Part 21—Technical regulation

Division 1—Simplified outline

373 Simplified outline

The following is a simplified outline of this Part:

- The ACMA may make the following types of standards:
  - (a) technical standards about customer equipment and customer cabling;
  - (b) standards relating to the features of customer equipment that are designed to cater for the special needs of persons with disabilities;
  - (c) technical standards about the interconnection of facilities;
  - (d) technical standards relating to Layer 2 bitstream services.
- The ACMA may require customer equipment and customer cabling to be labelled so as to indicate compliance with standards.
- The ACMA may issue connection permits, and make connection rules, authorising the connection of customer equipment and customer cabling that does not comply with the labelling requirements.
- A label may include a compliance symbol. The unauthorised use of compliance symbols is prohibited.
- The ACMA may grant cabling licences, and make cabling provider rules, authorising the performance of cabling work.
- Civil actions may be instituted for unlawful or dangerous connections of customer equipment or customer cabling.

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- Dangerous equipment and cabling may be disconnected from networks.
- The ACMA may prohibit the supply or possession of dangerous equipment or cabling.

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Division 2—Interpretative provisions

374 Part applies to networks or facilities in Australia operated by carriers or carriage service providers

(1) A reference in this Part to a ***telecommunications network*** is a reference to a telecommunications network in Australia that is operated by a carrier or carriage service provider.

(2) A reference in this Part to a ***facility*** is a reference to a facility in Australia that is operated by a carrier or carriage service provider.

375 Manager of network or facility

For the purposes of this Part, the ***manager*** of:

(a) a telecommunications network; or

(b) a facility of a telecommunications network;

is the carrier, or carriage service provider, who operates the network or facility, as the case may be.

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Division 3—Technical standards about customer equipment and customer cabling

376 ACMA's power to make technical standards

(1) The ACMA may, by legislative instrument, make a technical standard relating to specified customer equipment or specified customer cabling.

(2) Standards under this section are to consist only of such requirements as are necessary or convenient for:

(a) protecting the integrity of a telecommunications network or a facility; or

(b) protecting the health or safety of persons who:

(i) operate; or

(ii) work on; or

(iii) use services supplied by means of; or

(iv) are otherwise reasonably likely to be affected by the operation of;

a telecommunications network or a facility; or

(c) ensuring that customer equipment can be used to give access to an emergency call service; or

(d) ensuring, for the purpose of the supply of a standard telephone service, the interoperability of customer equipment with a telecommunications network to which the equipment is, or is proposed to be, connected; or

(da) ensuring, for the purpose of the supply of a carriage service using:

(i) the national broadband network; or

(ii) any other superfast telecommunications network;

the interoperability of customer equipment with such a network; or

(db) ensuring that customer equipment or customer cabling that is, or is proposed to be, connected to:

(i) the national broadband network; or

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(ii) any other superfast telecommunications network;

meets particular performance requirements; or

(dc) ensuring that customer equipment or customer cabling that is, or is proposed to be, connected to:

(i) the national broadband network; or

(ii) any other superfast telecommunications network;

has particular design features; or

(e) achieving an objective specified in the regulations.

(3) Regulations made for the purposes of paragraph (2)(e) must not specify an objective if the achievement of the objective is likely to have the effect (whether direct or indirect) of requiring a telecommunications network or a facility to:

(a) have particular design features; or

(b) meet particular performance requirements.

(4) A standard under this section may be of general application or may be limited as provided in the standard. This subsection does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

(7) In this section:

national broadband network has the same meaning as in section 577BA.

superfast carriage service means a carriage service, where:

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

(b) the download transmission speed of the carriage service is normally more than 25 megabits per second; and

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

superfast telecommunications network means a telecommunications network that is capable of being used to supply a superfast carriage service.

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376A ACMA must make technical standards if directed by the Minister

(1) The Minister may, by legislative instrument, direct the ACMA to:
  (a) make a technical standard under section 376 that deals with one or more specified matters; and
  (b) do so within a specified period.

(2) The Minister must not give the ACMA a direction under section 14 of the *Australian Communications and Media Authority Act 2005* requiring the ACMA to make a technical standard under section 376 of this Act that deals with one or more specified matters.

377 Adoption of voluntary standards

(1) In making a technical standard under section 376, the ACMA may apply, adopt or incorporate (with or without modification) any matter contained in a standard proposed or approved by:
  (a) Standards Australia; or
  (b) any other body or association;
  either:
  (c) as in force or existing at a particular time; or
  (d) as in force or existing from time to time.

(2) Subsection (1) does not, by implication, limit section 589.

378 Procedures for making technical standards

(1) Before making a technical standard under section 376, the ACMA must, so far as is practicable, try to ensure that:
  (a) interested persons have had an adequate opportunity to make representations about the proposed standard (either directly, or indirectly by means of a report under paragraph (2)(g)); and
  (b) due consideration has been given to any representation so made.

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Note: This subsection has effect subject to section 379 (which deals with the ACMA's power to make standards in cases of urgency).

(2) The ACMA may make an arrangement with any of the following bodies or associations:

(a) Standards Australia;

(b) a body or association approved in writing by Standards Australia for the purposes of this subsection;

(c) a body or association specified in a written determination made by the ACMA for the purposes of this subsection;

under which the body or association:

(d) prepares a draft of a standard; and

(e) publishes the draft standard; and

(f) undertakes a process of public consultation on the draft standard; and

(g) reports to the ACMA on the results of that process of public consultation.

(3) A copy of an approval under paragraph (2)(b) is to be published in the *Gazette*.

(4) A copy of a determination under paragraph (2)(c) is to be published in the *Gazette*.

(5) For the purposes of subsection (1), interested persons are taken not to have had an adequate opportunity to make representations unless there was a period of at least 60 days during which the representations could be made.

379 Making technical standards in cases of urgency

(1) The ACMA is not required to comply with subsection 378(1) in relation to the making of a particular technical standard if the ACMA is satisfied that it is necessary to make the standard as a matter of urgency in order to:

(a) protect the integrity of a telecommunications network or of a facility; or

(b) protect the health or safety of persons who:

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(i) operate; or
(ii) work on; or
(iii) use services supplied by means of; or
(iv) are otherwise reasonably likely to be affected by the operation of;

a telecommunications network or a facility.

(2) If subsection (1) applies to a standard (the ***urgent standard***), the urgent standard ceases to have effect 12 months after it came into operation. However, this rule does not prevent the ACMA from revoking the urgent standard and making another standard under section 376 that:

(a) is not a standard to which subsection (1) applies; and
(b) deals with the same subject matter as the urgent standard.

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Division 7—Labelling of customer equipment and customer cabling

406 Application of labels

(1) A reference in this Division to a ***label*** includes a reference to a statement.

(2) For the purposes of this Division, a label is taken to be ***applied*** to a thing if:

(a) the label is affixed to the thing; or

(b) the label is woven in, impressed on, worked into or annexed to the thing; or

(c) the label is affixed to a container, covering, package, case, box or other thing in or with which the first-mentioned thing is supplied; or

(d) the label is affixed to, or incorporated in, an instruction or other document that accompanies the first-mentioned thing.

406A Application of Division to agent of manufacturer or importer

For the purposes of this Act and to avoid doubt, a reference in this Division to a manufacturer or importer of customer equipment or customer cabling includes a reference to a person who is authorised in writing by such a manufacturer or importer to act in Australia as an agent of the manufacturer or importer (as the case may be) for the purposes of this Division.

407 Labelling requirements

(1) The ACMA may, by written instrument, require any person who is a manufacturer or importer of specified customer equipment or specified customer cabling to apply to the equipment or cabling a label that indicates whether the equipment or cabling meets the requirements of the section 376 standards specified in the instrument.

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(2) An instrument under this section is a legislative instrument.

408 Requirements to apply labels—ancillary matters

(1) This section applies to an instrument under section 407.

(2) The label must be in the form specified by the ACMA in the instrument.

(3) The method of applying the label to the equipment or cabling must be as specified by the ACMA in the instrument.

(4) The instrument may state that the requirement does not apply to imported customer equipment, or imported customer cabling, if there is applied to the equipment or cabling a label of a specified kind that indicates that the equipment or cabling complies with the requirements of:

(a) a specified law of a specified foreign country; or

(b) a specified instrument in force under a specified law of a specified foreign country; or

(c) a specified convention, treaty or international agreement; or

(d) a specified instrument in force under a specified convention, treaty or international agreement.

(5) The instrument may specify requirements that must be met before a label can be applied, including (but not limited to):

(a) a requirement that, before a manufacturer or importer applies the label to the equipment or cabling, the manufacturer or importer must have obtained a written statement from a certification body certifying that the equipment or cabling complies with a specified section 376 standard; and

(b) a requirement that, before a manufacturer or importer applies the label to the equipment or cabling, the equipment or cabling must have been tested by a recognised testing authority for compliance with the standards specified in the instrument; and

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(c) a requirement that a manufacturer or importer must:
  (i) conduct quality assurance programs; or
  (ii) be satisfied that quality assurance programs have been conducted; or
  (iii) have regard to the results of quality assurance programs;
  before the manufacturer or importer applies the label to the equipment or cabling; and

(d) a requirement that, before a manufacturer or importer applies the label to the equipment or cabling, the manufacturer or importer must have obtained a written statement from a competent body certifying that reasonable efforts have been made to avoid a contravention of a specified section 376 standard; and

(e) a requirement that, before a manufacturer or importer applies the label to the equipment or cabling, the manufacturer or importer must make a written declaration in relation to the equipment or cabling, being a declaration in a form specified in the instrument.

Note 1: ***Certification body*** is defined by section 410.

Note 2: ***Recognised testing authority*** is defined by section 409.

Note 3: ***Competent body*** is defined by section 409.

(6) The instrument may specify requirements that must be met after a label has been applied to customer equipment or customer cabling, including (but not limited to) a requirement that a manufacturer or importer retain for inspection, for the period specified in the instrument:

(a) records of the quality assurance programs conducted in accordance with the instrument in respect of the equipment or cabling; and

(b) records of any results of any tests conducted in relation to compliance with the standards specified in the instrument; and

(c) a declaration, or a copy of a declaration, made as mentioned in paragraph (5)(e).

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409 Recognised testing authorities and competent bodies

(1) The ACMA may, by notice published in the *Gazette*, determine that a specified person or association is an ***accreditation body*** for the purposes of this section. The determination has effect accordingly.

(2) An accreditation body may, by written instrument, determine that a specified person is a ***recognised testing authority*** for the purposes of this Division. The determination has effect accordingly.

(3) An accreditation body may, by written instrument, determine that a specified person or association is a ***competent body*** for the purposes of this Division. The determination has effect accordingly.

410 Certification bodies

(1) The ACMA may, by notice published in the *Gazette*, determine that a specified person or association is an ***approving body*** for the purposes of this section. The determination has effect accordingly.

(2) An approving body may, by written instrument, determine that a specified person or association is a ***certification body*** for the purposes of this Division. The determination has effect accordingly.

411 Connection of customer equipment or customer cabling—breach of section 376 standards

Basic prohibition

(1) A person must not:

(a) connect customer equipment or customer cabling to a telecommunications network or to a facility; or

(b) maintain such a connection;

if:

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(c) the manufacturer or importer of the equipment or cabling was required by subsection 407(1) to apply a label to the equipment or cabling; and

(d) either:

(i) the manufacturer or importer did not comply with the requirement; or

(ii) the manufacturer or importer complied with the requirement, but the label indicated that the equipment or cabling did not meet the requirements of the section 376 standards that were specified in the first-mentioned requirement.

Offence

(2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 120 penalty units.

Note 1: See also sections 4AA and 4B of the *Crimes Act 1914*.

Note 2: See also Division 13 of this Part (which deals with the payment of penalties as an alternative to prosecution).

Exception—reasonable excuse for contravention

(2A) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

Exception—connection permit

(3) A person does not contravene subsection (1) in relation to:

(a) connecting customer equipment, or customer cabling, to a telecommunications network, or to a facility; or

(b) maintaining such a connection;

if the connection, or the maintenance of the connection, as the case may be, is in accordance with a connection permit.

Note: Connection permits are issued under section 394.

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Exception—compliance with connection rules

(4) A person does not contravene subsection (1) in relation to:

(a) connecting customer equipment, or customer cabling, to a telecommunications network, or to a facility; or

(b) maintaining such a connection;

if:

(c) the person is subject to the connection rules; and

(d) the connection, or the maintenance of the connection, as the case may be, is in accordance with the connection rules.

Note: The connection rules are dealt with by section 404.

Exception—consent of network manager

(5) A person does not contravene subsection (1) in relation to the connection of customer equipment, or customer cabling, to a telecommunications network, or to a facility, if:

(a) the manager of the network or facility consents in writing to the connection; and

(b) the equipment or cabling has applied to it a label that indicates that the equipment or cabling does not meet the requirements of each of the standards under section 376 that were applicable to it when it was connected.

Note: ***Manager*** is defined by section 375.

412 Connection of labelled customer equipment or customer cabling not to be refused

(1) If:

(a) at a particular time, a person proposes to connect customer equipment or customer cabling to a telecommunications network or to a facility; and

(b) the manufacturer or importer of the equipment or cabling was required by subsection 407(1) to apply a label to the equipment or cabling; and

(c) both:

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(i) the manufacturer or importer complied with the requirement; and

(ii) the label indicated that the equipment or cabling met the requirements of the section 376 standards that were specified in the first-mentioned requirement;

the manager of the network or facility must not refuse to give written consent to the connection.

Note: ***Manager*** is defined by section 375.

(2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 100 penalty units.

Note: See also sections 4AA and 4B of the *Crimes Act 1914*.

(2A) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

(3) A manager of a telecommunications network, or of a facility, does not contravene subsection (1) in relation to a refusal to give consent to the connection of customer equipment, or customer cabling, to the network, or to the facility, if:

(a) the manager has reasonable grounds to believe that a label has been applied to the equipment or cabling in contravention of section 414 or 416; or

(b) the manager has reasonable grounds to believe that the connection would, or would be likely to, constitute a threat to the integrity of a telecommunications network or of a facility; or

(c) the manager has reasonable grounds to believe that the connection would, or would be likely to, constitute a threat to the health or safety of persons who:

(i) operate; or

(ii) work on; or

(iii) use services supplied by means of; or

(iv) are otherwise reasonably likely to be affected by the operation of;

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a telecommunications network or a facility.

(4) This section does not, by implication, impose an obligation to supply a carriage service to a particular person.

413 Supply of unlabelled customer equipment or unlabelled customer cabling

(1) If a person:

(a) is a manufacturer or importer of customer equipment or customer cabling; and

(b) is required under section 407 to apply to it a label in a particular form;

the person must not supply the equipment or cabling unless a label in that form has been applied to the equipment or cabling.

(2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 100 penalty units.

Note 1: See also sections 4AA and 4B of the *Crimes Act 1914*.

Note 2: See also Division 13 of this Part (which deals with the payment of penalties as an alternative to prosecution).

(2A) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

(3) In this section:

supply includes supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase.

414 Applying labels before satisfying requirements under subsection 408(5)

(1) If a person is subject to requirements that:

(a) have been specified under subsection 408(5); and

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(b) must be met before applying a particular label to customer equipment or customer cabling;

the person must not apply:

(c) the label; or

(d) a label that purports to be such a label;

before the person satisfies those requirements.

(2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 100 penalty units.

Note 1: See also sections 4AA and 4B of the *Crimes Act 1914*.

Note 2: See also Division 13 of this Part (which deals with the payment of penalties as an alternative to prosecution).

(3) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

415 Failure to retain records etc.

(1) If the ACMA makes an instrument under subsection 407(1) that specifies requirements to be met after a label has been applied, a manufacturer or importer must not contravene those requirements.

(2) A person commits an offence if:

(a) the person is a manufacturer or importer of customer equipment or customer cabling; and

(b) the person engages in conduct; and

(c) the person's conduct contravenes a requirement referred to in subsection (1).

Penalty: 100 penalty units.

Note 1: See also sections 4AA and 4B of the *Crimes Act 1914*.

Note 2: See also Division 13 of this Part (which deals with the payment of penalties as an alternative to prosecution).

(3) Subsection (1) does not apply if the person has a reasonable excuse.

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Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

(4) In this section:

engage in conduct means:

(a) do an act; or

(b) omit to perform an act.

416 Application of labels containing false statements about compliance with standards

(1) A person must not apply a label to customer equipment or customer cabling if:

(a) the label contains a statement to the effect that the equipment or cabling complies with a section 376 standard; and

(b) the statement is false or misleading.

(2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 120 penalty units.

Note 1: See also sections 4AA and 4B of the *Crimes Act 1914*.

Note 2: See also Division 13 of this Part (which deals with the payment of penalties as an alternative to prosecution).

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Division 8—Protected symbols

417 Protected symbols

(1) A person must not:

(a) use in relation to a business, trade, profession or occupation; or

(b) apply, as a trade mark or otherwise, to goods imported, manufactured, produced, sold, offered for sale or let on hire; or

(c) use in relation to:

(i) goods or services; or

(ii) the promotion, by any means, of the supply or use of goods or services;

a protected symbol, or a symbol so closely resembling a protected symbol as to be likely to be mistaken for it.

(2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 30 penalty units.

Note 1: See also sections 4AA and 4B of the *Crimes Act 1914*.

Note 2: See also Division 13 of this Part (which deals with the payment of penalties as an alternative to prosecution).

(3) Nothing in subsection (1) limits anything else in that subsection.

(4) Nothing in subsection (1), so far as it applies in relation to a protected symbol, affects rights conferred by law on a person in relation to:

(a) a trade mark that is registered under the *Trade Marks Act 1995*; or

(b) a design that is registered under the *Designs Act 2003*;

and was registered under the *Trade Marks Act 1995* or the *Designs Act 1906* immediately before 16 August 1996 in relation to the symbol.

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(5) Nothing in this section, so far as it applies to a protected symbol, affects the use, or rights conferred by law relating to the use, of the symbol by a person in a particular manner if, immediately before 16 August 1996, the person:

(a) was using the symbol in good faith in that manner; or

(b) would have been entitled to prevent another person from passing off, by means of the use of the symbol or a similar symbol, goods or services as the goods or services of the first-mentioned person.

(6) This section does not apply to a person who uses or applies a protected symbol for the purposes of labelling customer equipment or customer cabling in accordance with section 407.

(6A) This section does not apply to a person who uses or applies a protected symbol for the purposes of labelling equipment in accordance with equipment rules made under the *Radiocommunications Act 1992*.

(7) This section does not apply to a person who uses or applies a protected symbol for a purpose of a kind specified in a written determination made by the ACMA.

(8) A reference in this section to a ***protected symbol*** is a reference to:

(a) the symbol known in the telecommunications industry as the C-Tick mark:

(i) the design of which is set out in a written determination made by the ACMA; and

(ii) a purpose of which, after the commencement of this section, is to indicate compliance by customer equipment or customer cabling with applicable section 376 standards; or

(b) a symbol:

(i) the design of which is set out in a written determination made by the ACMA; and

(ii) a purpose of which, after the commencement of this section, is to indicate compliance by customer

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equipment or customer cabling with applicable section 376 standards; or

(c) a symbol:

(i) the design of which is set out in a written determination made by the ACMA; and

(ii) a purpose of which, after the commencement of this section, is to indicate non-compliance by customer equipment or customer cabling with applicable section 376 standards.

(9) For the purposes of this Part, if:

(a) a label is applied to customer equipment or customer cabling; and

(b) the label embodies a symbol referred to in paragraph (8)(a) or (b);

the label is taken to indicate that the equipment or cabling meets the requirements of each applicable section 376 standard.

(10) For the purposes of this Part, if:

(a) a label is applied to customer equipment or customer cabling; and

(b) the label embodies a symbol referred to in paragraph (8)(c);

the label is taken to indicate that the equipment or cabling does not meet the requirements of each applicable section 376 standard.

(11) For the purposes of this section, a section 376 standard is taken to be applicable in relation to customer equipment or customer cabling if, and only if, the standard was specified in the section 407 requirement that dealt with the manufacture or importation of the equipment or cabling.

(12) A determination made by the ACMA under subsection (7) or (8) is a legislative instrument.

(13) In addition to its effect apart from this subsection, this section also has the effect it would have if a reference in subsection (1) to a person were, by express provision, confined to a corporation to which paragraph 51(xx) of the Constitution applies.

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(14) In addition to its effect apart from this subsection, this section also has the effect it would have if each reference in subsection (1) to use, or to application, were a reference to use or application, as the case may be, in the course of, or in relation to:

(a) trade or commerce between Australia and places outside Australia; or

(b) trade or commerce among the States; or

(c) trade or commerce within a Territory, between a State and a Territory or between 2 Territories; or

(d) the supply of goods or services to the Commonwealth, to a Territory or to an authority or instrumentality of the Commonwealth or of a Territory; or

(e) the defence of Australia; or

(f) the operation of lighthouses, lightships, beacons or buoys; or

(g) astronomical or meteorological observations; or

(h) an activity of a corporation to which paragraph 51(xx) of the Constitution applies; or

(i) banking, other than State banking; or

(j) insurance, other than State insurance; or

(k) weighing or measuring.

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Division 10—Remedies for unauthorised connections to telecommunications networks etc.

443 Civil action for unauthorised connections to telecommunications networks etc.

(1) If:

(a) a person:

(i) connects customer equipment, or customer cabling, to a telecommunications network, or to a facility, contrary to section 411; or

(ii) has under his or her control customer equipment, or customer cabling, connected to a telecommunications network, or to a facility, where the equipment or cabling was so connected by another person contrary to section 411; and

(b) as a result of:

(i) the connection of the customer equipment or customer cabling to the network or facility; or

(ii) the customer equipment or customer cabling being used while it was so connected;

either:

(iii) damage is caused to the network or the facility; or

(iv) the manager of the network or facility suffers a loss or incurs a liability;

the manager of the network or facility may apply to the Federal Court for remedial relief.

(2) The relief that may be granted includes an injunction and, at the option of the manager, either damages or an account of profits.

(3) If an application is made to the Federal Court for an injunction under this section, the court may grant an interim injunction pending determination of the application.

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(4) The power of the court under this section to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:

(a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.

(5) The power of the court under this section to grant an injunction requiring a person to do an act or thing may be exercised:

(a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or

(b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.

(6) An application under this section must be made within 3 years after the damage was caused, the loss was suffered or the liability was incurred, as the case requires.

444 Remedy for contravention of labelling requirements

(1) If:

(a) a person (the ***first person***) contravenes section 413, 414 or 415 in relation to particular customer equipment or particular customer cabling; and

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(b) a person (who may be the first person) connects the equipment or cabling to a telecommunications network or to a facility; and

(c) as a result of:

(i) the connection of the equipment or cabling to the network or facility; or

(ii) the equipment or cabling being used while it was so connected;

either:

(iii) damage is caused to the network or the facility; or

(iv) the manager of the network or facility suffers a loss;

the manager of the network or facility may apply to the Federal Court for the recovery from the first person of the amount of the loss or damage.

(2) An application under this section must be made within 3 years after the damage was caused or the loss was suffered, as the case requires.

445 Remedies for connection of unlabelled customer equipment or unlabelled customer cabling

(1) This section applies if:

(a) a person:

(i) connects customer equipment, or customer cabling, to a telecommunications network or to a facility; or

(ii) has under his or her control customer equipment, or customer cabling, connected to a telecommunications network or to a facility; and

(b) the manufacturer or importer of the equipment or cabling was required by subsection 407(1) to apply a label to the equipment or cabling; and

(c) either:

(i) the manufacturer or importer did not comply with the requirement; or

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(ii) the manufacturer or importer complied with the requirement, but the label indicated that the equipment or cabling did not meet the requirements of the section 376 standards that were specified in the first-mentioned requirement.

(2) If, as a result of:

(a) the connection of the equipment or cabling to the network or facility; or

(b) the equipment or cabling being used while it was so connected;

either:

(c) damage is caused to the network or the facility; or

(d) the manager of the network or facility suffers a loss;

the manager of the network or facility may apply to the Federal Court for remedial relief.

(3) The relief that may be granted includes an injunction and, at the option of the manager, either damages or an account of profits.

(4) The manager of the network or facility may disconnect the equipment or cabling from the network or facility.

(5) If it is necessary for other customer equipment or other customer cabling to be disconnected from the network or facility in order to achieve the disconnection mentioned in subsection (4), the manager may disconnect that other equipment or cabling.

(6) If an application is made to the Federal Court for an injunction under this section, the court may grant an interim injunction pending determination of the application.

(7) The power of the court under this section to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:

(a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the

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person intends to engage again, or to continue to engage, in conduct of that kind; or

(b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.

(8) The power of the court under this section to grant an injunction requiring a person to do an act or thing may be exercised:

(a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or

(b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.

(9) An application under this section must be made within 3 years after the damage was caused or the loss was suffered, as the case requires.

446 Disconnection of dangerous customer equipment or customer cabling

(1) If:

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

(i) connects customer equipment, or customer cabling, to a telecommunications network or to a facility; or

(ii) has under his or her control customer equipment, or customer cabling, connected to a telecommunications network or to a facility; and

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