Telecommunications Act 1997

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Authorised Version C2026C00224 registered 12/06/2026

Main Index		
Item	**Topic**	**Provisions**
15	Inquiries, public	Part 25
16	International aspects	Part 20
17	Investigations	Part 26
19	Liability, vicarious	Part 32
21	National interest matters	Part 14
22	Network units	Part 2
23	Numbering and electronic addressing	Part 22
24	Penalties, civil	Part 31
25	Performance of carriers and carriage service providers, monitoring of	Part 5
26	Pre-selection	Part 17
28	Service provider rules	Part 4, Schedule 2
29	Service providers	Part 4
29A	SMS Sender ID Register	Part 24B
30	Standard agreements for the supply of carriage services	Part 23
32	Technical regulation	Part 21

7 Definitions

In this Act, unless the contrary intention appears:

ACCC means the Australian Competition and Consumer Commission.

ACCC's telecommunications functions and powers means the functions and powers conferred on the ACCC by or under:

(a) this Act; or

(b) the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; or

(ba) the *National Broadband Network Companies Act 2011*; or

(c) Part XIB of the *Competition and Consumer Act 2010*; or

Authorised Version C2026C00224 registered 12/06/2026

(d) Part XIC of the *Competition and Consumer Act 2010*; or

(e) any other provision of the *Competition and Consumer Act 2010*, in so far as that provision applies to a matter connected with telecommunications.

For this purpose, ***telecommunications*** means the carriage of communications by means of guided and/or unguided electromagnetic energy.

access, in relation to an emergency call service, has a meaning affected by section 18.

ACMA means the Australian Communications and Media Authority.

ACMA's telecommunications functions means the functions that are telecommunications functions, in relation to the ACMA, for the purposes of the *Australian Communications and Media Authority Act 2005*.

ACMA's telecommunications powers means the powers conferred on the ACMA by:

(a) this Act; or

(b) the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; or

(ba) Chapter 4 or 5 of the *Telecommunications (Interception and Access) Act 1979*; or

(c) the *Spam Act 2003*; or

(ca) the *Do Not Call Register Act 2006*; or

(d) Part XIC of the *Competition and Consumer Act 2010*; or

(e) section 12 of the *Australian Communications and Media Authority Act 2005*, in so far as that section relates to the ACMA's telecommunications functions.

ACNC type of entity means an entity that meets the description of a type of entity in column 1 of the table in subsection 25-5(5) of the *Australian Charities and Not-for-profits Commission Act 2012*.

Authorised Version C2026C00224 registered 12/06/2026

administrative action, when used in Part 24B, has the meaning given by subsection 484J(2).

adverse security assessment has the meaning given by section 35 of the *Australian Security Intelligence Organisation Act 1979*.

AFP Minister means the Minister administering the *Australian Federal Police Act 1979*.

aircraft includes a balloon.

ASIO means the Australian Security Intelligence Organisation.

Australia, when used in a geographical sense, includes the eligible Territories.

Australian number has the same meaning as in the *Do Not Call Register Act 2006*.

authorised infringement notice officer means:

(a) the Chair of the ACMA; or

(b) a member of the staff of the ACMA appointed under section 572L; or

(c) the Chairperson of the ACCC; or

(d) a member of the staff of the ACCC appointed under section 572L.

base station that is part of a terrestrial radiocommunications customer access network has the meaning given by section 34.

broadcasting service has the same meaning as in the *Broadcasting Services Act 1992*.

building lot has the meaning given by section 372Q.

building unit has the meaning given by section 372S.

cabling licence means a licence granted under section 427.

carriage service means a service for carrying communications by means of guided and/or unguided electromagnetic energy.

Authorised Version C2026C00224 registered 12/06/2026

carriage service intermediary means a person who is a carriage service provider under subsection 87(5).

carriage service provider has the meaning given by section 87.

carrier means the holder of a carrier licence.

carrier licence means a licence granted under section 56.

carry includes transmit, switch and receive.

civil penalty provision means:

(a) a provision of this Act (other than section 317ZB) that is declared by this Act to be a civil penalty provision; or

(b) a provision of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* that is declared by that Act to be a civil penalty provision; or

(c) a provision of the *Telecommunications (Interception and Access) Act 1979* that is declared by that Act to be a civil penalty provision for the purposes of this Act.

commercial electronic message has the same meaning as in the *Spam Act 2003*.

communications includes any communication:

(a) whether between persons and persons, things and things or persons and things; and

(b) whether in the form of speech, music or other sounds; and

(c) whether in the form of data; and

(d) whether in the form of text; and

(e) whether in the form of visual images (animated or otherwise); and

(f) whether in the form of signals; and

(g) whether in any other form; and

(h) whether in any combination of forms.

Communications Access Coordinator has the meaning given by section 6R of the *Telecommunications (Interception and Access) Act 1979*.

Authorised Version C2026C00224 registered 12/06/2026

connected, in relation to:

(a) a telecommunications network; or

(b) a facility; or

(c) customer cabling; or

(d) customer equipment;

includes connection otherwise than by means of physical contact, for example, a connection by means of radiocommunication.

connection permit means a permit issued under section 394.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

content service has the meaning given by section 15.

content service provider has the meaning given by section 97.

contracted service provider: see subsections 484E(1) and (2).

controlled carriage service has the meaning given by section 14.

controlled facility has the meaning given by section 14.

controlled network has the meaning given by section 14.

customer cabling has the meaning given by section 20.

customer equipment has the meaning given by section 21.

data processing device means any article or material (for example, a disk) from which information is capable of being reproduced, with or without the aid of any other article or device.

Defence Department means the Department of State that deals with defence and that is administered by the Minister administering section 1 of the *Defence Act 1903*.

defence purposes means any one or more of the following:

(a) the operation of command or control systems;

(b) the operation, direction or use of a defence organisation;

(c) the operation of intelligence systems;

Authorised Version C2026C00224 registered 12/06/2026

(d) the collection or dissemination of information relevant to the security or defence of:
  (i) the Commonwealth; or
  (ii) a foreign country that is allied or associated with the Commonwealth;
(e) the operation or control of weapons systems, including any thing that, by itself or together with any other thing or things, is intended for defensive or offensive use in combat;
(f) any other matter specified in the regulations.

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

designated part of the spectrum has the meaning given by section 577H.

designated radiocommunications facility has the meaning given by section 31.

designated Telstra successor company: see section 581G.

Director-General of Security means the Director-General of Security holding office under the *Australian Security Intelligence Organisation Act 1979*.

directory assistance services means services that are:
(a) provided to an end-user of a standard telephone service to help the end-user find the number of another end-user of a standard telephone service; and
(b) provided by an operator or by means of:
  (i) an automated voice response system; or
  (ii) another technology-based system.

distinct places has the meaning given by section 36.

draft functional separation undertaking means a draft functional separation undertaking under Division 2 of Part 9 of Schedule 1.

draft migration plan means a draft migration plan under Subdivision B of Division 2 of Part 33.

Authorised Version C2026C00224 registered 12/06/2026

eligible partnership means a partnership where each partner is a constitutional corporation.

eligible Territory means:

(a) the Territory of Christmas Island; or

(b) the Territory of Cocos (Keeling) Islands; or

(c) an external Territory prescribed for the purposes of section 10.

emergency call contractor means a person who performs services for or on behalf of a recognised person who operates an emergency call service, but does not include a person who performs such services in the capacity of an employee of the person who operates the emergency call service.

Note: ***Recognised person who operates an emergency call service*** is defined by section 19.

emergency call person means:

(a) a recognised person who operates an emergency call service; or

(b) an employee of such a person; or

(c) an emergency call contractor; or

(d) an employee of an emergency call contractor.

Note: ***Recognised person who operates an emergency call service*** is defined by section 19.

emergency call service means a service for:

(a) receiving and handling calls to an emergency service number; and

(b) transferring such calls to an emergency service or a service for despatching an emergency service.

For the purposes of paragraph (b), ***transferring*** a call includes giving information in relation to the call for purposes connected with dealing with the matter or matters raised by the call.

emergency service has the meaning given by subsection 466(1).

emergency service number has the meaning given by section 466.

Authorised Version C2026C00224 registered 12/06/2026

exempt network-user means:

(a) a person:

(i) who is entitled to use a network unit to supply a carriage service; and

(ii) whose entitlement derives, directly or indirectly, from rights granted to a carrier; or

(b) if:

(i) a police force or service; or

(ii) a fire service; or

(iii) an ambulance service; or

(iv) an emergency service (within its ordinary meaning) specified in the regulations;

(the ***first force or service***) uses a network unit for the sole or principal purpose of enabling either or both of the following:

(v) communication between the members of the first force or service;

(vi) communication between the members of the first force or service and the members of another force or service, where the other force or service is of a kind covered by subparagraph (i), (ii), (iii) or (iv);

the first force or service.

For the purposes of paragraph (b), an employee of a force or service is taken to be a member of the force or service.

facility means:

(a) any part of the infrastructure of a telecommunications network; or

(b) any line, equipment, apparatus, tower, mast, antenna, tunnel, duct, hole, pit, pole or other structure or thing used, or for use, in or in connection with a telecommunications network.

fax marketing industry means an industry that involves carrying on a fax marketing activity (as defined by section 109C).

Federal Court means the Federal Court of Australia.

fibre-ready facility has the meaning given by subsection 372W(1).

Authorised Version C2026C00224 registered 12/06/2026

final functional separation undertaking means a final functional separation undertaking under Division 2 of Part 9 of Schedule 1.

final migration plan means a final migration plan under Subdivision B of Division 2 of Part 33.

Finance Minister means the Minister administering the *Public Governance, Performance and Accountability Act 2013*.

fixed-line facility has the meaning given by section 372V.

fixed radiocommunications link has the meaning given by section 35.

functional fibre-ready facility has the meaning given by subsection 372W(2).

Home Affairs Department means the Department administered by the Home Affairs Minister.

Home Affairs Minister means the Minister administering the *Security of Critical Infrastructure Act 2018*.

Home Affairs Secretary means the Secretary of the Home Affairs Department.

hybrid fibre-coaxial network means a telecommunications network:

(a) that is for use for the transmission of any broadcasting service; and

(b) that is also capable of being used to supply an internet carriage service; and

(c) the line component of which consists of optical fibre to connecting nodes, supplemented by coaxial cable connections from the nodes to the premises of end-users.

IGIS official (short for Inspector-General of Intelligence and Security official) means:

(a) the Inspector-General of Intelligence and Security; or

Authorised Version C2026C00224 registered 12/06/2026

(b) any other person covered by subsection 32(1) of the *Inspector-General of Intelligence and Security Act 1986*.

immediate circle has the meaning given by section 23.

import means import into Australia.

industry levy means levy imposed by the *Telecommunications (Industry Levy) Act 2012*.

infringement notice means an infringement notice under section 572E.

inspector has the meaning given by section 533.

integrated public number database scheme means the scheme in force under section 295A.

intercell hand-over functions has the meaning given by section 33.

internet carriage service means a carriage service that enables end-users to access the internet.

internet service provider has the same meaning as in the *Online Safety Act 2021*.

Layer 2 bitstream service means a carriage service that is:

(a) a Layer 2 bitstream service (within the ordinary meaning of that expression); and

(b) a listed carriage service; and

(c) supplied using a line to premises occupied or used by an end-user.

For the purposes of determining the ordinary meaning of the expression used in paragraph (a), assume that ***Layer 2*** has the same meaning as in the Open System Interconnection (OSI) Reference Model for data exchange.

line means a wire, cable, optical fibre, tube, conduit, waveguide or other physical medium used, or for use, as a continuous artificial guide for or in connection with carrying communications by means of guided electromagnetic energy.

Authorised Version C2026C00224 registered 12/06/2026

line link has the meaning given by section 30.

listed carriage service has the meaning given by section 16.

marketing fax means:

(a) a marketing fax (within the meaning of the *Do Not Call Register Act 2006*) that is sent to an Australian number; or

(b) a fax (within the meaning of the *Do Not Call Register Act 2006*) that is sent to an Australian number, where, having regard to:

(i) the content of the fax; and

(ii) the presentational aspects of the fax;

it would be concluded that the purpose, or one of the purposes, of the fax is:

(iii) to conduct opinion polling; or

(iv) to carry out standard questionnaire-based research.

member means a member of the ACMA (and does not include an associate member).

NBN corporation has the same meaning as in the *National Broadband Network Companies Act 2011*. This definition does not apply to:

(a) section 577BA; or

(b) section 577BC; or

(c) clause 17 of Schedule 1; or

(d) Part 5 of Schedule 1.

network unit has the meaning given by Division 2 of Part 2.

nominated carriage service provider means a carriage service provider covered by a declaration in force under subsection 197(4) of the *Telecommunications (Interception and Access) Act 1979*.

nominated carrier means a carrier in respect of whom a nominated carrier declaration is in force.

nominated carrier declaration means a declaration under section 81.

Authorised Version C2026C00224 registered 12/06/2026

notifiable equipment has the same meaning as in the *Telecommunications (Interception and Access) Act 1979*.

numbering plan has the meaning given by section 455.

numbering scheme means the scheme for planning and managing:

(a) the numbering of carriage services in Australia; and

(b) the use of numbers in connection with the supply of such services; and

(c) the specification, allocation and issuing of numbers for that use.

numbering scheme manager: see subsection 454A(2).

numbering scheme principles: see subsection 454C(2).

optical fibre line means a line that consists of, or encloses, optical fibre.

owner, in relation to a network unit, means a person who legally owns the unit (whether alone or together with one or more other persons).

person includes a partnership.

point-to-multipoint service means a carriage service which allows a person to transmit a communication to more than one end-user simultaneously.

project area for a real estate development project has the meaning given by section 372Q.

public body means:

(a) the Commonwealth, a State or a Territory; or

(b) an authority, or institution, of the Commonwealth, a State or a Territory; or

(c) an incorporated company all the stock or shares in the capital of which is beneficially owned by one of the following:

(i) the Commonwealth;

(ii) a State;

Authorised Version C2026C00224 registered 12/06/2026

(iii) a Territory; or

(d) an incorporated company limited by guarantee, where the interests and rights of the members in or in relation to the company are beneficially owned by one of the following:

(i) the Commonwealth;

(ii) a State;

(iii) a Territory.

public mobile telecommunications service has the meaning given by section 32.

radiocommunication has the same meaning as in the *Radiocommunications Act 1992*.

radiocommunications device has the same meaning as in the *Radiocommunications Act 1992*.

radiocommunications receiver has the same meaning as in the *Radiocommunications Act 1992*.

radiocommunications transmitter has the same meaning as in the *Radiocommunications Act 1992*.

real estate development project has the meaning given by section 372Q.

recognised person who operates an emergency call service has the meaning given by section 19.

recognised testing authority has the meaning given by section 409.

record-keeping rule means a rule under section 529.

registered charity means an entity that is registered under the *Australian Charities and Not-for-profits Commission Act 2012* as the type of entity mentioned in column 1 of item 1 of the table in subsection 25-5(5) of that Act.

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

Authorised Version C2026C00224 registered 12/06/2026

satellite-based facility means a radiocommunications transmitter, or a radiocommunications receiver, in a satellite.

sell:

(a) when used in relation to a building lot—has the meaning given by section 372T; or

(b) when used in relation to a building unit—has the meaning given by section 372U.

sender identification has the meaning given by section 484C.

service provider has the meaning given by section 86.

service provider rules has the meaning given by section 98.

SMS Sender ID Register means the register established and maintained under section 484E.

spectrum has the same meaning as in the *Radiocommunications Act 1992*.

spectrum licence has the same meaning as in the *Radiocommunications Act 1992*.

spoofing sender identification has the meaning given by section 484D.

standard questionnaire-based research means research that involves people being asked to answer one or more standard questions, but does not include:

(a) opinion polling; or

(b) research of a kind specified in the regulations.

standard telephone service has the meaning given by section 6 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

subdivision of an area of land has a meaning affected by section 372R.

Authorised Version C2026C00224 registered 12/06/2026

subscription television broadcasting licence has the same meaning as in the *Broadcasting Services Act 1992*.

telecommunications industry includes an industry that involves:

(a) carrying on business as a carrier; or

(b) carrying on business as a carriage service provider; or

(c) supplying goods or services for use in connection with the supply of a listed carriage service; or

(d) supplying a content service using a listed carriage service; or

(e) manufacturing or importing customer equipment or customer cabling; or

(f) installing, maintaining, operating or providing access to:

(i) a telecommunications network; or

(ii) a facility;

used to supply a listed carriage service.

Telecommunications Industry Ombudsman has the same meaning as in the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

Telecommunications Industry Ombudsman scheme has the same meaning as in the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

telecommunications network means a system, or series of systems, that carries, or is capable of carrying, communications by means of guided and/or unguided electromagnetic energy.

telecommunications service has the same meaning as in the *Telecommunications (Interception and Access) Act 1979*.

telecommunications system has the same meaning as in the *Telecommunications (Interception and Access) Act 1979*.

telemarketing call means:

(a) a telemarketing call (within the meaning of the *Do Not Call Register Act 2006*) that is made to an Australian number; or

Authorised Version C2026C00224 registered 12/06/2026

(b) a voice call (within the meaning of the *Do Not Call Register Act 2006*) that is made to an Australian number, where, having regard to:

(i) the content of the call; and

(ii) the presentational aspects of the call;

it would be concluded that the purpose, or one of the purposes, of the call is:

(iii) to conduct opinion polling; or

(iv) to carry out standard questionnaire-based research.

telemarketing industry means an industry that involves carrying on a telemarketing activity (as defined by section 109B).

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

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).

Telstra successor company: see section 581F.

this Act includes the regulations.

universal service obligation has the same meaning as in the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

vessel means a vessel or boat of any description, and includes:

(a) an air-cushion vehicle; and

(b) any floating structure.

Authorised Version C2026C00224 registered 12/06/2026

Note: ***Boundary of a telecommunications network*** is defined by section 22.

(3) Subsection (2) does not, by implication, limit subsection (1).

(4) If no regulations are in force for the purposes of subsection (1), then, for the purposes of this Act, ***customer cabling*** means a line that is used, installed ready for use or intended for use on the customer side of the boundary of a telecommunications network.

Note: ***Boundary of a telecommunications network*** is defined by section 22.

21 Customer equipment

(1) For the purposes of this Act, ***customer equipment*** means:

(a) any equipment, apparatus, tower, mast, antenna or other structure or thing; or

(b) any system (whether software-based or otherwise);

that:

(c) is used, installed ready for use or intended for use in connection with a carriage service; and

(d) under the regulations, is treated as customer equipment;

but does not include a line.

(2) Regulations made for the purposes of subsection (1) may deal with a matter by reference to the boundary of a telecommunications network.

Note: ***Boundary of a telecommunications network*** is defined by section 22.

(3) Subsection (2) does not, by implication, limit subsection (1).

(4) If no regulations are in force for the purposes of subsection (1), then, for the purposes of this Act, ***customer equipment*** means:

(a) any equipment, apparatus, tower, mast, antenna or other structure or thing that is used, installed ready for use or intended for use on the customer side of the boundary of a telecommunications network; or

(b) any system (whether software-based or otherwise) that is used, installed ready for use or intended for use on the

Authorised Version C2026C00224 registered 12/06/2026

customer side of the boundary of a telecommunications network;

but does not include:

(c) a line; or

(d) equipment of a kind specified in regulations made for the purposes of this paragraph; or

(e) an apparatus, tower, mast, antenna or other structure or thing that is of a kind specified in regulations made for the purposes of this paragraph; or

(f) a system (whether software-based or otherwise) that is of a kind specified in regulations made for the purposes of this paragraph.

Note : ***Boundary of a telecommunications network*** is defined by section 22.

22 Customer cabling and customer equipment—boundary of a telecommunications network

(1) For the purposes of sections 20, 21, 30, 349, 372B, 372C and 372V, the boundary of a telecommunications network is to be ascertained in accordance with the regulations.

(2) Regulations made for the purposes of subsection (1) may deal with a matter by reference to any or all of the following:

(a) the terms of an agreement between 2 or more carriers, where the agreement is entered into for the purposes of those regulations;

(b) the terms of an agreement between 2 or more carriage service providers, where the agreement is entered into for the purposes of those regulations;

(c) the terms of an agreement between a carrier and a carriage service provider, where the agreement is entered into for the purposes of those regulations;

(d) the terms of an agreement between a carrier and a customer of the carrier, where the agreement is entered into for the purposes of those regulations;

Authorised Version C2026C00224 registered 12/06/2026

(e) the terms of an agreement between a carriage service provider and a customer of the provider, where the agreement is entered into for the purposes of those regulations.

(3) Subsection (2) does not, by implication, limit subsection (1).

(4) If no regulations are in force for the purposes of subsection (1), then, for the purposes of sections 20, 21, 30, 349, 372B, 372C and 372V, the boundary of a telecommunications network is:

(a) in a case where a telecommunications network is used to supply a carriage service to an end-user in a building by means of a line that enters the building—the point agreed between the customer and the carrier or carriage service provider who operates the telecommunications network, or, failing agreement:

(i) if there is a main distribution frame in the building and the line is connected to the frame—the side of the frame nearest to the end-user; or

(ii) if subparagraph (i) does not apply but the line is connected to a network termination device located in, on or within close proximity to, the building—the side of the device nearest to the end-user; or

(iii) if neither subparagraph (i) nor (ii) applies but the line is connected to one or more sockets in the building—the side nearest to the end-user of the first socket after the building entry point; or

(b) in a case where a telecommunications network is used to supply a carriage service to an end-user by means of a satellite-based facility that transmits to, or receives transmissions from, the point where the end user is located—the outer surface of the satellite-based facility; or

(c) in a case where:

(i) a telecommunications network is used to supply a carriage service to an end-user; and

(ii) paragraphs (a) and (b) do not apply;

Authorised Version C2026C00224 registered 12/06/2026

the outer surface of the fixed facility nearest to the end-user, where the facility is used, installed ready for use or intended for use to supply the carriage service.

(5) If, immediately before 1 July 1997, the boundary of a telecommunications network used to supply a standard telephone service to an end-user in a building by means of a line that enters the building is the side of a main distribution frame, or a telephone socket, nearest to the end-user, paragraph (4)(a) has effect, on and after 1 July 1997, as if the customer and the carrier or carriage service provider who operates the network had agreed to the boundary at that point.

(6) Subsection (5) does not prevent the customer and the carrier or carriage service provider agreeing to a boundary at a different point.

(7) For the purposes of subsection (4), the ***building entry point*** is the point at which a line that is used to provide a carriage service to an end-user in a building meets the outer surface of that building, immediately before entering the building.

(8) In this section:

building includes a structure, a caravan and a mobile home.

23 Immediate circle

(1) For the purposes of this Act, a person's ***immediate circle*** consists of the person, together with the following persons:

(a) if the person is an individual—an employee of the individual;

(b) if the person is a partnership—an employee of the partnership;

(c) if the person is a body corporate:

(i) an officer of the body corporate;

(ii) if another body corporate is related to the first-mentioned body corporate (within the meaning of the *Corporations Act 2001*)—that other body corporate and an officer of that other body corporate;

Authorised Version C2026C00224 registered 12/06/2026