor company; or
(d) a body corporate that is a related body corporate (within the meaning of the *Corporations Act 2001*) of the first designated Telstra successor company;

a written direction to take specified action.

(2) The Minister must not give a direction to a body corporate under subsection (1) unless:
(a) the Minister is satisfied that the action specified in the direction will assist the first designated Telstra successor company to fulfil its obligations under the final migration plan; and
(b) the Minister is satisfied that the body corporate:
(i) has the capability (including the technical, operational and organisational capability) to comply with the direction; or
(ii) could reasonably acquire the capability (including the technical, operational and organisational capability) to comply with the direction; and
(c) the body corporate:
(i) is a constitutional corporation; or
(ii) carries on a telecommunications business covered by paragraph 581L(1)(a), (b) or (c).

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Compliance with requirement

(3) A body corporate must comply with a direction under subsection (1).

Civil penalty

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

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

Consultation

(5) Before giving or varying a direction under subsection (1), the Minister must:
  (a) make a copy of the draft direction or variation available on the Minister's website; and
  (b) publish a notice on the Minister's website:
    (i) stating that the Minister has prepared the draft; and
    (ii) inviting interested persons to give written comments about the draft to the Minister within the period specified in the notice.

(6) Subject to subsection (7), the period specified in the notice must run for at least 30 days after the publication of the notice.

(7) The period specified in the notice may be shorter than 30 days if the Minister is satisfied that the shorter period is necessary due to urgent circumstances.

(8) If interested persons have given comments in accordance with a notice under subsection (5), the Minister must have due regard to those comments in giving or varying the direction.

60 Subsection 577BF(2)

Omit "Telstra", substitute "If the final migration plan imposes obligations or prohibitions on a designated Telstra successor company, the designated Telstra successor company".

61 Before section 577G

Insert:

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577FA Enforcement of undertakings in force under section 577A

(1) If:
  (a) an undertaking is in force under section 577A; and
  (b) the ACCC considers that a designated Telstra successor company has breached the undertaking;

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

(2) If the Federal Court is satisfied that the designated Telstra successor company has breached the undertaking, the Court may make any or all of the following orders:
  (a) an order directing the designated Telstra successor company to comply with the undertaking;
  (b) an order directing the disposal of network units, shares or other assets;
  (c) an order restraining the exercise of any rights attached to shares;
  (d) an order prohibiting or deferring the payment of any sums due to a person in respect of shares held by the designated Telstra successor company;
  (e) an order that any exercise of rights attached to shares be disregarded;
  (f) an order directing the designated Telstra successor company to pay to the Commonwealth an amount up to the amount of any financial benefit that the designated Telstra successor company has obtained directly or indirectly and that is reasonably attributable to the breach;
  (g) any order that the Court considers appropriate directing the designated Telstra successor company to compensate any other person who has suffered loss or damage as a result of the breach;
  (h) any other order that the Court considers appropriate.

(3) In addition to the Federal Court's powers under subsection (2), the Court:
  (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order

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directing any person to do or refrain from doing a specified act; and

(b) has power to make an order containing such ancillary or consequential provisions as the Court thinks just.

(4) The Federal Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.

(5) The Federal Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

62 Section 577G (heading)

After "**Enforcement of undertakings**", insert "**in force under section 577C or 577E**".

63 Paragraph 577G(1)(a)

Omit "577A,".

64 Before subsection 577M(1)

Insert:

(1A) For the purposes of this Part, an ***associate*** of a designated Telstra successor company in relation to control of:

(a) a telecommunications network; or

(b) a company;

is:

(c) a partner of the designated Telstra successor company; or

(d) if the designated Telstra successor company or another person who is an associate of the designated Telstra successor company under another paragraph receives benefits or is capable of benefiting under a trust—the trustee of the trust; or

(e) a person (whether a company or not) who:

(i) acts, or is accustomed to act; or

(ii) under a contract or an arrangement or understanding (whether formal or informal) is intended or expected to act;

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in accordance with the directions, instructions or wishes of, or in concert with:

(iii) the designated Telstra successor company; or

(iv) the designated Telstra successor company and another person who is an associate of the designated Telstra successor company under another paragraph; or

(f) another company if:

(i) the other company is a related body corporate of the designated Telstra successor company for the purposes of the *Corporations Act 2001*; or

(ii) the designated Telstra successor company, or the designated Telstra successor company and another person who is an associate of the designated Telstra successor company under another paragraph, are in a position to exercise control of the other company.

65 Section 577Q (heading)

After "**When Telstra**", insert "**or a designated Telstra successor company**".

66 Before subsection 577Q(1)

Insert:

(1A) For the purposes of this Part, a designated Telstra successor company is in a position to exercise control of:

(a) a hybrid fibre-coaxial network; or

(b) another telecommunications network;

if:

(c) the designated Telstra successor company legally or beneficially owns the network (whether alone or together with one or more other persons); or

(d) the designated Telstra successor company is in a position, either alone or together with an associate of the designated Telstra successor company and whether directly or indirectly:

(i) to exercise control of the operation of all or part of the network; or

(ii) to exercise control of the selection of the kinds of services that are supplied using the network; or

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(iii) to exercise control of the supply of services using the network; or

(e) a company other than the designated Telstra successor company legally or beneficially owns the network (whether alone or together with one or more other persons), and:

(i) the designated Telstra successor company is in a position, either alone or together with an associate of the designated Telstra successor company, to exercise control of the company; or

(ii) the designated Telstra successor company, either alone or together with an associate of the designated Telstra successor company, is in a position to veto any action taken by the board of directors of the company; or

(iii) the designated Telstra successor company, either alone or together with an associate of the designated Telstra successor company, is in a position to appoint or secure the appointment of, or veto the appointment of, at least half of the board of directors of the company; or

(iv) the designated Telstra successor company, either alone or together with an associate of the designated Telstra successor company, is in a position to exercise, in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the company; or

(v) the company or more than 50% of its directors act, or are accustomed to act in accordance with the directions, instructions or wishes of, or in concert with, the designated Telstra successor company or of the designated Telstra successor company and an associate of the designated Telstra successor company acting together or of the directors of the designated Telstra successor company; or

(vi) the company or more than 50% of its directors, under a contract or an arrangement or understanding (whether formal or informal) are intended or expected to act, in accordance with the directions, instructions or wishes of, or in concert with, the designated Telstra successor company or of the designated Telstra successor company and an associate of the designated Telstra

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successor company acting together or of the directors of the designated Telstra successor company.

67 Subsection 577Q(2)

After "network under subsection", insert "(1A) or".

68 After paragraph 17(2A)(a) of Schedule 1

Insert:

(aa) preventing a designated Telstra successor company from complying with an undertaking in force under section 577A;

69 Paragraph 17(2A)(b) of Schedule 1

Omit "577A,".

70 Paragraph 17(2A)(c) of Schedule 1

Omit "Telstra", substitute "a designated Telstra successor company".

71 Paragraph 17(4A)(a) of Schedule 1

After "Telstra", insert "or a designated Telstra successor company".

72 Paragraph 17(4A)(b) of Schedule 1

After "Telstra", insert "or the designated Telstra successor company".

73 Before paragraph 18(6)(a) of Schedule 1

Insert:

(aa) preventing a designated Telstra successor company from complying with an undertaking in force under section 577A; or

74 Paragraph 18(6)(a) of Schedule 1

Omit "577A,".

75 Paragraph 18(6)(b) of Schedule 1

Omit "Telstra", substitute "a designated Telstra successor company".

76 After paragraph 33(6)(a) of Schedule 1

Insert:

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(aa) preventing a designated Telstra successor company from complying with an undertaking in force under section 577A;

77 Paragraph 33(6)(b) of Schedule 1

Omit "577A,".

78 Paragraph 33(6)(c) of Schedule 1

Omit "Telstra", substitute "a designated Telstra successor company".

79 Paragraph 33(8)(a) of Schedule 1

After "Telstra", insert "or a designated Telstra successor company".

80 Paragraph 33(8)(b) of Schedule 1

Omit "Telstra", substitute "the designated Telstra successor company".

81 After paragraph 34(6)(a) of Schedule 1

Insert:

(aa) preventing a designated Telstra successor company from complying with an undertaking in force under section 577A;

82 Paragraph 34(6)(b) of Schedule 1

Omit "577A,".

83 Paragraph 34(6)(c) of Schedule 1

Omit "Telstra", substitute "a designated Telstra successor company".

84 Paragraph 34(8)(a) of Schedule 1

After "Telstra", insert "or a designated Telstra successor company".

85 Subparagraphs 34(8)(b)(i) and (ii) of Schedule 1

After "Telstra", insert "or the designated Telstra successor company".

86 After paragraph 35(6)(a) of Schedule 1

Insert:

(aa) preventing a designated Telstra successor company from complying with an undertaking in force under section 577A;

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87 Paragraph 35(6)(b) of Schedule 1

Omit "577A,".

88 Paragraph 35(6)(c) of Schedule 1

Omit "Telstra", substitute "a designated Telstra successor company".

89 Paragraph 35(8)(a) of Schedule 1

After "Telstra", insert "or a designated Telstra successor company".

90 Paragraph 35(8)(b) of Schedule 1

After "Telstra", insert "or the designated Telstra successor company".

91 Before paragraph 36(7)(a) of Schedule 1

Insert:

(aa) preventing a designated Telstra successor company from complying with an undertaking in force under section 577A; or

92 Paragraph 36(7)(a) of Schedule 1

Omit "577A,".

93 Paragraph 36(7)(b) of Schedule 1

Omit "Telstra", substitute "a designated Telstra successor company".

94 Clause 10 of Schedule 2 (heading)

Omit "**Telstra**", substitute "**Telstra Limited**".

95 Subclause 10(1) of Schedule 2

Omit "Telstra", substitute "Telstra Limited".

96 Subclause 10(2) of Schedule 2

Omit "Telstra" (wherever occurring), substitute "Telstra Limited".

98 Subclause 10(2) of Schedule 2

Omit "Telstra's", substitute "Telstra Limited's".

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99 Clause 20 of Schedule 2

Repeal the clause, substitute:

20 Requirements for Telstra Limited and Telstra

(1) This Part does not impose a requirement on Telstra Limited if:
  (a) Telstra Limited holds a carrier licence; and
  (b) the carrier licence is subject to one or more conditions about priority assistance obligations.

(2) This Part is taken not to have imposed a requirement on Telstra at a time before the commencement of this clause if section 12 of the *Telecommunications (Carrier Licence Conditions - Telstra Corporation Limited) Declaration 2019* was in force at that time.

Note: Section 12 of the *Telecommunications (Carrier Licence Conditions - Telstra Corporation Limited) Declaration 2019* was about Telstra's priority assistance obligations.

Telecommunications (Consumer Protection and Service Standards) Act 1999

100 Section 4 (paragraph beginning "Telstra is subject to")

Omit "Telstra is", substitute "designated Telstra successor companies are".

101 Subsection 12A(2)

After "determine", insert "under subsection (1)".

102 After subsection 12A(2)

Insert:

(2A) The Minister may determine, in writing, that each of 2 or more specified persons is a ***primary universal service provider*** in respect of a service obligation.

(2B) The Minister must not specify a person in a determination under subsection (2A) unless the person is a carrier or carriage service provider.

(2C) The Minister may determine under subsection (2A):

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(a) different primary universal service providers in respect of different service obligations; and
(b) the same person as a primary universal service provider in respect of one or more service obligations.

(2D) The Minister must not make a determination under subsection (1) in respect of a service obligation if a determination in respect of that service obligation is in force under subsection (2A).

(2E) The Minister must not make a determination under subsection (2A) in respect of a service obligation if a determination in respect of that service obligation is in force under subsection (1).

103 Subsection 12A(3)

After "there is", insert "at least".

104 Section 12C

Repeal the section, substitute:

12C Obligations of primary universal service providers

(1) If there is only one primary universal service provider in respect of a service obligation, that service obligation is imposed on that primary universal service provider.

(2) If there are 2 or more primary universal service providers in respect of a service obligation:
(a) that obligation is imposed on each of those primary universal service providers, but may be discharged by any of those primary universal service providers; and
(b) if the service obligation is complied with by any of those primary universal service providers—the obligation is taken to have been complied with by the other primary universal service provider or providers.

105 Section 12D (heading)

Omit "**Telstra**", substitute "**Telstra Limited**".

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106 Subsection 12D(1)

Omit "under section 12A that Telstra", substitute "under subsection 12A(1) that Telstra Limited".

107 At the end of section 12D

Add:

(3) Subsection (1) does not apply to Telstra Limited unless Telstra Limited is a carrier or carriage service provider.

108 Paragraph 12E(1)(a)

Omit "the primary universal service provider", substitute "a primary universal service provider".

108A At the end of Division 3 of Part 2

Add:

Subdivision C—Relevant contracts entered into by designated Telstra successor companies

22A Relevant contract

For the purposes of this Subdivision, ***relevant contract*** means a contract or agreement that is entered into:

(a) by a designated Telstra successor company; and

(b) for a purpose relating to either or both of the following:

(i) the achievement of any or all of the policy objectives of this Division;

(ii) the transfer of one or more assets that were used in connection with the fulfilment of obligations imposed on the designated Telstra successor company by the section 14 contract known as the Telstra USO Performance Agreement.

22AA Transfer of asset

For the purposes of this Subdivision, a transfer of an asset occurs if:

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(a) the legal ownership of the asset is transferred in whole or in part; or
(b) the beneficial ownership of the asset is transferred in whole or in part (whether by way of a declaration of trust or in any other way); or
(c) if the asset is the subject of a lease—the lease is transferred.

22B Authorised officer

(1) For the purposes of this Subdivision, ***authorised officer*** means an SES employee, or an acting SES employee, who holds, or performs the duties of, a position designated under subsection (2).

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

(2) The Minister may, by notifiable instrument, designate one or more specified positions in the Department for the purposes of subsection (1).

22C Notification of relevant contracts

(1) Within 7 days after a designated Telstra successor company enters into:
(a) a relevant contract; or
(b) a variation of a relevant contract;
the company must give:
(c) an authorised officer; or
(d) if there is no authorised officer—the Minister;
a written statement that sets out the following information:
(e) the names of the parties to the contract or variation, as the case requires;
(f) the nature of the contract or variation, as the case requires;
(g) the date the contract or variation, as the case requires, was entered into;
(h) the date when the contract or variation, as the case requires, came, or is to come, into effect;
(i) if the contract or variation (as the case requires) deals with the transfer of an asset—the name of the transferee;

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(j) such other information (if any) relating to the contract or variation, as the case requires, as is specified under subsection (2).

(2) The Minister may, by legislative instrument, specify information for the purposes of paragraph (1)(j).

Civil penalty

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

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

22CA Notification of proposed contracts

(1) If:

(a) a designated Telstra successor company proposes to enter into a relevant contract; and

(b) the contract is to be entered into for a purpose relating to the transfer of one or more assets that were used in connection with the fulfilment of obligations imposed on the company by the section 14 contract known as the Telstra USO Performance Agreement;

the company must, at least 30 days before entering into the contract, give:

(c) an authorised officer; or

(d) if there is no authorised officer—the Minister;

a written statement that sets out the following information:

(e) the names of the parties to the contract;

(f) the nature of the contract;

(g) the date the contract is to be entered into;

(h) the date when the contract is to come into effect;

(i) the name of the transferee of the assets;

(j) such other information (if any) relating to the contract as is specified under subsection (2).

(2) The Minister may, by legislative instrument, specify information for the purposes of paragraph (1)(j).

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

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

22D Copies of relevant contracts—requirement imposed by Ministerial notice

Requirement to give copy of proposed contract or variation

(1) If a designated Telstra successor company proposes to enter into:
  (a) a relevant contract; or
  (b) a variation of a relevant contract;
the Minister or an authorised officer may, by written notice given to the company, require the company to:
  (c) give:
    (i) an authorised officer; or
    (ii) if there is no authorised officer—the Minister;
    a copy of the proposed contract or variation, as the case requires; and
  (d) do so within 7 days after the notice is given.

Requirement to give copy of contract or variation

(2) If a designated Telstra successor company has entered into:
  (a) a relevant contract; or
  (b) a variation of a relevant contract;
the Minister or an authorised officer may, by written notice given to the company, require the company to:
  (c) give:
    (i) an authorised officer; or
    (ii) if there is no authorised officer—the Minister;
    a copy of the contract or variation, as the case requires; and
  (d) do so within 7 days after the notice is given.

Compliance with requirement

(3) A designated Telstra successor company must comply with a requirement under subsection (1) or (2).

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Civil penalty

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

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

22E Copies of relevant contracts—requirement imposed by rules

(1) The Minister may, by legislative instrument, make rules that impose the following requirements to be complied with by a designated Telstra successor company that has entered into a relevant contract in a specified class of relevant contracts:

(a) the requirement that, within 7 days after such a contract is entered into, the company must give:

(i) an authorised officer; or

(ii) if there is no authorised officer—the Minister;

a copy of the contract;

(b) the requirement that, within 7 days after the company enters into a variation of such a contract, the company must give:

(i) an authorised officer; or

(ii) if there is no authorised officer—the Minister;

a copy of the variation.

Compliance with requirement

(2) A designated Telstra successor company must comply with a requirement imposed by rules made under subsection (1).

Civil penalty

(3) Subsection (2) is a civil penalty provision.

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

108B At the end of section 44

Add:

; or (c) at any time during the eligible revenue period, the person was in a class of persons specified in the regulations.

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109 Subsection 96(1) (heading)

Omit "*Telstra*", substitute "*Designated Telstra successor company*".

110 Part 9 (heading)

Omit "**Telstra**", substitute "**designated Telstra successor companies**".

111 Section 152 (paragraph beginning "This Part provides for")

Omit "Telstra", substitute "designated Telstra successor companies".

112 Section 153 (paragraphs (a) and (b) of the definition of *carrier charge*)

Omit "Telstra", substitute "a designated Telstra successor company".

113 Paragraph 155(1)(b)

Omit "Telstra", substitute "a designated Telstra successor company".

114 Subsection 155(5)

Omit "Telstra", substitute "A designated Telstra successor company".

115 Subsection 156(1)

Omit "Telstra", substitute "a designated Telstra successor company".

116 Subsections 156(2) and (3)

Omit "Telstra", substitute "the designated Telstra successor company".

117 Paragraph 156(3)(d)

Omit "Telstra", substitute "the designated Telstra successor company".

118 Subsection 158(1)

Omit "Telstra" (first occurring), substitute "a designated Telstra successor company".

119 Subsection 158(1)

Omit "Telstra" (second occurring), substitute "the designated Telstra successor company".

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120 Paragraph 158(2)(b)

Omit "Telstra", substitute "the designated Telstra successor company".

121 Subsection 158(4)

Omit "Telstra" (wherever occurring), substitute "the designated Telstra successor company".

122 Subsection 158(5)

Omit "Telstra", substitute "A designated Telstra successor company".

Division 2—Transitional

123 Transitional—section 577G of the *Telecommunications Act 1997*

Despite the amendment of section 577G of the *Telecommunications Act 1997* made by this Part, that section continues to apply, in relation to a breach that occurred before the commencement of this item, as if that amendment had not been made.

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Part 2—Other amendments

A Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities

124 Clause 1.2.1

Before "This Code does not apply", insert "This Code does not apply to the extent (if any) it imposes an obligation on a designated Telstra successor company that has the effect of preventing the designated Telstra successor company from complying with an undertaking in force under section 577A of the *Telecommunications Act 1997*.".

125 Clause 1.2.1

Omit "Telstra Corporation Ltd (Telstra)", substitute "Telstra".

126 Clause 1.2.1

Omit "577A,".

127 Clause 1.2.1

After "between Telstra", insert "or a designated Telstra successor company".

128 Clause 1.2.1

After "by Telstra", insert "or the designated Telstra successor company".

129 Clause 6.1 (definition of Telstra)

Repeal the definition, substitute:

> **Telstra** has the same meaning as in the *Telstra Corporation Act 1991*.

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Telecommunications Act 1997

130 At the end of subsection 19(1)

Add:

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

131 Subsection 19(2)

Repeal the subsection, substitute:

(2) A determination under paragraph (1)(b) is a notifiable instrument.

Telecommunications (Carrier Licence Conditions - Telstra Corporation Limited) Declaration 2019

132 Section 1

Omit "*Telstra Corporation Limited*", substitute "*Telstra Infraco Limited*".

133 At the end of section 3

Add:

Note: Section 63A of the Act provides that until the first occasion after the commencement of that section on which a declaration under subsection 63(2) of the Act takes effect in relation to a carrier licence held by Telstra Limited:

(a) the carrier licence is subject to the conditions set out in section 11 of this declaration; and

(b) for that purpose, a reference in that section to the licensee is to be read as a reference to Telstra Limited.

133A Section 4 (definitions of *emergency call service*, *emergency service*, *ESA*, *FSA* and *inoperative*)

Repeal the definitions.

135 Section 4 (definition of *licensee*)

Repeal the definition, substitute:

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licensee means Telstra Infraco Limited (ACN 051 775 556), as the company exists from time to time (even if its name is later changed).

135AA Section 4 (definitions of *location dependent carriage service*, *operator assistance service*, *operator services*, *priority assistance*, *public number*, *payphone*, *T(CPSS) Act* and *unlisted number*)

Repeal the definitions.

135A Sections 6 to 10

Repeal the sections.

136 Subsection 11(1)

Insert:

licensee representatives means any directors, employees, officers, representatives, delegates, professional or financial advisers, agents, contractors or sub-contractors of the licensee (in their capacity as such).

137 Subsection 11(1) (definition of *Telstra Representatives*)

Repeal the definition.

138 Subparagraph 11(8)(g)(iii)

Omit “Telstra Representatives”, substitute “licensee representatives”.

138A Sections 12 to 18

Repeal the sections.

139 Schedule 1

Repeal the Schedule.

Telecommunications (Emergency Call Persons) Determination 2019

142 Section 4 (paragraph (c) of the note)

Repeal the paragraph, substitute:

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(c) Telstra Limited.

143 Section 7

Omit "Telstra is", substitute "Telstra Limited is".

144 Section 7 (note 1)

Omit "Telstra", substitute "Telstra Limited".

Telecommunications (Emergency Call Service) Determination 2019

145 Section 6 (paragraph (a) of the definition of *IPND*)

Repeal the paragraph, substitute:

(a) the Integrated Public Number Database provided and maintained by Telstra Limited in accordance with a condition of its carrier licence; or

145A Section 6 (paragraph (b) of the definition of *IPND*)

Omit "Telstra", substitute "Telstra Limited".

146B Section 6 (note at the end of the definition of *IPND*)

Repeal the note.

146 Section 6 (paragraph (a) of the definition of *IPND Manager*)

Repeal the paragraph, substitute:

(a) Telstra Limited; or

146A Section 6 (paragraph (b) of the definition of *IPND Manager*)

Omit "Telstra", substitute "Telstra Limited".

147 Section 6 (at the end of the note at the end of the section)

Add:

; (t) Telstra Limited.

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Telecommunications (Statutory Infrastructure Providers—Exempt Real Estate Development Projects and Building Redevelopment Projects) Determination (No.1) 2020

148 Section 4 (after paragraph (b) of the note)

Insert:

(ba) designated Telstra successor company (section 581G);

149 Section 5 (heading)

Omit "**Telstra**", substitute "**certain**".

150 Subparagraph 5(b)(ii)

After "by Telstra", insert "or a designated Telstra successor company".

151 Subparagraph 5(b)(ii)

After "require Telstra", insert "or the designated Telstra successor company".

152 Subparagraph 5(b)(iii)

After "by Telstra", insert "or a designated Telstra successor company".

153 Section 6 (heading)

Omit "**Telstra**", substitute "**certain**".

154 Subparagraphs 6(b)(ii) and (iii)

After "by Telstra", insert "or a designated Telstra successor company".

155 Subparagraph 6(b)(iii)

After "from Telstra", insert "or a designated Telstra successor company".

156 Section 9 (heading)

Omit "**Telstra**", substitute "**certain**".

157 Subparagraph 9(b)(ii)

After "by Telstra", insert "or a designated Telstra successor company".

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158 Subparagraph 9(b)(ii)

After “require Telstra”, insert “or the designated Telstra successor company”.

159 Subparagraph 9(b)(iii)

After “by Telstra”, insert “or a designated Telstra successor company”.

160 Section 10 (heading)

Omit “**Telstra**”, substitute “**certain**”.

161 Subparagraphs 10(b)(ii) and (iii)

After “by Telstra”, insert “or a designated Telstra successor company”.

162 Subparagraph 10(b)(iii)

After “from Telstra”, insert “or a designated Telstra successor company”.

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Schedule 3—Amendments relating to contracts and agreements

Telecommunications Act 1997

1A After subsection 577BA(10)

Insert:

(10A) If:

(a) a body corporate enters into a contract, arrangement or understanding; and

(b) the body corporate enters into the contract, arrangement or understanding in order to comply with a direction under subsection 577BAA(1);

then:

(c) the entering into of the contract, arrangement or understanding by the body corporate; and

(d) conduct engaged in by the body corporate in order to give effect to a provision of the contract, arrangement or understanding;

is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*.

(10B) If a body corporate is subject to a direction under subsection 577BAA(1), conduct engaged in by the body corporate in order to comply with the direction is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*.

1 At the end of Subdivision A of Division 2 of Part 33

Add:

577BAA Directions—facilitation of contract or agreement

(1) If:

(a) a contract or agreement:

(i) is covered by a subsection of section 577BA; and

(ii) was in force at the commencement of this section; and

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(b) a designated Telstra successor company (the ***first designated Telstra successor company***) is a party to the contract or agreement; and

(c) the Minister is satisfied that the first designated Telstra successor company has failed, is failing, or is likely to fail, to fulfil its obligations under the contract or agreement;

the Minister may give:

(d) another designated Telstra successor company; or

(e) a body corporate that is a related body corporate (within the meaning of the *Corporations Act 2001*) of the first designated Telstra successor company;

a written direction to take specified action.

(2) The Minister must not give a direction to a body corporate under subsection (1) unless:

(a) the Minister is satisfied that the action specified in the direction will facilitate the first designated Telstra successor company fulfilling its obligations under the contract or agreement; and

(b) the Minister is satisfied that the body corporate:

(i) has the capability (including the technical, operational and organisational capability) to comply with the direction; or

(ii) could reasonably acquire the capability (including the technical, operational and organisational capability) to comply with the direction; and

(c) the body corporate:

(i) is a constitutional corporation; or

(ii) carries on a telecommunications business covered by paragraph 581L(1)(a), (b) or (c).

Compliance with requirement

(3) A body corporate must comply with a direction under subsection (1).

Civil penalty

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

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

Consultation—public

(5) Before the Minister gives or varies a direction under subsection (1), the Minister must consult the ACCC.

(6) Subject to subsection (9), before giving or varying a direction under subsection (1), the Minister must:
  (a) make a copy of the draft direction or variation available on the Minister's website; and
  (b) publish a notice on the Minister's website:
    (i) stating that the Minister has prepared the draft; and
    (ii) inviting interested persons to give written comments about the draft to the Minister within the period specified in the notice.

(7) The period specified in the notice must run for at least 30 days after the publication of the notice.

(8) If interested persons have given comments in accordance with a notice under subsection (6), the Minister must have due regard to those comments in giving or varying the direction.

Consultation—affected companies

(9) If the Minister is satisfied that compliance with subsection (6) in relation to giving or varying a direction could reasonably be expected to prejudice the commercial interests of a person:
  (a) subsection (6) does not apply to giving or varying the direction; and
  (b) before giving or varying the direction, the Minister must give each affected company:
    (i) a copy of the draft direction or variation; and
    (ii) a notice inviting the affected company to give written comments about the draft to the Minister within the period specified in the notice.

(10) The period specified in the notice must run for at least 30 days after the giving of the notice.

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(11) If affected companies have given comments in accordance with a notice under subsection (9), the Minister must have due regard to those comments in making or varying the direction.

(12) For the purposes of the application of this section to a direction that relates to a contract or agreement or to a variation of such a direction, each of the following is an ***affected company***:

(a) a body corporate that is a party to the contract or agreement;

(b) a body corporate that is, or will be, subject to the direction.

Telecommunications (Consumer Protection and Service Standards) Act 1999

2 After section 21

Insert:

21A Directions—facilitation of Telstra USO Performance Agreement

(1) If:

(a) a designated Telstra successor company (the ***first designated Telstra successor company***) is a party to the section 14 contract known as the Telstra USO Performance Agreement; and

(b) the Minister is satisfied that the first designated Telstra successor company has failed, is failing, or is likely to fail, to fulfil its obligations under the Telstra USO Performance Agreement;

the Minister may give:

(c) Telstra Limited; or

(d) another designated Telstra successor company; or

(e) a body corporate that is a related body corporate (within the meaning of the *Corporations Act 2001*) of the first designated Telstra successor company;

a written direction:

(f) to do a specified act or thing; or

(g) not to do a specified act or thing.

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(2) The Minister must not give a direction to a body corporate under subsection (1) to do an act or thing unless:
  (a) the Minister is satisfied that the act or thing will facilitate the first designated Telstra successor company fulfilling its obligations under the Telstra USO Performance Agreement; and
  (b) the Minister is satisfied that the body corporate:
    (i) has the capability (including the technical, operational and organisational capability) to comply with the direction; or
    (ii) could reasonably acquire the capability (including the technical, operational and organisational capability) to comply with the direction; and
  (c) the body corporate:
    (i) is a constitutional corporation; or
    (ii) carries on a telecommunications business covered by paragraph 581L(1)(a), (b) or (c).

(3) The Minister must not give a direction to a body corporate under subsection (1) not to do an act or thing unless:
  (a) the Minister is satisfied that not doing the act or thing will facilitate the first designated Telstra successor company fulfilling its obligations under the Telstra USO Performance Agreement; and
  (b) the Minister is satisfied that the body corporate:
    (i) has the capability (including the technical, operational and organisational capability) to comply with the direction; or
    (ii) could reasonably acquire the capability (including the technical, operational and organisational capability) to comply with the direction; and
  (c) the body corporate:
    (i) is a constitutional corporation; or
    (ii) carries on a telecommunications business covered by paragraph 581L(1)(a), (b) or (c) of the *Telecommunications Act 1997*.

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Compliance with requirement

(4) A body corporate must comply with a direction under subsection (1).

Civil penalty

(5) Subsection (4) is a civil penalty provision.

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

Consultation

(6) Before giving or varying a direction under subsection (1), the Minister must:
   (a) make a copy of the draft direction or variation available on the Minister's website; and
   (b) publish a notice on the Minister's website:
      (i) stating that the Minister has prepared the draft; and
      (ii) inviting interested persons to give written comments about the draft to the Minister within the period specified in the notice.

(7) Subject to subsection (8), the period specified in the notice must run for at least 30 days after the publication of the notice.

(8) The period specified in the notice may be shorter than 30 days if the Minister is satisfied that the shorter period is necessary due to urgent circumstances.

(9) If interested persons have given comments in accordance with a notice under subsection (6), the Minister must have due regard to those comments in giving or varying the direction.

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Schedule 4—Amendments relating to access to supplementary facilities and telecommunications transmission towers

Telecommunications Act 1997

1A After paragraph 570(3)(aa)

Insert:

(ab) in the case of a contravention of subsection 581Y(1) or 581ZD(1)—10,000 penalty units for each contravention; or

1 Before Part 35

Insert:

Part 34B—Access to supplementary facilities and telecommunications transmission towers

Division 1—Introduction

581V Simplified outline of this Part

- If a group of companies includes a carrier, a company (other than a carrier) that is in the group must:
  - (a) provide carriers with access to facilities; and
  - (b) provide carriers with access to telecommunications transmission towers.

581W Carrier company group

(1) For the purposes of this Part, ***carrier company group*** means a group of 2 or more bodies corporate, where:

(a) at least one of those bodies corporate is a carrier; and

(b) each of those bodies corporate are related to each other.

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(2) For the purposes of this section, the question of whether bodies corporate are related to each other is to be determined in accordance with section 50 of the *Corporations Act 2001*.

(3) The Minister may, by legislative instrument, determine that, for the purposes of this section, each reference in section 46 of the *Corporations Act 2001* to one-half is taken to be a reference to the percentage specified in the determination.

(4) If no determination is in force under subsection (3), then, for the purposes of this section, assume that each reference in section 46 of the *Corporations Act 2001* to one-half were a reference to 15%.

Consultation

(5) Before making or varying a determination under subsection (3), the Minister must:
  (a) make a copy of the draft determination or variation available on the Department's website; and
  (b) publish a notice on the Department's website:
    (i) stating that the Minister has prepared the draft; and
    (ii) inviting interested persons to give written comments about the draft to the Minister within the period specified in the notice.

(6) The period specified in the notice must run for at least 30 days after the publication of the notice.

(7) If interested persons have given comments in accordance with a notice under subsection (5), the Minister must have due regard to those comments in making or varying the determination.

581X Eligible company

For the purposes of this Part, ***eligible company*** means a body corporate that:
  (a) is in a carrier company group; and
  (b) is not a carrier.

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581XA Deemed bodies corporate

(1) The Minister may, by legislative instrument, determine that, if:
  (a) a specified person is an individual or a partnership; and
  (b) the person owns or operates:
    (i) a facility; or
    (ii) a telecommunications transmission tower (within the meaning of Division 3);

this Part has effect as if the person were a body corporate that is related to one or more specified bodies corporate.

(2) The Minister may, by legislative instrument, determine that, if:
  (a) a person is the trustee of a specified trust; and
  (b) the person (in the capacity of trustee of the trust) owns or operates:
    (i) a facility; or
    (ii) a telecommunications transmission tower (within the meaning of Division 3);

this Part has effect as if the person (in the capacity of trustee of the trust) were a body corporate that is related to one or more specified bodies corporate.

(3) The Minister may, by legislative instrument, determine that, if:
  (a) 2 or more persons are the trustees of a specified trust; and
  (b) the persons (in their capacity of trustees of the trust) own or operate:
    (i) a facility; or
    (ii) a telecommunications transmission tower (within the meaning of Division 3);

this Part has effect as if the persons (in their capacity of trustees of the trust) were a body corporate that is related to one or more specified bodies corporate.

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Division 2—Access to supplementary facilities

581Y Access to supplementary facilities

(1) An eligible company must, if requested to do so by a carrier, give the carrier access to facilities owned or operated by the eligible company.

Note 1: See also subsection (10) (when carrier is entitled to make a request).

Note 2: See also clause 17 of Schedule 1.

(2) Subsection (1) is a civil penalty provision.

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

(3) The eligible company is not required to comply with subsection (1) unless:

(a) the access is provided for the sole purpose of enabling the carrier:

(i) to provide facilities and carriage services; or

(ii) to establish its own facilities; and

(b) the carrier's request is reasonable; and

(c) the carrier gives the eligible company reasonable notice that the carrier requires the access; and

(d) in a case where the facilities do not consist of customer cabling or customer equipment—the facilities:

(i) were in place on 30 June 1991; or

(ii) were not in place on 30 June 1991, and were not obtained after that date by the eligible company solely by means of commercial negotiation.

(4) Subsection (1) does not impose an obligation to the extent (if any) to which the imposition of the obligation would have any of the following effects:

(a) depriving any person of a right under a contract that was in force at the time the request was made;

(b) preventing a designated Telstra successor company from complying with an undertaking in force under section 577A;

(c) preventing Telstra from complying with an undertaking in force under section 577C or 577E;

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(d) if a final migration plan is in force—requiring a designated Telstra successor company to engage in conduct in connection with matters covered by the final migration plan.

(5) If, at the time the request was made:

(a) one or more provisions (the ***contingent provisions***) of a contract have not come into force because:

(i) the contingent provisions are subject to a condition precedent; and

(ii) the condition precedent has not been satisfied; and

(b) there is a possibility that the condition precedent could become satisfied; and

(c) assuming that the condition precedent had been satisfied:

(i) the contingent provisions would come into force; and

(ii) the person would have a right under the contingent provisions;

paragraph (4)(a) has effect, in relation to the contract, as if, at the time the request was made:

(d) the contract was in force; and

(e) the person had the right under the contract.

(6) For the purposes of this section, in determining whether the carrier's request is reasonable, regard must be had to the question whether compliance with the request will promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services. That question is to be determined in the same manner as it is determined for the purposes of Part XIC of the *Competition and Consumer Act 2010*.

(7) Subsection (6) is intended to limit the matters to which regard may be had.

(8) For the purposes of subsection (1), if:

(a) there is an agreement in force between Telstra or a designated Telstra successor company and an NBN corporation; and

(b) the agreement relates to the NBN corporation's access to facilities owned or operated by Telstra or the designated Telstra successor company; and

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(c) apart from this section, the agreement would result in the NBN corporation being the operator of the facilities;

the NBN corporation is taken not to be the operator of the facilities.

(9) A reference in this section to a ***facility*** is a reference to:

(a) a facility as defined by section 7; or

(b) land on which a facility mentioned in paragraph (a) is located; or

(c) a building or structure on land referred to in paragraph (b); or

(d) customer equipment, or customer cabling, connected to a telecommunications network owned or operated by a carrier.

(10) A carrier is not entitled to make a request under subsection (1) of this section before the end of the 60-day period beginning on the day after the day specified in the instrument made under subsection 581ZH(3).

(11) In this section:

NBN corporation has the same meaning as in section 577BA.

581Z Terms and conditions of access

(1) An eligible company must comply with subsection 581Y(1) on such terms and conditions as are:

(a) agreed between the following parties:

(i) the eligible company;

(ii) the carrier concerned; or

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

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

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

(3) The regulations may provide that, for the purposes of a particular arbitration conducted by the ACCC under this section, the ACCC may be constituted by a single member, or a specified number of members, of the ACCC. For each such arbitration, that member or

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those members are to be nominated in writing by the Chairperson of the ACCC.

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

(5) A determination made in an arbitration under this section must not be inconsistent with a Ministerial pricing determination in force under section 581ZA.

(6) An arbitrator must not make a determination under this section if the determination would have the effect of:

(a) preventing a designated Telstra successor company from complying with an undertaking in force under section 577A; or

(b) preventing Telstra from complying with an undertaking in force under section 577C or 577E; or

(c) if a final migration plan is in force—requiring a designated Telstra successor company to engage in conduct in connection with matters covered by the final migration plan.

(7) If:

(a) an agreement mentioned in paragraph (1)(a) is in force; and

(b) the agreement is in writing;

a determination under this section has no effect to the extent to which it is inconsistent with the agreement.

581ZA Ministerial pricing determinations

(1) The Minister may, by legislative instrument, make a determination setting out principles dealing with price-related terms and conditions relating to the obligations imposed by subsection 581Y(1). The determination is to be known as a ***Ministerial pricing determination***.

(2) In this section:

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

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Division 3—Access to telecommunications transmission towers

581ZB Definitions

In this Division:

NBN corporation has the same meaning as in section 577BA.

telecommunications transmission tower means:

(a) a tower; or

(b) a pole; or

(c) a mast; or

(d) a similar structure;

used to supply a carriage service by means of radiocommunications.

581ZC Extended meaning of *access*

For the purposes of this Division, ***giving access*** to a tower includes replacing the tower with another tower located on the same site and giving access to the replacement tower.

581ZD Access to telecommunications transmission towers

(1) An eligible company must, if requested to do so by a carrier, give the carrier access to a telecommunications transmission tower owned or operated by the eligible company.

Note 1: See also subsection (11) (when carrier is entitled to make a request).

Note 2: See also clause 33 of Schedule 1.

(2) Subsection (1) is a civil penalty provision.

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

(3) The eligible company is not required to comply with subsection (1) unless:

(a) the access is provided for the sole purpose of enabling the carrier to install a facility used, or for use, in connection with

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the supply of a carriage service by means of radiocommunications; and

(b) the carrier gives the eligible company reasonable notice that the carrier requires the access.

(4) The eligible company is not required to comply with subsection (1) in relation to a particular telecommunications transmission tower if there is in force a written certificate issued by the ACCC stating that, in the ACCC's opinion, compliance with subsection (1) in relation to that tower is not technically feasible.

(5) In determining whether compliance with subsection (1) in relation to a tower is technically feasible, the ACCC must have regard to:

(a) whether compliance is likely to result in significant difficulties of a technical or engineering nature; and

(b) whether compliance is likely to result in a significant threat to the health or safety of persons who operate, or work on, the tower; and

(c) if compliance is likely to have a result referred to in paragraph (a) or (b)—whether there are practicable means of avoiding such a result, including (but not limited to):

(i) changing the configuration or operating parameters of a facility situated on the tower; and

(ii) making alterations to the tower; and

(d) such other matters (if any) as the ACCC considers relevant.

(6) Before issuing a certificate under subsection (4), the ACCC may consult the ACMA.

(7) If the ACCC receives a request to make a decision about the issue of a certificate under subsection (4), the ACCC must use its best endeavours to make that decision within 10 business days after the request was made.

(8) Subsection (1) does not impose an obligation to the extent (if any) to which the imposition of the obligation would have any of the following effects:

(a) depriving any person of a right under a contract that was in force at the time the request was made;

(b) preventing a designated Telstra successor company from complying with an undertaking in force under section 577A;

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(c) preventing Telstra from complying with an undertaking in force under section 577C or 577E;

(d) if a final migration plan is in force—requiring a designated Telstra successor company to engage in conduct in connection with matters covered by the final migration plan.

(9) If, at the time the request was made:

(a) one or more provisions (the ***contingent provisions***) of a contract have not come into force because:

(i) the contingent provisions are subject to a condition precedent; and

(ii) the condition precedent has not been satisfied; and

(b) there is a possibility that the condition precedent could become satisfied; and

(c) assuming that the condition precedent had been satisfied:

(i) the contingent provisions would come into force; and

(ii) the person would have a right under the contingent provisions;

paragraph (8)(a) has effect, in relation to the contract, as if, at the time the request was made:

(d) the contract was in force; and

(e) the person had the right under the contract.

(10) For the purposes of subsection (1), if:

(a) there is an agreement in force between Telstra or a designated Telstra successor company and an NBN corporation; and

(b) the agreement relates to the NBN corporation's access to a telecommunications transmission tower owned or operated by Telstra or the designated Telstra successor company; and

(c) apart from this section, the agreement would result in the NBN corporation being the operator of the telecommunications transmission tower;

the NBN corporation is taken not to be the operator of the telecommunications transmission tower.

(11) A carrier is not entitled to make a request under subsection (1) of this section before the end of the 60-day period beginning on the

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day after the day specified in the instrument made under subsection 581ZH(3).

581ZE Terms and conditions of access

(1) An eligible company must comply with subsection 581ZD(1) on such terms and conditions as are:
   (a) agreed between the following parties:
      (i) the eligible company;
      (ii) the carrier concerned; or
   (b) failing agreement, determined by an arbitrator appointed by the parties.

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

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

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

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

(5) An arbitrator must not make a determination under this section if the determination would have the effect of:
   (a) preventing a designated Telstra successor company from complying with an undertaking in force under section 577A; or
   (b) preventing Telstra from complying with an undertaking in force under section 577C or 577E; or
   (c) if a final migration plan is in force—requiring a designated Telstra successor company to engage in conduct in connection with matters covered by the final migration plan.

(6) If:
   (a) an agreement mentioned in paragraph (1)(a) is in force; and
   (b) the agreement is in writing;

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a determination under this section has no effect to the extent to which it is inconsistent with the agreement.

581ZF Code relating to access

(1) The ACCC may, by legislative instrument, make a Code setting out conditions that are to be complied with in relation to the provision of access under this Division.

(2) An eligible company must comply with the Code.

(3) This section does not, by implication, limit a power conferred by or under this Act to make an instrument.

(4) This section does not, by implication, limit the matters that may be dealt with by codes or standards referred to in Part 6.

(5) Subsections (3) and (4) do not, by implication, limit subsection 33(3B) of the *Acts Interpretation Act 1901*.

581ZG This Division does not limit Division 2

This Division does not, by implication, limit Division 2.

Division 4—Review of corporate control percentage

581ZH Review of corporate control percentage

(1) Within 6 months after the commencement of this section, the ACCC must conduct a review of whether a determination should be made under subsection 581W(3) and, if so, the percentage that should be specified in the determination.

(2) The ACCC must:
  (a) prepare a written report of the review; and
  (b) give the report to the Minister.

(3) The ACCC must, by notifiable instrument, specify the day on which the report was given to the Minister.

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(4) The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the report is given to the Minister.

Telecommunications (Arbitration) Regulations 2018

2 Section 5 (paragraph (a) of the definition of *arbitration*)

Omit "or 462", substitute ", 462, 581Z or 581ZE".

3 Section 5 (subparagraph (b)(i) of the definition of *service*)

After "section 372L", insert ", 581Y or 581ZD".

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Schedule 5—Exemption from sunsetting

Legislation (Exemptions and Other Matters) Regulation 2015

1 Section 12 (after paragraph (aa) of table item 61)

Insert:

(ab) a declaration made under section 581F or 581G of that Act;

[*Minister's second reading speech made in—*
House of Representatives on 21 October 2021
Senate on 30 November 2021]

(133/21)

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