

EXPOSURE DRAFT

2013

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

Telecommunications Legislation Amendment (International Mobile Roaming) Bill 2014

No. , 2014

(Communications)

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

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

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Telecommunications Legislation Amendment (International Mobile Roaming) Act 2014*.

2 Commencement

This Act commences on the day after this Act receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1 Amendments

Part 1 Competition and Consumer Act 2010

1 **Schedule 1—Amendments**

2 **Part 1—Competition and Consumer Act 2010**

3 **Division 1—Amendments for controls on prices of**
4 **services relating to international mobile**
5 **roaming**

6 **1 Part XIB (heading)**

7 Repeal the heading, substitute:

8 **Part XIB—The telecommunications industry:**
9 **anti-competitive conduct, pricing and**
10 **record-keeping rules**

11 **2 Section 151AA**

12 After:

- 13

<ul style="list-style-type: none">• Carriers and carriage service providers may be directed to file tariff information with the Commission. The direction is called a <i>tariff filing direction</i>.

16 insert:

- 17

<ul style="list-style-type: none">• The Commission may control the price of services that carriers and carriage service providers supply to telecommunications operators in certain foreign countries to enable those operators to offer their customers mobile roaming services in Australia.
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22 **3 Section 151AB**

23 Insert:

24 *commences*, in relation to a public inquiry by the Commission
25 under Part 25 of the *Telecommunications Act 1997*, has the
26 meaning given by section 151AHB.

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Amendments **Schedule 1**
Competition and Consumer Act 2010 **Part 1**

1 ***designated country*** means a foreign country that is declared by the
2 Minister under section 151AHA to be a designated country.

3 ***final price-control determination*** means a price-control
4 determination other than an interim price-control determination.

5 ***interim price-control determination*** means a price-control
6 determination that is expressed to be an interim price-control
7 determination.

8 ***positive result***: a service specification inquiry for a wholesale IMR
9 service has a ***positive result*** if the inquiry results in the
10 Commission:

- 11 (a) finding that the service should be specified in a price-control
12 determination if appropriate price-control arrangements for
13 the service can be made in the determination; and
14 (b) finding, in accordance with sections 152AB and 152AIA,
15 that such specification of the service in that case:
16 (i) promotes the long-term interests of end-users of
17 carriage services or services supplied by means of
18 carriage services; and
19 (ii) passes the reciprocity test.

20 ***price-control arrangements*** includes:

- 21 (a) price-capping arrangements; and
22 (b) principles in accordance with which alterations to price are to
23 be made.

24 ***price-control determination*** means a determination under
25 section 151BTC.

26 ***price-control inquiry*** means a public inquiry by the Commission
27 under Part 25 of the *Telecommunications Act 1997* about what
28 price-control arrangements should be specified in a price-control
29 determination for a wholesale IMR service.

30 ***service specification inquiry*** means a public inquiry by the
31 Commission under Part 25 of the *Telecommunications Act 1997*
32 about whether a particular wholesale IMR service should be
33 specified in a price-control determination.

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Schedule 1 Amendments

Part 1 Competition and Consumer Act 2010

1 **Trade Minister** means the Minister administering the *Australian*
2 *Trade Commission Act 1985*.

3 **wholesale IMR service** means a carriage service for which all the
4 following conditions are met:

- 5 (a) the service is supplied by a carrier, or a carriage service
6 provider, using a telecommunications network (as defined in
7 the *Telecommunications Act 1997*) that is in Australia (as
8 defined in that Act);
- 9 (b) the service is supplied to a person who carries on business in
10 a designated country;
- 11 (c) the service enables the person to supply a public mobile
12 telecommunications service (as defined in that Act) that is a
13 listed carriage service;
- 14 (d) the supply of the service is enabled by the use of credentials
15 that:
- 16 (i) are provided to the carrier or carriage service provider
17 by the end-user of the service or by that end-user's
18 customer equipment (as defined in that Act); and
- 19 (ii) are verified by an operator of a telecommunications
20 network (as defined in that Act) that is in the designated
21 country or by a person who supplies carriage services
22 using such a network.

23 Note: IMR is short for international mobile roaming.

24 **4 After section 151AH**

25 Insert:

26 **151AHA Declaration of designated countries**

27 The Minister may by legislative instrument declare a specified
28 foreign country to be a designated country.

29 **151AHB When public inquiry commences**

30 For the purposes of this Part, a public inquiry held by the
31 Commission under Part 25 of the *Telecommunications Act 1997*
32 **commences** when the Commission publishes the notice under
33 section 498 of that Act about the inquiry.

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Amendments **Schedule 1**
Competition and Consumer Act 2010 **Part 1**

1 **5 After Division 5 of Part XIB**

2 Insert:

3 **Division 5A—Price controls on certain wholesale IMR**
4 **services**

5 **Subdivision A—Simplified outline of this Division**

6 **151BTB Simplified outline of this Division**

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- The Commission may determine price-control arrangements for carriage services that:
 - (a) are supplied, by carriers or carriage service providers, using Australian telecommunications networks to telecommunications businesses in foreign countries designated by the Minister; and
 - (b) are supplied to enable those businesses to supply their customers with roaming services for their mobile telecommunications devices while they are in Australia.
 - Before the Commission can make such a determination it must:
 - (a) publicly inquire into the service to which price-control arrangements are to apply and what the arrangements should be; and
 - (b) notify the Minister and the Trade Minister of the proposed determination.
 - There are timing requirements for inquiries. The Commission can set interim price-control arrangements for a service while an inquiry into price-control arrangements for the service is occurring.
 - There are special rules for the variation, revocation, expiry and replacement of determinations of price-control arrangements.

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Schedule 1 Amendments

Part 1 Competition and Consumer Act 2010

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- Carriers and carriage service providers must comply with determinations. Compliance is both a condition of a carrier licence and a service provider rule for the purposes of the *Telecommunications Act 1997* (and so can be enforced under that Act as well as under Division 7 of this Part).

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Subdivision B—Commission may make price-control determinations for wholesale IMR services

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151BTC Price-control determinations

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- (1) The Commission may make a written determination of price-control arrangements for a specified wholesale IMR service.

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Note 1: Subdivision C prohibits the Commission from making a price-control determination for a wholesale IMR service unless the Commission has:

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- (a) held a service specification inquiry for the service and as a result found that the service should be specified in a price-control determination; and
 - (b) held a price-control inquiry for the service; and
 - (c) informed the Minister and the Trade Minister about the proposed determination.

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Note 2: Subdivision C requires the Commission:

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- (a) to commence holding a price-control inquiry for a wholesale IMR service no later than 30 days after publishing the report of a service specification inquiry that resulted in the Commission finding the service should be specified in a price-control determination; and
 - (b) generally to make the price-control determination within a limited time after commencing the price-control inquiry.

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- (2) A determination under subsection (1) is to be known as a *price-control determination*.

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- (3) A price-control determination must specify a wholesale IMR service by reference to the particular designated country in relation to which the service meets the condition in subparagraph (d)(ii) of the definition of *wholesale IMR service* in section 151AB.

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- (4) A price-control determination for a wholesale IMR service may make different provision for price-control arrangements with respect to:
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- 1 (a) different carriers or carriage service providers who supply, or
2 are to supply, the service; or
3 (b) different classes of carriers or carriage service providers who
4 supply, or are to supply, the service; or
5 (c) different persons to whom the service is supplied or is to be
6 supplied; or
7 (d) different classes of persons to whom the service is supplied
8 or is to be supplied.
- 9 (5) Subsection (4) does not, by implication, limit subsection 33(3A) of
10 the *Acts Interpretation Act 1901*.
- 11 (6) A price-control determination may provide for the Commission to
12 perform functions, and exercise powers, under the determination.
- 13 (7) A price-control determination is not a legislative instrument.

14 **151BTD Matters that the Commission must take into account**

- 15 (1) The Commission must take the following matters into account in
16 making price-control arrangements in a price-control
17 determination:
- 18 (a) whether the determination will promote the long-term
19 interests of end-users of carriage services or of services
20 supplied by means of carriage services, on the basis
21 described in section 152AB;
- 22 (b) whether making the determination passes the reciprocity test,
23 on the basis described in section 152AIA;
- 24 (c) the legitimate business interests of a carrier or carriage
25 service provider who supplies, or is capable of supplying, the
26 specified wholesale IMR service, and the carrier's or
27 provider's investment in facilities used to supply the service;
- 28 (d) the interests of all persons who have rights to use the
29 specified wholesale IMR service;
- 30 (e) the direct costs of supplying the specified wholesale IMR
31 service;
- 32 (f) the value to a person of extensions, or enhancement of
33 capability, whose cost is borne by someone else;

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Schedule 1 Amendments

Part 1 Competition and Consumer Act 2010

- 1 (g) the operational and technical requirements necessary for the
2 safe and reliable operation of a carriage service, a
3 telecommunications network or a facility;
- 4 (h) the economically efficient operation of a carriage service, a
5 telecommunications network or a facility.
- 6 (2) If a carrier or carriage service provider who supplies, or is capable
7 of supplying, the specified wholesale IMR service supplies one or
8 more other eligible services, then, in making a price-control
9 determination that is applicable to the carrier or provider, as the
10 case may be, the Commission may take into account:
- 11 (a) the characteristics of those other eligible services; and
12 (b) the costs associated with those other eligible services; and
13 (c) the revenues associated with those other eligible services;
14 and
15 (d) the demand for those other eligible services.
- 16 (3) The Commission may take into account any other matters that it
17 thinks are relevant.
- 18 (4) This section does not apply to an interim price-control
19 determination.
- 20 (5) In this section:
- 21 *eligible service* has the same meaning as in section 152AL.

22 **151BTE Price-control determinations may be set out in the same** 23 **document**

24 Two or more price-control determinations may be set out in the
25 same document.

26 **151BTF Duration of price-control determination**

- 27 (1) A price-control determination:
- 28 (a) comes into force on the day specified in the determination as
29 the day on which the determination is to come into force; and
30 (b) unless sooner revoked, ceases to be in force on the expiry
31 date for the determination.

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1 *Day for replacement determination to come into force*

2 (2) If:

3 (a) a price-control determination is expressed to replace a
4 previous price-control determination for the same wholesale
5 IMR service; and

6 (b) the previous price-control determination is not an interim
7 price-control determination;

8 the specified day must be the first day after the expiry of the
9 previous price-control determination.

10 (3) The specified day for a final price-control determination that is
11 expressed to replace an interim price-control determination for the
12 same wholesale IMR service may be a day before the final
13 price-control determination is made but not before the interim
14 price-control determination came into force.

15 *Expiry date*

16 (4) A price-control determination must specify an expiry date for the
17 determination, which must not be more than 5 years after the
18 determination comes into force.

19 (5) If a price-control determination expires, this Division does not
20 prevent the Commission from making a fresh price-control
21 determination under section 151BTC in the same terms as the
22 expired price-control determination.

23 *Automatic revocation of interim price-control determination*

24 (6) If:

25 (a) an interim price-control determination for a wholesale IMR
26 service is in force; and

27 (b) a final price-control determination for the service comes into
28 force;

29 the interim price-control determination is taken to be revoked at the
30 time when the final price-control determination comes into force.

31 *Extension of price-control determination*

32 (7) If:

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Schedule 1 Amendments

Part 1 Competition and Consumer Act 2010

- 1 (a) a price-control determination (the *original price-control*
2 *determination*) for a wholesale IMR service is in force; and
3 (b) the Commission has commenced to hold a public inquiry
4 under Part 25 of the *Telecommunications Act 1997* about a
5 proposal to make another price-control determination for the
6 service; and
7 (c) the Commission considers that it will make the other
8 price-control determination, but will not be in a position to do
9 so before the expiry date for the original price-control
10 determination;
11 the Commission may, by writing, declare that the expiry date for
12 the original price-control determination is taken to be the day
13 immediately before the day on which the other price-control
14 determination comes into force.
- 15 (8) The Commission must publish a declaration under subsection (7)
16 on the Commission's website.
- 17 (9) The Commission is not required to observe any requirements of
18 procedural fairness in relation to a decision under subsection (7).
- 19 (10) A declaration under subsection (7) is not a legislative instrument.

20 **151BTG Interim price-control determinations**

- 21 (1) If the Commission:
22 (a) has held a service specification inquiry for a wholesale IMR
23 service with a positive result; and
24 (b) has prepared a report about the inquiry under section 505 of
25 the *Telecommunications Act 1997*; and
26 (c) has published the report of the inquiry; and
27 (d) has commenced to hold a price-control inquiry relating to the
28 service no later than 30 days after that publication; and
29 (e) considers that there is an urgent need to make a price-control
30 determination for the service before the completion of the
31 price-control inquiry;
32 the Commission may make an interim price-control determination
33 for the service.

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Amendments **Schedule 1**
Competition and Consumer Act 2010 **Part 1**

1 (2) The Commission is not required to observe any requirements of
2 procedural fairness in relation to the making of an interim
3 price-control determination.

4 (3) The Commission must not make an interim price-control
5 determination otherwise than in accordance with this section.

6 **151BTH Stay of price-control determinations**

7 (1) Paragraphs 15(1)(a) and (b) and 15A(1)(a) and (b) of the
8 *Administrative Decisions (Judicial Review) Act 1977* do not apply
9 to a decision of the Commission to make a price-control
10 determination.

11 (2) If a person applies to the Federal Court under subsection 39B(1) of
12 the *Judiciary Act 1903* for a writ or injunction in relation to a
13 decision of the Commission to make a price-control determination,
14 the Court must not make any orders staying or otherwise affecting
15 the operation or implementation of the decision pending the
16 finalisation of the application.

17 **Subdivision C—Public inquiries and other notice about** 18 **proposals to make price-control determinations**

19 **151BTI Simplified outline of this Subdivision**

20 *Inquiries and notice before making a price-control determination*

- 21 • The Commission needs to take 3 steps before it can make a
22 price-control determination for a wholesale IMR service.
- 23 • The first step is to inquire publicly whether the service should
24 be specified in a price-control determination and find that it
25 should.
- 26 • The second step is to inquire publicly what price-control
27 arrangements for the service should be made in a price-control
28 determination.
- 29 • The third step is to inform Ministers of the proposed
30 price-control determination.

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- The inquiries for the first 2 steps may be combined (so those steps may overlap, although both must be taken for the Commission to make a price-control determination).
- If the Commission finds in the first step that the service should be specified, it must commence an inquiry for the second step no later than 30 days after publishing the report of the inquiry for the first step.
- Generally the Commission must make a price-control determination for the service within a limited time after commencing the inquiry for the second step.

Inquiry before expiry of a price-control determination

- Before a price-control determination for a wholesale IMR service expires, the Commission must inquire publicly what should happen to the determination and whether the service should be specified in a future determination. This may be part of the first step for making the future determination.

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151BTJ Price-control determination to be made after service specification inquiry with positive result

- (1) The Commission must not make a price-control determination specifying a wholesale IMR service unless:
- (a) the Commission has:
 - (i) held a service specification inquiry for the service; and
 - (ii) prepared a report about the inquiry under section 505 of the *Telecommunications Act 1997*; and
 - (iii) published the report of the inquiry; and
 - (b) the inquiry had a positive result.

Note 1: It does not matter whether the service specification inquiry is held by itself or as part of a combined inquiry under section 151BTM or of an inquiry required by section 151BTP.

Note 2: Sections 151BTK and 151BTO set out other prerequisites to making a price-control determination.

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Amendments **Schedule 1**
Competition and Consumer Act 2010 **Part 1**

1 *Holding of service specification inquiry*

- 2 (2) The Commission may hold a service specification inquiry:
3 (a) on its own initiative; or
4 (b) if requested in writing to do so by a person.
- 5 (3) The Commission does not have a duty to consider whether to hold
6 a service specification inquiry if the Commission is requested to do
7 so by a person.

8 *Providing copies of report of service specification inquiry*

- 9 (4) The Commission must give the ACMA a copy of the report about a
10 service specification inquiry prepared under section 505 of the
11 *Telecommunications Act 1997*.
- 12 (5) If a service specification inquiry is held at the request of a person,
13 the Commission must give the person a copy of the report about
14 the inquiry prepared under section 505 of the *Telecommunications*
15 *Act 1997*.

16 **151BTK Price-control determination to be made after price-control**
17 **inquiry**

- 18 (1) The Commission must not make a price-control determination
19 unless:
20 (a) the Commission has held a price-control inquiry in
21 accordance with section 151BTL about the price-control
22 arrangements to be made by the determination; and
23 (b) the Commission has prepared a report about the inquiry
24 under section 505 of the *Telecommunications Act 1997*; and
25 (c) the report was published during the 180-day period ending
26 when the determination was made.
- 27 Note 1: A price-control inquiry may be held by itself or as part of a combined
28 inquiry: see section 151BTM.
- 29 Note 2: Sections 151BTJ and 151BTO set out other prerequisites to making a
30 price-control determination.
- 31 (2) Subsection (1) does not apply to an interim price-control
32 determination.

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Schedule 1 Amendments

Part 1 Competition and Consumer Act 2010

1 **151BTL When price-control inquiry must be held**

2 If the Commission holds a service specification inquiry for a
3 wholesale IMR service with a positive result, the Commission must
4 commence to hold a price-control inquiry relating to the service no
5 later than 30 days after the publication of the report of the service
6 specification inquiry under section 505 of the *Telecommunications*
7 *Act 1997*.

8 Note: This requirement will be met if the price-control inquiry commences
9 before the publication of the report (for example because the service
10 specification inquiry and the price-control inquiry are combined).

11 **151BTM Combined inquiries about proposals to make price-control**
12 **determinations**

13 (1) The Commission may decide to combine:

- 14 (a) 2 or more service specification inquiries (about different
15 wholesale IMR services); or
16 (b) one or more service specification inquiries and one or more
17 inquiries of either or both of the following kinds:
18 (i) a public inquiry under Part 25 of the
19 *Telecommunications Act 1997* about a proposal to make
20 a declaration under section 152AL of this Act of an
21 eligible service that is a wholesale IMR service;
22 (ii) a public inquiry under Part 25 of the
23 *Telecommunications Act 1997* about whether a
24 particular retail IMR service (as defined in the
25 *Telecommunications (Consumer Protection and Service*
26 *Standards) Act 1999*) should be specified in a
27 price-control determination made under Part 9AA of
28 that Act; or
29 (c) 2 or more price-control inquiries (relating to different
30 wholesale IMR services); or
31 (d) one or more service specification inquiries and one or more
32 price-control inquiries (whether the inquiries relate to the
33 same or different wholesale IMR services), but not any
34 inquiries described in subparagraph (b)(i) or (ii).

35 (2) If the Commission makes such a decision:

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- 1 (a) the Commission may publish a single notice relating to the
2 combined inquiry under section 498 of the
3 *Telecommunications Act 1997*; and
4 (b) the Commission may prepare a single discussion paper about
5 the combined inquiry under section 499 of that Act; and
6 (c) the Commission may hold hearings relating to the combined
7 inquiry under section 501 of that Act; and
8 (d) the Commission must ensure that each inquiry is covered by
9 a report under section 505 of that Act, whether the report
10 relates:
11 (i) to a single one of those inquiries; or
12 (ii) to any 2 or more of those inquiries.

13 **151BTN Time limit for making a price-control determination**

- 14 (1) This section applies if:
15 (a) the Commission holds a service specification inquiry for a
16 wholesale IMR service with a positive result; and
17 (b) the Commission commences to hold a price-control inquiry
18 relating to the service.

19 However, this section does not apply if the Commission is later
20 satisfied that making a final price-control determination does not
21 pass the reciprocity test.

- 22 (2) The Commission must make a final price-control determination for
23 the service within 6 months after:
24 (a) the commencement of the price-control inquiry; or
25 (b) the publication of the report of the service specification
26 inquiry, if the price-control inquiry commences before that
27 publication.

28 *Extension of decision-making period*

- 29 (3) The Commission may, by written notice published on its website,
30 extend or further extend the 6-month period referred to in
31 subsection (2), so long as:
32 (a) the extension or further extension is for a period of not more
33 than 6 months; and

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Schedule 1 Amendments

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- 1 (b) the notice includes a statement explaining why the
2 Commission has been unable to make a final price-control
3 determination within that 6-month period or that 6-month
4 period as previously extended, as the case may be.

5 **151BTO Price-control determination to be made after notice is given** 6 **to Ministers**

- 7 (1) The Commission must not make a price-control determination
8 unless the Commission has informed the Minister and the Trade
9 Minister of:
10 (a) the wholesale IMR service to be specified in the
11 determination; and
12 (b) the price-control arrangements to be made by the
13 determination.
- 14 (2) Failure to comply with subsection (1) does not affect the validity of
15 the price-control determination.

16 **151BTP Public inquiry to be held before expiry of price-control** 17 **determination**

- 18 If a price-control determination for a wholesale IMR service is in
19 force, the Commission must, during the period:
20 (a) beginning 18 months before the expiry date for the
21 price-control determination; and
22 (b) ending 6 months before the expiry date for the price-control
23 determination;
- 24 commence to hold a public inquiry under Part 25 of the
25 *Telecommunications Act 1997* about the following:
26 (c) whether the determination should be revoked;
27 (d) whether the determination should be allowed to expire
28 without a replacement price-control determination for the
29 service being made;
30 (e) whether the service should be specified in a replacement
31 price-control determination.
- 32 Note: The inquiry will be a service specification inquiry due to
33 paragraph (e). If the inquiry has a positive result (with a finding that
34 the service should be specified in the replacement determination),
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Amendments **Schedule 1**
Competition and Consumer Act 2010 **Part 1**

1 section 151BTL will require the holding of a price-control inquiry
2 about price-control arrangements to be made in that determination.

3 **Subdivision D—Variation or revocation of price-control**
4 **determinations for wholesale IMR services**

5 **151BTQ Variation or revocation of price-control determinations**

6 (1) Subsection 33(3) of the *Acts Interpretation Act 1901* applies to a
7 power conferred on the Commission by section 151BTC, but it
8 applies with the following changes.

9 *Variation*

10 (2) The Commission is not required to hold a public inquiry under
11 Part 25 the *Telecommunications Act 1997* about a proposal to vary
12 a price-control determination if:

13 (a) the variation is of a minor nature; or

14 (b) each:

15 (i) carrier or carriage service provider; and

16 (ii) person to whom the wholesale IMR service is or is to be
17 supplied;

18 whose interests are likely to be affected by the variation has
19 consented in writing to the variation.

20 (3) The Commission is not required to hold a service specification
21 inquiry about a proposal to vary only price-control arrangements
22 made by a price-control determination.

23 *Revocation*

24 (4) The Commission is not required to hold a service specification
25 inquiry before revoking a price-control determination if the
26 Commission is satisfied that each:

27 (a) carrier or carriage service provider; and

28 (b) person to whom the wholesale IMR service is or is to be
29 supplied;

30 whose interests are likely to be affected by the revocation has
31 consented in writing to the revocation.

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1 (5) The condition in paragraph 151BTJ(1)(b) (about a positive result
2 of a service specification inquiry) does not apply to revoking a
3 price-control determination.

4 (6) The Commission is not required to hold a price-control inquiry or
5 to inform the Minister or the Trade Minister before revoking a
6 price-control determination.

7 Note: This does not affect the requirement under section 151BTP to hold an
8 inquiry, because an inquiry under that section is not a price-control
9 inquiry.

10 *No duty to consider whether to revoke or vary*

11 (7) The Commission does not have a duty to consider whether to
12 exercise the power to vary or revoke a price-control determination,
13 whether the Commission is requested to do so by another person,
14 or in any other circumstances.

15 *Alteration of proposed variation*

16 (8) If the Commission has commenced to hold a public inquiry under
17 Part 25 of the *Telecommunications Act 1997* about a proposal to
18 vary a price-control determination, the Commission may alter the
19 proposed variation.

20 (9) Notice of the alteration is to be published in the same way in which
21 a notice relating to the public inquiry was published under
22 section 498 of the *Telecommunications Act 1997*.

23 (10) Subsection (9) does not apply in relation to an alteration if:

24 (a) the alteration is of a minor nature; or

25 (b) each:

26 (i) carrier or carriage service provider; and

27 (ii) person to whom the wholesale IMR service is or is to be
28 supplied;

29 whose interests are likely to be affected by the alteration has
30 consented in writing to the alteration.

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Amendments **Schedule 1**
Competition and Consumer Act 2010 **Part 1**

1 **Subdivision E—Compliance with price-control determinations**
2 **for wholesale IMR services**

3 **151BTR Carrier licence condition**

4 A carrier licence held by a carrier is subject to a condition that the
5 carrier must comply with any price-control determinations that are
6 applicable to the carrier.

7 **151BTS Service provider rule**

- 8 (1) In addition to the rules mentioned in section 98 of the
9 *Telecommunications Act 1997*, the rule set out in subsection (2) of
10 this section is a service provider rule for the purposes of that Act.
- 11 (2) A carriage service provider must comply with any price-control
12 determinations that are applicable to the provider.

13 **Subdivision F—Register of Wholesale IMR Service**
14 **Price-control Determinations**

15 **151BTT Register of Wholesale IMR Service Price-control**
16 **Determinations**

- 17 (1) The Commission is to maintain a register, to be known as the
18 Register of Wholesale IMR Service Price-control Determinations,
19 in which the Commission includes all price-control determinations
20 in force.
- 21 (2) The Register is to be maintained by electronic means.
- 22 (3) The Register is to be made available for inspection on the
23 Commission's website.
- 24 (4) The Register is not a legislative instrument.
- 25 (5) If the Commission is satisfied that:
26 (a) publication of a particular provision of a price-control
27 determination could reasonably be expected to prejudice
28 substantially the commercial interests of a person; and

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- 1 (b) the prejudice outweighs the public interest in the publication
2 of the provision;
3 the Commission may remove the provision from the version of the
4 price-control determination that is included in the Register.
- 5 (6) If the Commission does so, the Commission must include in the
6 Register an annotation to that effect.

7 **Subdivision G—Review of operation of this Division and other** 8 **provisions about wholesale IMR services**

9 **151BTU Review of operation of this Division and other provisions** 10 **about wholesale IMR services**

- 11 (1) The Minister must cause to be conducted, within the period starting
12 36 months after the commencement of this Division and ending on
13 31 December 2018, a review of the operation of the following:
14 (a) this Division;
15 (b) Divisions 6, 7 and 12 so far as they relate to this Division;
16 (c) Part XIC so far as it relates to wholesale IMR services;
17 (d) the *Telecommunications Act 1997* so far as it relates to this
18 Division.
- 19 (2) A review under subsection (1) must make provision for public
20 consultation.
- 21 (3) The Minister must cause to be prepared a report of a review under
22 subsection (1).
- 23 (4) The Minister must cause copies of the report to be tabled in each
24 House of the Parliament within 15 sitting days of that House after
25 the completion of the preparation of the report.

26 **6 Application**

27 Division 5A of Part XIB of the *Competition and Consumer Act 2010*
28 applies to wholesale IMR services that are, or are to be, supplied under
29 agreements entered into after the commencement of that Division.

30 **7 Division 7 of Part XIB (heading)**

31 Repeal the heading, substitute:

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Amendments **Schedule 1**
Competition and Consumer Act 2010 **Part 1**

1 **Division 7—Enforcement of the competition rule, tariff**
2 **filing directions, price controls, record-keeping**
3 **rules and disclosure directions**

4 **8 Section 151CA (heading)**

5 Repeal the heading, substitute:

6 **151CA Injunctions etc.**

7 **9 Before subsection 151CA(1)**

8 Insert:

9 *Injunctions for breach of competition rule, tariff filing direction,*
10 *record-keeping rule or disclosure direction*

11 **10 After subsection 151CA(1)**

12 Insert:

13 *Injunctions etc. for breach of price-control determination*

14 (1A) If the Federal Court is satisfied that a carrier or carriage service
15 provider has engaged, is engaging, or is proposing to engage in
16 conduct that contravenes a price-control determination, the Court
17 may make any or all of the following orders on the application of
18 the Commission or anyone whose interests are or would be
19 affected by the contravention:

- 20 (a) an order granting an injunction on such terms as the Court
21 determines to be appropriate:
- 22 (i) restraining the carrier or carriage service provider from
23 engaging in the conduct; or
- 24 (ii) if the conduct involves refusing or failing to do
25 something—requiring the carrier or carriage service
26 provider to do that thing;
- 27 (b) an order directing the carrier or carriage service provider to
28 compensate the applicant for loss or damage suffered as a
29 result of the contravention;
- 30 (c) any other order that the Court determines to be appropriate
31 against the carrier or carriage service provider;

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- 1 (d) any order (including an order granting an injunction) that the
2 Court determines to be appropriate against another person
3 who has:
4 (i) aided, abetted, counselled or procured the
5 contravention; or
6 (ii) induced the contravention, whether through threats or
7 promises or otherwise; or
8 (iii) been in any way (directly or indirectly) knowingly
9 concerned in or a party to the contravention; or
10 (iv) conspired with others to effect the contravention.

11 *Ancillary provisions about injunctions*

12 **11 Paragraph 151CA(2)(a)**

13 After “(1)”, insert “or (1A)”.

14 **12 At the end of subsections 151CA(2) and (3)**

15 Add “or (1A)”.

16 **13 Subsection 151CA(4)**

17 After “(1)”, insert “, (1A)”.

18 **Division 2—Amendments of telecommunications access** 19 **regime**

20 **14 At the end of subsection 152AB(2)**

21 Add:

22 Note: End-users of wholesale IMR services could be either foreigners or
23 Australians.

24 **15 After subsection 152AB(5)**

25 Insert:

26 *Promoting competition in markets for wholesale IMR services*

27 (5A) In determining the extent to which a particular thing relating to a
28 wholesale IMR service is likely to result in the achievement of the

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1 objective referred to in paragraph (2)(c), regard must be had to
2 markets outside Australia as well as markets in Australia.

3 **16 Section 152AC**

4 Insert:

5 ***connected with***: a wholesale IMR service is ***connected with*** a
6 particular designated country if the service is a wholesale IMR
7 service because the condition in subparagraph (d)(ii) of the
8 definition of ***wholesale IMR service*** is met in relation to that
9 country.

10 ***designated country*** means a foreign country that is declared by the
11 Minister under section 151AHA to be a designated country.

12 ***passes the reciprocity test*** has the meaning given by
13 section 152AIA.

14 ***Trade Minister*** means the Minister administering the *Australian*
15 *Trade Commission Act 1985*.

16 ***wholesale IMR service*** means a carriage service for which all the
17 following conditions are met:

- 18 (a) the service is supplied by a carrier, or a carriage service
19 provider, using a telecommunications network (as defined in
20 the *Telecommunications Act 1997*) that is in Australia (as
21 defined in that Act);
- 22 (b) the service is supplied to a person who carries on business in
23 a designated country;
- 24 (c) the service enables the person to supply a public mobile
25 telecommunications service (as defined in that Act) that is a
26 listed carriage service (as defined in that Act);
- 27 (d) the supply of the service is enabled by the use of credentials
28 that:
- 29 (i) are provided to the carrier or carriage service provider
30 by the end-user of the service or by that end-user's
31 customer equipment (as defined in that Act); and
- 32 (ii) are verified by an operator of a telecommunications
33 network (as defined in that Act) that is in the designated
34 country or by a person who supplies carriage services
35 using such a network.

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Schedule 1 Amendments

Part 1 Competition and Consumer Act 2010

1 Note: IMR is short for international mobile roaming.

2 **17 After section 152AI**

3 Insert:

4 **152AIA Passing the reciprocity test**

5 (1) Action relating to a wholesale IMR service connected with a
6 designated country *passes the reciprocity test* if taking the action
7 may help promote the equivalent availability of the service and one
8 or more services covered by subsection (2).

9 Note: The availability of those services may be equivalent even though the
10 terms and conditions for their supply are not identical.

11 (2) This subsection covers a carriage service for which all the
12 following conditions are met:

13 (a) the service is supplied by:

14 (i) the operator of a telecommunications network (as
15 defined in the *Telecommunications Act 1997*) that is in
16 the designated country; or

17 (ii) a person who supplies carriage services using such a
18 network;

19 (b) the service is supplied to a carrier or a carriage service
20 provider;

21 (c) the service enables the carrier or carriage service provider to
22 supply a public mobile telecommunications service (as
23 defined in that Act) that is a carriage service:

24 (i) between a point in the designated country and one or
25 more other points in the country; or

26 (ii) between a point in the designated country and one or
27 more other points, at least one of which is outside the
28 country; or

29 (iii) between a point outside the designated country and one
30 or more other points, at least one of which is in the
31 country;

32 (d) the supply of the service is enabled by the use of credentials
33 that:

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- 1 (i) are provided to the supplier of the service by the
2 end-user of the service or that end-user's customer
3 equipment (as defined in that Act); and
4 (ii) are verified by a carrier or carriage service provider.
- 5 (3) In determining whether action relating to a wholesale IMR service
6 passes the reciprocity test, the Commission:
7 (a) must take account of the terms and conditions of supply of
8 the services mentioned in subsection (1); and
9 (b) may take account of any other matters the Commission
10 considers relevant.

11 *Locations of points*

- 12 (4) For the purposes of this section, a *point* includes a mobile or
13 potentially mobile point, whether on land, underground, in the
14 atmosphere, in outer space, underwater, at sea or anywhere else.
- 15 (5) For the purposes of this section, a point that is:
16 (a) in the atmosphere; and
17 (b) in or below the stratosphere; and
18 (c) above a foreign country;
19 is taken to be a point in the foreign country.
- 20 (6) For the purposes of this section, a point that is:
21 (a) on a satellite; and
22 (b) above the stratosphere;
23 is taken to be a point outside a foreign country.

24 **18 Paragraph 152AL(3)(d)**

25 Repeal the paragraph, substitute:

- 26 (d) the Commission is satisfied that the making of the
27 declaration:
28 (i) will promote the long-term interests of end-users of
29 carriage services or of services provided by means of
30 carriage services; and
31 (ii) if the eligible service is a wholesale IMR service—
32 passes the reciprocity test.

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Schedule 1 Amendments

Part 1 Competition and Consumer Act 2010

1 **19 After subsection 152AL(3)**

2 Insert:

3 (3AA) A declaration of an eligible service that is a wholesale IMR service
4 connected with a particular designated country must specify the
5 country.

6 Note: For *connected with*, see section 152AC.

7 **20 After subsection 152AL(3B)**

8 Insert:

9 (3BA) Before the Commission declares that a specified wholesale IMR
10 service connected with a particular designated country is a declared
11 service, the Commission must inform the Minister and the Trade
12 Minister that the Commission proposes to declare the service.

13 (3BB) Failure to comply with subsection (3BA) does not affect the
14 validity of the declaration.

15 **21 After subsection 152AO(3)**

16 Insert:

17 (3A) The Commission is not required to inform the Minister or the
18 Trade Minister before revoking a declaration under section 152AL
19 of a wholesale IMR service connected with a particular designated
20 country.

21 **22 After subsection 152BCA(1)**

22 Insert:

23 (1A) In making an access determination relating to a wholesale IMR
24 service the Commission must also take into account whether
25 making the determination passes the reciprocity test.

26 **23 Subdivision B of Division 4 of Part XIC (heading)**

27 Repeal the heading, substitute:

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Amendments **Schedule 1**
Competition and Consumer Act 2010 **Part 1**

1 **Subdivision B—Public inquiries and other notice about**
2 **proposals to make access determinations**

3 **24 At the end of subsection 152BCK(1)**

4 Add “However, this section does not apply if the service is a wholesale
5 IMR service and the Commission is later satisfied that making a final
6 access determination does not pass the reciprocity test.”.

7 **25 At the end of Subdivision B of Division 4 of Part XIC**

8 Add:

9 **152BCL Access determination relating to wholesale IMR service to**
10 **be made after notice is given to Ministers**

11 (1) The Commission must not make an access determination relating
12 to a declared service that is a wholesale IMR service unless the
13 Commission has informed the Minister and the Trade Minister that
14 the Commission proposes to make the determination.

15 (2) Failure to comply with subsection (1) does not affect the validity of
16 the access determination.

17 **26 After subsection 152BCN(3)**

18 Insert:

19 (3A) The Commission is not required to inform the Minister or the
20 Trade Minister before revoking an access determination relating to
21 a declared service that is a wholesale IMR service.

22 **27 After subsection 152BDAA(1)**

23 Insert:

24 (1A) In making binding rules of conduct relating to a declared service
25 that is a wholesale IMR service the Commission must also take
26 into account whether making the rules passes the reciprocity test.

27 **28 At the end of Subdivision A of Division 4A of Part XIC**

28 Add:

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Schedule 1 Amendments

Part 1 Competition and Consumer Act 2010

1 **152BDEB Binding rules of conduct relating to wholesale IMR**
2 **service to be made after notice is given to Ministers**

3 (1) The Commission must not make binding rules of conduct relating
4 to a declared service that is a wholesale IMR service unless the
5 Commission has informed the Minister and the Trade Minister that
6 the Commission proposes to make the rules.

7 (2) Failure to comply with subsection (1) does not affect the validity of
8 the rules.

9 **Division 3—Amendments of provisions about**
10 **information, records and reports**

11 **29 Section 151AB**

12 Insert:

13 *retail IMR service* has the same meaning as in the
14 *Telecommunications Act 1997*.

15 **30 At the end of subsection 151BU(4)**

16 Add:

17 ; or (g) the operation of Part 9AA of the *Telecommunications*
18 *(Consumer Protection and Service Standards) Act 1999*
19 (which deals with controls on prices of retail IMR services).

20 **31 At the end of paragraphs 151BUA(2)(b), 151BUB(2)(b) and**
21 **151BUC(2)(b)**

22 Add:

23 or (v) Part 9AA of the *Telecommunications (Consumer*
24 *Protection and Service Standards) Act 1999* (which
25 deals with controls on prices of retail IMR services);

26 **32 Subparagraph 151CM(1)(a)(iii)**

27 Omit “and”.

28 **33 At the end of paragraph 151CM(1)(a)**

29 Add:

30 (iv) retail IMR services; and

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Amendments **Schedule 1**
Competition and Consumer Act 2010 **Part 1**

1 **34 After paragraph 151CM(1)(a)**

2 Insert:

3 (aa) the differences between:

- 4 (i) charges paid by consumers for retail IMR services; and
5 (ii) the costs to carriage service providers of supplying
6 those services to consumers; and

7 **35 At the end of subsection 151CM(1)**

8 Add:

9 ; and (d) the adequacy of compliance:

- 10 (i) by carriers and carriage service providers with
11 price-control determinations for wholesale IMR
12 services; and
13 (ii) by carriage service providers with price-control
14 determinations made under Part 9AA of the
15 *Telecommunications (Consumer Protection and Service*
16 *Standards) Act 1999* for retail IMR services.

17 **36 After subsection 151CM(1)**

18 Insert:

- 19 (1A) The Minister may by legislative instrument specify requirements
20 for the protection of confidential information that reports under
21 subsection (1) on the matter described in paragraph (1)(aa) must
22 comply with. For this purpose, information is ***confidential***
23 ***information*** if, and only if, the publication of the information
24 could reasonably be expected to prejudice substantially a person's
25 commercial interests.

26 **37 Section 154**

27 After "Part 9", insert "or 9AA".

28 **38 Section 154A (paragraph (c) of the definition of *evidential***
29 ***material*)**

30 After "Part 9", insert "or 9AA".

31 **39 Paragraph 154V(2)(c)**

32 After "Part 9", insert "or 9AA".

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Schedule 1 Amendments

Part 1 Competition and Consumer Act 2010

1 **40 Subsection 155AAA(21) (at the end of the definition of**
2 **core statutory provision)**

3 Add:

4 ; or (f) a provision of Part 9AA of the *Telecommunications*
5 *(Consumer Protection and Service Standards) Act 1999.*

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1 **Part 2—Telecommunications (Consumer Protection**
2 **and Service Standards) Act 1999**

3 **41 Section 4**

4 After:

- 5
 - Telstra is subject to price control arrangements.

6 insert:

- 7
 - Charges by carriage service providers for international mobile

8 roaming services may be controlled.

9 **42 Subsection 5(2)**

10 Insert:

11 *commences*, in relation to a public inquiry by the ACCC under
12 Part 25 of the *Telecommunications Act 1997*, has the meaning
13 given by section 158AB.

14 *final price-control determination* means a price-control
15 determination other than an interim price-control determination.

16 *interim price-control determination* means a price-control
17 determination that is expressed to be an interim price-control
18 determination.

19 *positive result*: a service specification inquiry for a retail IMR
20 service has a *positive result* if the inquiry results in the ACCC
21 finding that the service should be specified in a price-control
22 determination if appropriate price-control arrangements for the
23 service can be made in the determination.

24 *price-control arrangements* includes:

- 25 (a) price-capping arrangements; and
26 (b) principles in accordance with which alterations to price are to
27 be made.

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Schedule 1 Amendments

Part 2 Telecommunications (Consumer Protection and Service Standards) Act 1999

1 *price-control determination* means a determination under
2 section 158AC.

3 *price-control inquiry* means a public inquiry by the ACCC under
4 Part 25 of the *Telecommunications Act 1997* about what
5 price-control arrangements should be specified in a price-control
6 determination for a retail IMR service.

7 *service specification inquiry* means a public inquiry by the ACCC
8 under Part 25 of the *Telecommunications Act 1997* about whether a
9 particular retail IMR service should be specified in a price-control
10 determination.

11 **43 After Part 9**

12 Insert:

13 **Part 9AA—Price controls on certain retail IMR** 14 **services**

15 **Division 1—Introduction**

16 **158AA Simplified outline of this Part**

- 17 • The ACCC may determine price-control arrangements for
18 roaming services that allow Australian customers to use their
19 mobile telecommunications devices in foreign countries.
- 20 • Before the ACCC can make such a determination it must:
21 (a) publicly inquire into the service to which price-control
22 arrangements are to apply and what the arrangements
23 should be; and
24 (b) get the Minister’s agreement to the proposed
25 determination.
- 26 • There are timing requirements for inquiries. The ACCC can
27 set interim price-control arrangements for a service while an
28 inquiry into price-control arrangements for the service is
29 occurring.

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- There are special rules for the variation, revocation, expiry and replacement of determinations of price-control arrangements.
 - Carriage service providers must comply with determinations. Compliance is a service provider rule under the *Telecommunications Act 1997* (and so can be enforced under that Act).

8 **158AB When public inquiry commences**

9 A public inquiry held by the ACCC under Part 25 of the
10 *Telecommunications Act 1997* **commences** when the ACCC
11 publishes the notice under section 498 of that Act about the
12 inquiry.

13 **Division 2—ACCC may make price-control determinations**
14 **for retail IMR services**

15 **158AC Price-control determinations**

- 16 (1) The ACCC may make a written determination of price-control
17 arrangements for a specified retail IMR service.

18 Note 1: Division 3 prohibits the ACCC from making a price-control
19 determination for a retail IMR service unless the ACCC has:
20 (a) held a service specification inquiry for the service and as a result
21 found that the service should be specified in a price-control
22 determination; and
23 (b) held a price-control inquiry for the service; and
24 (c) got the Minister's agreement to the proposed determination.

25 Note 2: Division 3 requires the ACCC:
26 (a) to commence holding a price-control inquiry for a retail IMR
27 service no later than 30 days after publishing the report of a
28 service specification inquiry that resulted in the ACCC finding
29 the service should be specified in a price-control determination;
30 and
31 (b) to make the price-control determination within a limited time
32 after commencing the price-control inquiry.

- 33 (2) A determination under subsection (1) is to be known as a
34 ***price-control determination***.

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Schedule 1 Amendments

Part 2 Telecommunications (Consumer Protection and Service Standards) Act 1999

- 1 (3) A price-control determination for a retail IMR service may make
2 different provision for price-control arrangements with respect to:
3 (a) different carriage service providers who supply or arrange the
4 supply of the service or are to do so; or
5 (b) different classes of carriage service providers who supply or
6 arrange the supply of the service or are to do so; or
7 (c) different persons to whom the service is supplied or is to be
8 supplied; or
9 (d) different classes of persons to whom the service is supplied
10 or is to be supplied.
- 11 (4) Subsection (3) does not, by implication, limit subsection 33(3A) of
12 the *Acts Interpretation Act 1901*.
- 13 (5) A price-control determination may provide for the ACCC to
14 perform functions, and exercise powers, under the determination.
- 15 (6) A price-control determination is not a legislative instrument.

16 **158AD Matters that the ACCC must take into account**

- 17 (1) The ACCC must take the following matters into account in making
18 price-control arrangements in a price-control determination:
19 (a) the state of competition in any relevant markets for retail
20 IMR services;
21 (b) the following effects of the determination:
22 (i) the effect on competition;
23 (ii) the effect on consumers, including the effect on the
24 availability, choice, quality and prices of retail IMR
25 services to consumers;
26 (iii) the effect on the telecommunications industry, including
27 the effect on economically efficient investment by the
28 industry;
29 (iv) the effect on any other matter the ACCC considers
30 relevant.
- 31 (2) The ACCC may take into account any other matters that it thinks
32 are relevant.

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- 1 (3) This section does not apply to an interim price-control
2 determination.

3 **158AE Price-control determinations may be set out in the same**
4 **document**

- 5 Two or more price-control determinations may be set out in the
6 same document.

7 **158AF Duration of price-control determination**

- 8 (1) A price-control determination:
9 (a) comes into force on the day specified in the determination as
10 the day on which the determination is to come into force; and
11 (b) unless sooner revoked, ceases to be in force on the expiry
12 date for the determination.

13 *Day for replacement determination to come into force*

- 14 (2) If:
15 (a) a price-control determination is expressed to replace a
16 previous price-control determination for the same retail IMR
17 service; and
18 (b) the previous price-control determination is not an interim
19 price-control determination;
20 the specified day must be the first day after the expiry of the
21 previous price-control determination.

22 *Expiry date*

- 23 (3) A price-control determination must specify an expiry date for the
24 determination, which must not be more than 5 years after the
25 determination comes into force.
26 (4) If a price-control determination expires, this Part does not prevent
27 the ACCC from making a fresh price-control determination under
28 section 158AC in the same terms as the expired price-control
29 determination.

EXPOSURE DRAFT

Schedule 1 Amendments

Part 2 Telecommunications (Consumer Protection and Service Standards) Act 1999

1

Automatic revocation of interim price-control determination

2

(5) If:

3

(a) an interim price-control determination for a retail IMR service is in force; and

4

5

(b) a final price-control determination for the service comes into force;

6

7

the interim price-control determination is taken to be revoked at the time when the final price-control determination comes into force.

8

9

Extension of price-control determination

10

(6) If:

11

(a) a price-control determination (the *original price-control determination*) for a retail IMR service is in force; and

12

13

(b) the ACCC has commenced to hold a public inquiry under Part 25 of the *Telecommunications Act 1997* about a proposal to make another price-control determination for the service; and

14

15

16

17

(c) the ACCC considers that it will make the other price-control determination, but will not be in a position to do so before the expiry date for the original price-control determination;

18

19

the ACCC may, by writing, declare that the expiry date for the original price-control determination is taken to be the day immediately before the day on which the other price-control determination comes into force.

20

21

22

23

24

(7) The ACCC must publish a declaration under subsection (6) on the ACCC's website.

25

26

(8) The ACCC is not required to observe any requirements of procedural fairness in relation to a decision under subsection (6).

27

28

(9) A declaration under subsection (6) is not a legislative instrument.

29

158AG Interim price-control determinations

30

(1) If the ACCC:

31

(a) has held a service specification inquiry for a retail IMR service with a positive result; and

32

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- 1 (b) has prepared a report about the inquiry under section 505 of
2 the *Telecommunications Act 1997*; and
3 (c) has published the report of the inquiry; and
4 (d) has commenced to hold a price-control inquiry relating to the
5 service no later than 30 days after that publication; and
6 (e) considers that there is an urgent need to make a price-control
7 determination for the service before the completion of the
8 price-control inquiry;
9 the ACCC may make an interim price-control determination for the
10 service.
- 11 (2) The ACCC is not required to observe any requirements of
12 procedural fairness in relation to the making of an interim
13 price-control determination.
- 14 (3) The ACCC must not make an interim price-control determination
15 otherwise than in accordance with this section.

16 **158AH Stay of price-control determinations**

- 17 (1) Paragraphs 15(1)(a) and (b) and 15A(1)(a) and (b) of the
18 *Administrative Decisions (Judicial Review) Act 1977* do not apply
19 to a decision of the ACCC to make a price-control determination.
- 20 (2) If a person applies to the Federal Court under subsection 39B(1) of
21 the *Judiciary Act 1903* for a writ or injunction in relation to a
22 decision of the ACCC to make a price-control determination, the
23 Court must not make any orders staying or otherwise affecting the
24 operation or implementation of the decision pending the
25 finalisation of the application.

26 **Division 3—Public inquiries and Ministerial agreement** 27 **about proposals to make price-control** 28 **determinations**

29 **158AI Simplified outline of this Division**

30

<i>Inquiries and notice before making a price-control determination</i>

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Schedule 1 Amendments

Part 2 Telecommunications (Consumer Protection and Service Standards) Act 1999

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- The ACCC needs to take 3 steps before it can make a price-control determination for a retail IMR service.
- The first step is to inquire publicly whether the service should be specified in a price-control determination and find that it should.
- The second step is to inquire publicly what price-control arrangements for the service should be made in a price-control determination.
- The third step is to get the Minister's agreement to the proposed price-control determination.
- The inquiries for the first 2 steps may be combined (so those steps may overlap, although both must be taken for the ACCC to make a price-control determination).
- If the ACCC finds in the first step that the service should be specified, it must commence an inquiry for the second step no later than 30 days after publishing the report of the inquiry for the first step.
- The ACCC must make a price-control determination for the service within a limited time after commencing the inquiry for the second step.

Inquiry before expiry of a price-control determination

- Before a price-control determination for a retail IMR service expires, the ACCC must inquire publicly what should happen to the determination and whether the service should be specified in a future determination. This may be part of the first step for making the future determination.

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158AJ Price-control determination to be made after service specification inquiry with positive result

- (1) The ACCC must not make a price-control determination specifying a retail IMR service unless:

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- 1 (a) the ACCC has:
2 (i) held a service specification inquiry for the service; and
3 (ii) prepared a report about the inquiry under section 505 of
4 the *Telecommunications Act 1997*; and
5 (iii) published the report of the inquiry; and
6 (b) the inquiry had a positive result.

7 Note 1: It does not matter whether the service specification inquiry is held by
8 itself or as part of a combined inquiry under section 158AM or of an
9 inquiry required by section 158AP.

10 Note 2: Sections 158AK and 158AO set out other prerequisites to making a
11 price-control determination.

12 *Holding of service specification inquiry*

- 13 (2) The ACCC may hold a service specification inquiry:
14 (a) on its own initiative; or
15 (b) if requested in writing to do so by a person.
16 (3) The ACCC does not have a duty to consider whether to hold a
17 service specification inquiry if the ACCC is requested to do so by a
18 person.

19 *Matters to be considered in service specification inquiry*

- 20 (4) In holding a service specification inquiry for a retail IMR service,
21 the ACCC must consider:
22 (a) the state of competition in any relevant markets for retail
23 IMR services; and
24 (b) the following effects of specifying the service in a
25 price-control determination with appropriate price-control
26 arrangements:
27 (i) the effect on competition;
28 (ii) the effect on consumers, including the effect on the
29 availability, choice, quality and prices of retail IMR
30 services to consumers;
31 (iii) the effect on the telecommunications industry, including
32 the effect on economically efficient investment by the
33 industry;
34 (iv) the effect on any other matter the ACCC thinks
35 relevant; and
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Schedule 1 Amendments

Part 2 Telecommunications (Consumer Protection and Service Standards) Act 1999

1 (c) any other matters the ACCC thinks relevant.

2 *Providing copies of report of service specification inquiry*

3 (5) The ACCC must give the ACMA a copy of the report about a
4 service specification inquiry prepared under section 505 of the
5 *Telecommunications Act 1997*.

6 (6) If a service specification inquiry is held at the request of a person,
7 the ACCC must give the person a copy of the report about the
8 inquiry prepared under section 505 of the *Telecommunications Act*
9 *1997*.

10 **158AK Price-control determination to be made after price-control** 11 **inquiry**

- 12 (1) The ACCC must not make a price-control determination unless:
- 13 (a) the ACCC has held a price-control inquiry in accordance
14 with section 158AL about the price-control arrangements to
15 be made by the determination; and
- 16 (b) the ACCC has prepared a report about the inquiry under
17 section 505 of the *Telecommunications Act 1997*; and
- 18 (c) the report was published during the 180-day period ending
19 when the determination was made.

20 Note 1: A price-control inquiry may be held by itself or as part of a combined
21 inquiry: see section 158AM.

22 Note 2: Sections 158AJ and 158AO set out other prerequisites to making a
23 price-control determination.

- 24 (2) Subsection (1) does not apply to an interim price-control
25 determination.

26 **158AL When price-control inquiry must be held**

27 If the ACCC holds a service specification inquiry for a retail IMR
28 service with a positive result, the ACCC must commence to hold a
29 price-control inquiry relating to the service no later than 30 days
30 after the publication of the report of the service specification
31 inquiry under section 505 of the *Telecommunications Act 1997*.

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Amendments **Schedule 1**

Telecommunications (Consumer Protection and Service Standards) Act 1999 **Part 2**

1 Note: This requirement will be met if the price-control inquiry commences
2 before the publication of the report (for example because the service
3 specification inquiry and the price-control inquiry are combined).

4 **158AM Combined inquiries about proposals to make price-control** 5 **determinations**

- 6 (1) The ACCC may decide to combine:
- 7 (a) 2 or more service specification inquiries (about different
8 retail IMR services); or
 - 9 (b) one or more service specification inquiries and one or more
10 inquiries of either or both of the following kinds:
 - 11 (i) a public inquiry under Part 25 of the
12 *Telecommunications Act 1997* about a proposal to make
13 a declaration under section 152AL of the *Competition*
14 *and Consumer Act 2010* of an eligible service that is a
15 wholesale IMR service (as defined in Part XIC of that
16 Act);
 - 17 (ii) a public inquiry under Part 25 of the
18 *Telecommunications Act 1997* about whether a
19 particular wholesale IMR service (as defined in
20 Part XIB of the *Competition and Consumer Act 2010*)
21 should be specified in a price-control determination
22 made under Division 5A of that Part; or
 - 23 (c) 2 or more price-control inquiries (relating to different retail
24 IMR services); or
 - 25 (d) one or more service specification inquiries and one or more
26 price-control inquiries (whether the inquiries relate to the
27 same or different retail IMR services), but not any inquiries
28 described in subparagraph (b)(i) or (ii).
- 29 (2) If the ACCC makes such a decision:
- 30 (a) the ACCC may publish a single notice relating to the
31 combined inquiry under section 498 of the
32 *Telecommunications Act 1997*; and
 - 33 (b) the ACCC may prepare a single discussion paper about the
34 combined inquiry under section 499 of that Act; and
 - 35 (c) the ACCC may hold hearings relating to the combined
36 inquiry under section 501 of that Act; and

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Part 2 Telecommunications (Consumer Protection and Service Standards) Act 1999

- 1 (d) the ACCC must ensure that each inquiry is covered by a
2 report under section 505 of that Act, whether the report
3 relates:
4 (i) to a single one of those inquiries; or
5 (ii) to any 2 or more of those inquiries.

6 **158AN Time limit for making a price-control determination**

7 (1) This section applies if the ACCC holds a service specification
8 inquiry for a retail IMR service with a positive result and the
9 ACCC commences to hold a price-control inquiry relating to the
10 service.

11 (2) The ACCC must make a final price-control determination for the
12 service within 6 months after:

- 13 (a) that commencement; or
14 (b) the publication of the report of the service specification
15 inquiry, if the price-control inquiry commences before that
16 publication.

17 *Extension of decision-making period*

18 (3) The ACCC may, by written notice published on its website, extend
19 or further extend the 6-month period referred to in subsection (2),
20 so long as:

- 21 (a) the extension or further extension is for a period of not more
22 than 6 months; and
23 (b) the notice includes a statement explaining why the ACCC has
24 been unable to make a final price-control determination
25 within that 6-month period or that 6-month period as
26 previously extended, as the case may be.

27 *Requirement subject to Minister's agreement*

28 (4) The requirement in subsection (2) (as affected by subsection (3), if
29 relevant) to make a final price-control determination is subject to
30 section 158AO.

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1 **158AO Price-control determination to be made after Minister has**
2 **agreed**

3 The ACCC must not make a price-control determination unless the
4 ACCC has sought the Minister's agreement to the making of the
5 price-control determination and the Minister has agreed to it.

6 **158AP Public inquiry to be held before expiry of price-control**
7 **determination**

8 If a price-control determination for a retail IMR service is in force,
9 the ACCC must, during the period:

- 10 (a) beginning 18 months before the expiry date for the
11 price-control determination; and
12 (b) ending 6 months before the expiry date for the price-control
13 determination;

14 commence to hold a public inquiry under Part 25 of the
15 *Telecommunications Act 1997* about the following:

- 16 (c) whether the determination should be revoked;
17 (d) whether the determination should be allowed to expire
18 without a replacement price-control determination for the
19 service being made;
20 (e) whether the service should be specified in a replacement
21 price-control determination.

22 Note: The inquiry will be a service specification inquiry due to
23 paragraph (e). If the inquiry has a positive result (with a finding that
24 the service should be specified in the replacement determination),
25 section 158AL will require the holding of a price-control inquiry
26 about price-control arrangements to be made in that determination.

27 **Division 4—Variation or revocation of price-control**
28 **determinations for retail IMR services**

29 **158AQ Variation or revocation of price-control determinations**

- 30 (1) Subsection 33(3) of the *Acts Interpretation Act 1901* applies to a
31 power conferred on the ACCC by section 158AC, but it applies
32 with the following changes.

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Schedule 1 Amendments

Part 2 Telecommunications (Consumer Protection and Service Standards) Act 1999

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Variation

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- (2) The ACCC is not required to hold a public inquiry under Part 25 of the *Telecommunications Act 1997* about a proposal to vary a price-control determination if:

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(a) the variation is of a minor nature; or

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(b) each carriage service provider whose interests, as a person who supplies or arranges for the supply of retail IMR services, are likely to be affected by the variation has consented in writing to the variation.

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- (3) The ACCC is not required to hold a service specification inquiry about a proposal to vary only price-control arrangements made by a price-control determination.

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Revocation

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- (4) The ACCC is not required to hold a service specification inquiry before revoking a price-control determination if the ACCC is satisfied that each carriage service provider whose interests, as a person who supplies or arranges for the supply of retail IMR services, are likely to be affected by the revocation has consented in writing to the revocation.

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- (5) The condition in paragraph 158AJ(1)(b) (about a positive result of a service specification inquiry) does not apply to revoking a price-control determination.

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Note: This does not affect the requirement under section 158AP to hold an inquiry, because an inquiry under that section is not a price-control inquiry.

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- (6) The ACCC is not required to hold a price-control inquiry or to seek or obtain the Minister's agreement before revoking a price-control determination.

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No duty to consider whether to revoke or vary

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- (7) The ACCC does not have a duty to consider whether to exercise the power to vary or revoke a price-control determination, whether the ACCC is requested to do so by another person, or in any other circumstances.
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1 *Alteration of proposed variation*

- 2 (8) If the ACCC has commenced to hold a public inquiry under Part 25
3 of the *Telecommunications Act 1997* about a proposal to vary a
4 price-control determination, the ACCC may alter the proposed
5 variation.
- 6 (9) Notice of the alteration is to be published in the same way in which
7 a notice relating to the public inquiry was published under
8 section 498 of the *Telecommunications Act 1997*.
- 9 (10) Subsection (9) does not apply in relation to an alteration if:
10 (a) the alteration is of a minor nature; or
11 (b) each carriage service provider whose interests, as a person
12 who supplies or arranges for the supply of retail IMR
13 services, are likely to be affected by the variation has
14 consented in writing to the alteration.

15 **Division 5—Compliance with price-control determinations**
16 **for retail IMR services**

17 **158AR Carriage service providers must comply with price-control**
18 **determinations**

19 A carriage service provider must comply with any price-control
20 determinations that are applicable to the provider.

21 **Division 6—Register of Retail IMR Service Price-control**
22 **Determinations**

23 **158AS Register of Retail IMR Service Price-control Determinations**

- 24 (1) The ACCC is to maintain a register, to be known as the Register of
25 Retail IMR Service Price-control Determinations, in which the
26 ACCC includes all price-control determinations in force.
- 27 (2) The Register is to be maintained by electronic means.
- 28 (3) The Register is to be made available for inspection on the ACCC's
29 website.

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Schedule 1 Amendments

Part 2 Telecommunications (Consumer Protection and Service Standards) Act 1999

- 1 (4) The Register is not a legislative instrument.
- 2 (5) If the ACCC is satisfied that:
- 3 (a) publication of a particular provision of a price-control
- 4 determination could reasonably be expected to prejudice
- 5 substantially the commercial interests of a person; and
- 6 (b) the prejudice outweighs the public interest in the publication
- 7 of the provision;
- 8 the ACCC may remove the provision from the version of the
- 9 price-control determination that is included in the Register.
- 10 (6) If the ACCC does so, the ACCC must include in the Register an
- 11 annotation to that effect.

12 **Division 7—Review of operation of this Part and other**

13 **provisions about retail IMR services**

14 **158AT Review of operation of this Part and other provisions about**

15 **retail IMR services**

- 16 (1) The Minister must cause to be conducted, within the period starting
- 17 36 months after the commencement of this Part and ending on
- 18 31 December 2018, a review of the operation of the following:
- 19 (a) this Part;
- 20 (b) Divisions 6 and 12 of Part XIB of the *Competition and*
- 21 *Consumer Act 2010* so far as they relate to this Part or retail
- 22 IMR services;
- 23 (c) the *Telecommunications Act 1997* so far as it relates to this
- 24 Part or retail IMR services.
- 25 (2) A review under subsection (1) must make provision for public
- 26 consultation.
- 27 (3) The Minister must cause to be prepared a report of a review under
- 28 subsection (1).
- 29 (4) The Minister must cause copies of the report to be tabled in each
- 30 House of the Parliament within 15 sitting days of that House after
- 31 the completion of the preparation of the report.

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Amendments **Schedule 1**

Telecommunications (Consumer Protection and Service Standards) Act 1999 **Part 2**

1 **44 Application**

2 Part 9AA of the *Telecommunications (Consumer Protection and Service*
3 *Standards) Act 1999* applies to retail IMR services that are, or are to be,
4 supplied under agreements entered into after the commencement of that
5 Part.

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Schedule 1 Amendments

Part 3 Telecommunications Act 1997

1 **Part 3—Telecommunications Act 1997**

2 **45 Section 7**

3 Insert:

4 *retail IMR service* has the meaning given by section 88A.

5 Note: IMR is short for international mobile roaming.

6 **46 After section 61**

7 Insert:

8 **61A Condition of carrier licence set out in section 151BTR of the**
9 ***Competition and Consumer Act 2010***

10 A carrier licence is subject to the condition set out in
11 section 151BTR of the *Competition and Consumer Act 2010*.

12 Note: Section 151BTR of the *Competition and Consumer Act 2010* deals
13 with determinations by the ACCC of price-control arrangements for
14 certain wholesale services relevant to international mobile roaming.

15 **47 After subsection 69(6B)**

16 Insert:

17 (6C) Subsection (1) does not apply to the condition set out in
18 section 151BTR of the *Competition and Consumer Act 2010*.

19 Note: Section 151BTR of the *Competition and Consumer Act 2010* deals
20 with determinations by the ACCC of price-control arrangements for
21 certain wholesale services relevant to international mobile roaming.

22 **48 After subsection 70(3B)**

23 Insert:

24 (3C) Subsection (1) does not apply to the condition set out in
25 section 151BTR of the *Competition and Consumer Act 2010*.

26 Note: Section 151BTR of the *Competition and Consumer Act 2010* deals
27 with determinations by the ACCC of price-control arrangements for
28 certain wholesale services relevant to international mobile roaming.

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Amendments **Schedule 1**
Telecommunications Act 1997 **Part 3**

1 **49 After paragraph 70(5)(b)**

2 Insert:

3 (ba) the condition set out in section 151BTR of the *Competition*
4 *and Consumer Act 2010*;

5 **50 After subsection 87(3)**

6 Insert:

7 *Suppliers of retail IMR services*

8 (3A) For the purposes of this Act, if a person supplies, or proposes to
9 supply, a carriage service that is a retail IMR service to the public,
10 the person is a *carriage service provider*.

11 **51 Paragraph 87(5)(a)**

12 After “listed carriage service”, insert “or retail IMR service”.

13 **52 Paragraph 87(5)(b)**

14 Omit “or (2)”, substitute “, (2) or (3A)”.

15 **53 Subsection 88(1)**

16 Omit “and (3)”, substitute “, (3) and (3A)”.

17 **54 After section 88**

18 Insert:

19 **88A Retail IMR service**

20 (1) A *retail IMR service* is a public mobile telecommunications
21 service for which all the following conditions are met:

22 (a) the service is supplied to a retail customer of the person who
23 supplies, or arranges the supply of, the service;

24 (b) the end-user of the service is in a foreign country;

25 (c) the service is supplied using a telecommunications network
26 in the foreign country;

27 (d) the service is a carriage service:

28 (i) between a point in the foreign country and one or more
29 other points in the foreign country; or

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Schedule 1 Amendments

Part 3 Telecommunications Act 1997

- 1 (ii) between a point in the foreign country and one or more
2 other points, at least one of which is outside the foreign
3 country; or
4 (iii) between a point outside the foreign country and one or
5 more other points, at least one of which is in the foreign
6 country;
7 (e) the supply of the service is enabled by the use of credentials
8 that:
9 (i) are provided to the operator of the telecommunications
10 network in the foreign country by the end-user of the
11 service or by that end-user's customer equipment; and
12 (ii) are verified by a carrier or carriage service provider.

13 Note: IMR is short for international mobile roaming.

14 (2) For the purposes of this section, a *point* includes a mobile or
15 potentially mobile point, whether on land, underground, in the
16 atmosphere, in outer space, underwater, at sea or anywhere else.

17 (3) For the purposes of this section, a point that is:

- 18 (a) in the atmosphere; and
19 (b) in or below the stratosphere; and
20 (c) above a foreign country;

21 is taken to be a point in the foreign country.

22 (4) For the purposes of this section, a point that is:

- 23 (a) on a satellite; and
24 (b) above the stratosphere;

25 is taken to be a point outside a foreign country.

26 **55 After paragraph 95(5)(c)**

27 Insert:

- 28 (ca) subsection 87(3A);

29 **56 Subsection 96(1)**

30 Omit "87(4)", substitute "87(3A), (4)".

31 **57 After subsection 98(1)**

32 Insert:

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Amendments **Schedule 1**
Telecommunications Act 1997 **Part 3**

1 (1A) In addition to the rules mentioned in subsection (1), the rule set out
2 in subsection 151BTS(2) of the *Competition and Consumer Act*
3 *2010* is a service provider rule for the purposes of this Act.

4 Note: Subsection 151BTS(2) of the *Competition and Consumer Act 2010*
5 requires a carriage service provider to comply with determinations by
6 the ACCC of price-control arrangements for certain wholesale
7 services relevant to international mobile roaming.

8 **58 After subsection 102(5)**

9 Insert:

10 (5A) Subsection (1) does not apply to the rule set out in Part 1 of
11 Schedule 2 in so far as that rule relates to section 158AR of the
12 *Telecommunications (Consumer Protection and Service Standards)*
13 *Act 1999*.

14 Note: Section 158AR of the *Telecommunications (Consumer Protection and*
15 *Service Standards) Act 1999* requires a carriage service provider to
16 comply with price-control determinations for retail IMR services.

17 (5B) Subsection (1) does not apply to the rule set out in
18 subsection 151BTS(2) of the *Competition and Consumer Act 2010*.

19 Note: Subsection 151BTS(2) of the *Competition and Consumer Act 2010*
20 requires a carriage service provider to comply with determinations by
21 the ACCC of price-control arrangements for certain wholesale
22 services relevant to international mobile roaming.

23 **59 After subsection 103(2)**

24 Insert:

25 (2A) Subsection (1) does not apply to the rule set out in Part 1 of
26 Schedule 2 in so far as that rule relates to section 158AR of the
27 *Telecommunications (Consumer Protection and Service Standards)*
28 *Act 1999*.

29 Note: Section 158AR of the *Telecommunications (Consumer Protection and*
30 *Service Standards) Act 1999* requires a carriage service provider to
31 comply with price-control determinations for retail IMR services.

32 (2B) Subsection (1) does not apply to the rule set out in
33 subsection 151BTS(2) of the *Competition and Consumer Act 2010*.

34 Note: Subsection 151BTS(2) of the *Competition and Consumer Act 2010*
35 requires a carriage service provider to comply with determinations by

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Schedule 1 Amendments

Part 3 Telecommunications Act 1997

1 the ACCC of price-control arrangements for certain wholesale
2 services relevant to international mobile roaming.

3 **60 At the end of section 103**

4 Add:

5 (6) The ACCC may issue a formal warning if a person contravenes the
6 service provider rule set out in Part 1 of Schedule 2 in so far as that
7 rule relates to section 158AR of the *Telecommunications*
8 *(Consumer Protection and Service Standards) Act 1999*.

9 (7) The ACCC may issue a formal warning if a person contravenes the
10 service provider rule set out in subsection 151BTS(2) of the
11 *Competition and Consumer Act 2010*.

12 **61 After paragraph 564(3)(c)**

13 Insert:

14 (ca) the service provider rule set out in Part 1 of Schedule 2 in so
15 far as that rule relates to section 158AR of the
16 *Telecommunications (Consumer Protection and Service*
17 *Standards) Act 1999*; or

18 (cb) the carrier licence condition set out in section 151BTR of the
19 *Competition and Consumer Act 2010*; or

20 (cc) the service provider rule set out in subsection 151BTS(2) of
21 the *Competition and Consumer Act 2010*; or

22 **62 Subsection 564(3) (after note 2A)**

23 Insert:

24 Note 2B: Section 158AR of the *Telecommunications (Consumer Protection and*
25 *Service Standards) Act 1999* requires a carriage service provider to
26 comply with price-control determinations for retail IMR services.

27 Note 2C: Section 151BTR of the *Competition and Consumer Act 2010* deals
28 with determinations by the ACCC of price-control arrangements for
29 certain wholesale services relevant to international mobile roaming.

30 Note 2D: Subsection 151BTS(2) of the *Competition and Consumer Act 2010*
31 requires a carriage service provider to comply with determinations by
32 the ACCC of price-control arrangements for certain wholesale
33 services relevant to international mobile roaming.

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Telecommunications Act 1997 **Part 3**

63 After paragraph 571(3)(c)

Insert:

- (ca) the service provider rule set out in Part 1 of Schedule 2 in so far as that rule relates to section 158AR of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; or
- (cb) the carrier licence condition set out in section 151BTR of the *Competition and Consumer Act 2010*; or
- (cc) the service provider rule set out in subsection 151BTS(2) of the *Competition and Consumer Act 2010*; or

64 Subsection 571(3) (after note 2A)

Insert:

- Note 2B: Section 158AR of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* requires a carriage service provider to comply with price-control determinations for retail IMR services.
- Note 2C: Section 151BTR of the *Competition and Consumer Act 2010* deals with determinations by the ACCC of price-control arrangements for certain wholesale services relevant to international mobile roaming.
- Note 2D: Subsection 151BTS(2) of the *Competition and Consumer Act 2010* requires a carriage service provider to comply with determinations by the ACCC of price-control arrangements for certain wholesale services relevant to international mobile roaming.

65 After subparagraph 572E(4)(b)(v)

Insert:

- (va) the service provider rule set out in Part 1 of Schedule 2 in so far as that rule relates to section 158AR of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; or
- (vb) the carrier licence condition set out in section 151BTR of the *Competition and Consumer Act 2010*; or
- (vc) the service provider rule set out in subsection 151BTS(2) of the *Competition and Consumer Act 2010*; or

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Schedule 1 Amendments

Part 4 Telecommunications (Interception and Access) Act 1979

1 **Part 4—Telecommunications (Interception and**
2 **Access) Act 1979**

3 **66 Subsection 5(1) (definition of *carriage service provider*)**

4 Repeal the definition, substitute:

5 *carriage service provider* means a person who is a carriage service
6 provider under the *Telecommunications Act 1997*, except because
7 of subsection 87(3A) of that Act or subsection 87(5) of that Act so
8 far as it relates to a retail IMR service as defined in that Act.

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