

# EXPOSURE DRAFT

2008-2009-2010

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT (12/02/2010)
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## **Telecommunications Legislation Amendment (National Broadband Network Measures—Access Arrangements) Bill 2010**

**No.     , 2010**

*(Broadband, Communications and the Digital Economy)*

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



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

3     The Parliament of Australia enacts:

4     **1 Short title**

5                     This Act may be cited as the *Telecommunications Legislation*  
6                     *Amendment (National Broadband Network Measures—Access*  
7                     *Arrangements) Act 2010*.

8     **2 Commencement**

9                     (1) Each provision of this Act specified in column 1 of the table  
10                     commences, or is taken to have commenced, in accordance with  
11                     column 2 of the table. Any other statement in column 2 has effect  
12                     according to its terms.  
13

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1, Part 1	The latest of: (a) the day after this Act receives the Royal Assent; and (b) immediately after the commencement of the <i>National Broadband Network Companies Act 2010</i> ; and (c) immediately after the commencement of Part 2 of Schedule 1 to the <i>Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010</i> .  However, the provision(s) do not commence at all unless both of the events mentioned in paragraphs (b) and (c) occur.	
3. Schedule 1, Part 2	The latest of: (a) the day after this Act receives the Royal Assent; and (b) immediately after the commencement of the <i>National Broadband Network Companies 2010</i> ; and (c) immediately after the commencement of Part 7 of Schedule 1 to the <i>Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010</i> .  However, the provision(s) do not commence at all unless both of the events mentioned in paragraphs (b) and (c) occur.	

1 Note: This table relates only to the provisions of this Act as originally  
2 passed by both Houses of the Parliament and assented to. It will not be  
3 expanded to deal with provisions inserted in this Act after assent.

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1                   (2) Column 3 of the table contains additional information that is not  
2                   part of this Act. Information in this column may be added to or  
3                   edited in any published version of this Act.

## 4           **3 Schedule(s)**

5                   Each Act that is specified in a Schedule to this Act is amended or  
6                   repealed as set out in the applicable items in the Schedule  
7                   concerned, and any other item in a Schedule to this Act has effect  
8                   according to its terms.  
9

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## Schedule 1 Amendments

### Part 1 General amendments

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1 **Schedule 1—Amendments**

2 **Part 1—General amendments**

3 *Telecommunications Act 1997*

4 **1 Section 7 (after paragraph (b) of the definition of ACCC’s**  
5 ***telecommunications functions and powers*)**

6 Insert:

7 (ba) the *National Broadband Network Companies Act 2010*; or

8 **2 Section 7**

9 Insert:

10 *NBN corporation* has the same meaning as in the *National*  
11 *Broadband Network Companies Act 2010*.

12 **3 After section 62C**

13 Insert:

14 **62D Condition of carrier licence set out in section 152CJC of the**  
15 ***Trade Practices Act 1974***

16 A carrier licence held by an NBN corporation is subject to the  
17 condition set out in section 152CJC of the *Trade Practices Act*  
18 *1974*.

19 Note: Section 152CJC of the *Trade Practices Act 1974* deals with rules  
20 about the supply of services by NBN corporations.

21 **62E Condition of carrier licence set out in section ^11 of the**  
22 ***National Broadband Network Companies Act 2010***

23 A carrier licence held by an NBN corporation is subject to the  
24 condition set out in section ^11 of the *National Broadband*  
25 *Network Companies Act 2010*.

26 Note: Section ^11 of the *National Broadband Network Companies Act 2010*  
27 deals with rules about the supply of services by NBN corporations.

28 **4 After subsection 69(7C)**

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Amendments **Schedule 1**  
General amendments **Part 1**

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1           Insert:

2           (7D) Subsection (1) does not apply to the condition set out in  
3           section 152CJC of the *Trade Practices Act 1974*.

4           Note:       Section 152CJC of the *Trade Practices Act 1974* deals with rules  
5           about the supply of services by NBN corporations.

6           (7E) Subsection (1) does not apply to the condition set out in section  
7           ^11 of the *National Broadband Network Companies Act 2010*.

8           Note:       Section ^11 of the *National Broadband Network Companies Act 2010*  
9           deals with rules about the supply of services by NBN corporations.

10          (7F) Subsection (1) does not apply to a condition covered by section  
11          ^15 of the *National Broadband Network Companies Act 2010*.

12          Note:       Section ^15 of the *National Broadband Network Companies Act 2010*  
13          deals with rules about the supply of services by NBN corporations.

## 14   **5 After subsection 70(4C)**

15           Insert:

16           (4D) Subsection (1) does not apply to the condition set out in  
17           section 152CJC of the *Trade Practices Act 1974*.

18           Note:       Section 152CJC of the *Trade Practices Act 1974* deals with rules  
19           about the supply of services by NBN corporations.

20           (4E) Subsection (1) does not apply to the condition set out in section  
21           ^11 of the *National Broadband Network Companies Act 2010*.

22           Note:       Section ^11 of the *National Broadband Network Companies Act 2010*  
23           deals with rules about the supply of services by NBN corporations.

24           (4F) Subsection (1) does not apply to a condition covered by section  
25           ^15 of the *National Broadband Network Companies Act 2010*.

26           Note:       Section ^15 of the *National Broadband Network Companies Act 2010*  
27           deals with rules about the supply of services by NBN corporations.

## 28   **6 At the end of subsection 70(5)**

29           Add:

30           ; (g) the condition set out in section 152CJC of the *Trade*  
31           *Practices Act 1974*;

32           (h) the condition set out in section ^11 of the *National*  
33           *Broadband Network Companies Act 2010*;

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## Schedule 1 Amendments

### Part 1 General amendments

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- 1 (i) a condition covered by section ^15 of the *National*  
2 *Broadband Network Companies Act 2010*.

#### 3 **7 At the end of section 98**

4 Add:

- 5 (6) In addition to the rules mentioned in subsection (1), the rule set out  
6 in subsection 152CJD(2) of the *Trade Practices Act 1974* is a  
7 service provider rule for the purposes of this Act.

8 Note: Subsection 152CJD(2) of the *Trade Practices Act 1974* deals with  
9 rules about the supply of services by NBN corporations.

- 10 (7) In addition to the rules mentioned in subsection (1), the rule set out  
11 in subsection ^12(2) of the *National Broadband Network*  
12 *Companies Act 2010* is a service provider rule for the purposes of  
13 this Act.

14 Note: Subsection ^12(2) of the *National Broadband Network Companies Act*  
15 *2010* deals with rules about the supply of services by NBN  
16 corporations.

#### 17 **8 After subsection 102(6C)**

18 Insert:

- 19 (6D) Subsection (1) does not apply to the rule set out in subsection  
20 152CJD(2) of the *Trade Practices Act 1974*.

21 Note: Subsection 152CJD(2) of the *Trade Practices Act 1974* deals with  
22 rules about the supply of services by NBN corporations.

- 23 (6E) Subsection (1) does not apply to the rule set out in subsection  
24 ^12(2) of the *National Broadband Network Companies Act 2010*.

25 Note: Subsection ^12(2) of the *National Broadband Network Companies Act*  
26 *2010* deals with rules about the supply of services by NBN  
27 corporations.

#### 28 **9 After subsection 103(3C)**

29 Insert:

- 30 (3D) Subsection (1) does not apply to the rule set out in subsection  
31 152CJD(2) of the *Trade Practices Act 1974*.

32 Note: Subsection 152CJD(2) of the *Trade Practices Act 1974* deals with  
33 rules about the supply of services by NBN corporations.

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Amendments **Schedule 1**  
General amendments **Part 1**

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1 (3E) Subsection (1) does not apply to the rule set out in subsection  
2 ^12(2) of the *National Broadband Network Companies Act 2010*.

3 Note: Subsection ^12(2) of the *National Broadband Network Companies Act*  
4 *2010* deals with rules about the supply of services by NBN  
5 corporations.

## 6 **10 After subsection 103(4C)**

7 Insert:

8 (4D) The ACCC may issue a formal warning if a person contravenes the  
9 service provider rule set out in subsection 152CJD(2) of the *Trade*  
10 *Practices Act 1974*.

11 (4E) The ACCC may issue a formal warning if a person contravenes the  
12 service provider rule set out in subsection ^12(2) of the *National*  
13 *Broadband Network Companies Act 2010*.

## 14 **11 Subsection 384(1) (note)**

15 Omit “section 152AR”, substitute “sections 152AR and 152AXB”.

## 16 **12 At the end of subsection 564(3) (before the notes)**

17 Add:

18 ; or (l) the carrier licence condition set out in section 152CJC of the  
19 *Trade Practices Act 1974*; or

20 (m) the service provider rule set out in subsection 152CJD(2) of  
21 the *Trade Practices Act 1974*; or

22 (n) the carrier licence condition set out in section ^11 of the  
23 *National Broadband Network Companies Act 2010*; or

24 (o) the service provider rule set out in subsection ^12(2) of the  
25 *National Broadband Network Companies Act 2010*; or

26 (p) a carrier licence condition covered by section ^15 of the  
27 *National Broadband Network Companies Act 2010*.

## 28 **13 At the end of subsection 564(3) (after the notes)**

29 Add:

30 Note 11: Section 152CJC of the *Trade Practices Act 1974* deals with rules  
31 about the supply of services by NBN corporations.

32 Note 12: Subsection 152CJD(2) of the *Trade Practices Act 1974* deals with  
33 rules about the supply of services by NBN corporations.

34 Note 13: Section ^11 of the *National Broadband Network Companies Act 2010*  
35 deals with rules about the supply of services by NBN corporations.

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## Schedule 1 Amendments

### Part 1 General amendments

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1 Note 14: Subsection ^12(2) of the *National Broadband Network Companies Act*  
2 *2010* deals with rules about the supply of services by NBN  
3 corporations.

4 Note 15: Section ^15 of the *National Broadband Network Companies Act 2010*  
5 deals with rules about the supply of services by NBN corporations.

#### 6 **14 At the end of subsection 571(3) (before the notes)**

7 Add:

8 ; or (l) the carrier licence condition set out in section 152CJC of the  
9 *Trade Practices Act 1974*; or

10 (m) the service provider rule set out in subsection 152CJD(2) of  
11 the *Trade Practices Act 1974*; or

12 (n) the carrier licence condition set out in section ^11 of the  
13 *National Broadband Network Companies Act 2010*; or

14 (o) the service provider rule set out in subsection ^12(2) of the  
15 *National Broadband Network Companies Act 2010*; or

16 (p) a carrier licence condition covered by section ^15 of the  
17 *National Broadband Network Companies Act 2010*.

#### 18 **15 At the end of subsection 571(3) (after the notes)**

19 Add:

20 Note 11: Section 152CJC of the *Trade Practices Act 1974* deals with rules  
21 about the supply of services by NBN corporations.

22 Note 12: Subsection 152CJD(2) of the *Trade Practices Act 1974* deals with  
23 rules about the supply of services by NBN corporations.

24 Note 13: Section ^11 of the *National Broadband Network Companies Act 2010*  
25 deals with rules about the supply of services by NBN corporations.

26 Note 14: Subsection ^12(2) of the *National Broadband Network Companies Act*  
27 *2010* deals with rules about the supply of services by NBN  
28 corporations.

29 Note 15: Section ^15 of the *National Broadband Network Companies Act 2010*  
30 deals with rules about the supply of services by NBN corporations.

#### 31 **16 Clause 45 of Schedule 1 (definition of *active declared*** 32 ***service*)**

33 Repeal the definition, substitute:

34 ***active declared service*** means:

35 (a) an active declared service within the meaning of  
36 section 152AR of the *Trade Practices Act 1974*; or

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Amendments **Schedule 1**  
General amendments **Part 1**

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1 (b) a declared service (within the meaning of subsection  
2 152AL(8A) of the *Trade Practices Act 1974*) that an NBN  
3 corporation supplies (whether to itself or to other persons); or

4 (c) a declared service within the meaning of subsection  
5 152AL(8D) or (8E) of the *Trade Practices Act 1974*.

6 Note: Subsections 152AL(8A), (8D) and (8E) of the *Trade Practices Act*  
7 *1974* deal with services supplied by an NBN corporation.

## 8 ***Trade Practices Act 1974***

### 9 **17 Subsection 25(1)**

10 After “of the *Telecommunications Act 1997*”, insert “, the *National*  
11 *Broadband Network Companies Act 2010*, regulations under the  
12 *National Broadband Network Companies Act 2010*,”.

### 13 **18 After paragraph 151BU(4)(d)**

14 Insert:

15 (da) the operation of the *National Broadband Network Companies*  
16 *Act 2010* or regulations under that Act; or

### 17 **19 After subparagraph 151BUA(2)(b)(ii)**

18 Insert:

19 (ia) the *National Broadband Network Companies Act 2010*  
20 or regulations under that Act; or

### 21 **20 After subparagraph 151BUB(2)(b)(ii)**

22 Insert:

23 (ia) the *National Broadband Network Companies Act 2010*  
24 or regulations under that Act; or

### 25 **21 After subparagraph 151BUC(2)(b)(ii)**

26 Insert:

27 (ia) the *National Broadband Network Companies Act 2010*  
28 or regulations under that Act; or

### 29 **22 Section 152AA**

30 Omit:

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## Schedule 1 Amendments

### Part 1 General amendments

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1

2

- The Commission may declare carriage services and related services to be *declared services*.

3

Substitute:

4

5

6

7

- A carriage service, or a related service, supplied, or capable of being supplied, by a carrier (other than an NBN corporation) or a carriage service provider (other than an NBN corporation) is a *declared service* if:

8

9

- (a) the Commission has declared the service to be a *declared service*; or

10

11

12

13

- (b) the service is supplied by the carrier or carriage service provider, and a special access undertaking given by the carrier or carriage service provider is in operation in relation to the service.

14

15

16

- A carriage service, or a related service, supplied, or capable of being supplied, by an NBN corporation is a *declared service* if:

17

18

- (a) the Commission has declared the service to be a *declared service*; or

19

20

21

- (b) the NBN corporation has formulated a standard form of access agreement that relates to access to the service; or

22

23

24

25

- (c) the service is supplied by the NBN corporation, and a special access undertaking given by the NBN corporation is in operation in relation to the service.

26

## 23 Section 152AC

27

Insert:

28

29

*category A standard access obligation* has the meaning given by section 152AR.

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Amendments **Schedule 1**  
General amendments **Part 1**

---

1 **24 Section 152AC**

2 Insert:

3 *category B standard access obligation* has the meaning given by  
4 section 152AXB.

5 **25 Section 152AC**

6 Insert:

7 *NBN Co* has the same meaning as in the *National Broadband*  
8 *Network Companies Act 2010*.

9 **26 Section 152AC**

10 Insert:

11 *NBN corporation* has the same meaning as in the *National*  
12 *Broadband Network Companies Act 2010*.

13 **27 Section 152AC (definition of *standard access obligation*)**

14 Repeal the definition, substitute:

15 *standard access obligation* means:

- 16 (a) a category A standard access obligation; or  
17 (b) a category B standard access obligation.

18 **28 Subsection 152AG(2)**

19 After “which deals with the”, insert “category A”.

20 **29 Subsection 152AG(2)**

21 After “obligations”, insert “or section 152AXB (which deals with the  
22 category B standard access obligations)”.

23 **30 After subsection 152AL(3)**

24 Insert:

- 25 (3A) A declaration under subsection (3) does not apply to an eligible  
26 service to the extent to which the service is supplied, or is capable  
27 of being supplied, by an NBN corporation (whether to itself or to  
28 other persons).

29 Note: The heading to subsection 152AL(3) is altered by adding at the end “—*services not*  
30 *supplied by an NBN corporation*”.

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## Schedule 1 Amendments

### Part 1 General amendments

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1     **31 Subsections 152AL(4) and (5)**

2             Omit “this section”, substitute “subsection (3)”.

3     **32 Paragraph 152AL(7)(a)**

4             After “person”, insert “(other than an NBN corporation)”.

5     Note:     The heading to subsection 152AL(7) is altered by adding at the end “—*services not*  
6             *supplied by an NBN corporation*”.

7     **33 After subsection 152AL(8)**

8             Insert:

9                     *Declaration made after public inquiry—services supplied by an*  
10                     *NBN corporation*

11             (8A) The Commission may, by written instrument, declare that a  
12                 specified eligible service, to the extent to which the service is  
13                 supplied, or is capable of being supplied, by a specified NBN  
14                 corporation (whether to itself or to other persons), is a ***declared***  
15                 ***service*** if:

16                     (a) the Commission has held a public inquiry under Part 25 of  
17                     the *Telecommunications Act 1997* about a proposal to make  
18                     the declaration; and

19                     (b) the Commission has prepared a report about the inquiry  
20                     under section 505 of the *Telecommunications Act 1997*; and

21                     (c) the report was published during the 180-day period ending  
22                     when the declaration was made; and

23                     (d) the Commission is satisfied that the making of the declaration  
24                     will promote the long-term interests of end-users of carriage  
25                     services or of services provided by means of carriage  
26                     services.

27             Note:     Eligible services may be specified by name, by inclusion in a specified  
28                     class or in any other way.

29             (8B) A declaration under subsection (8A) has effect accordingly.

30             (8C) A copy of a declaration under section (8A) is to be published in the  
31             *Gazette*.

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Amendments **Schedule 1**  
General amendments **Part 1**

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1                    *Services supplied by an NBN corporation—standard form of*  
2                    *access agreement*

3                    (8D) If:

- 4                    (a) an eligible service is supplied, or is capable of being  
5                    supplied, by an NBN corporation (whether to itself or to  
6                    other persons); and  
7                    (b) the NBN corporation is a carrier or a carriage service  
8                    provider; and  
9                    (c) the NBN corporation has formulated a standard form of  
10                    access agreement that relates to access to the service; and  
11                    (d) the standard form of access agreement is available on the  
12                    NBN corporation’s website;

13                    the service, to the extent to which it is supplied, or is capable of  
14                    being supplied, by the NBN corporation (whether to itself or to  
15                    other persons) is a ***declared service***.

16                    *Services covered by special access undertakings—services*  
17                    *supplied by an NBN corporation*

18                    (8E) If:

- 19                    (a) an NBN corporation gives the Commission a special access  
20                    undertaking in relation to a service or a proposed service; and  
21                    (b) the undertaking is in operation; and  
22                    (c) the NBN corporation supplies the service or proposed service  
23                    (whether to itself or to other persons);

24                    the service supplied by the NBN corporation is a ***declared service***.  
25                    To avoid doubt, if the undertaking is subject to limitations, the  
26                    service supplied by the NBN corporation is a ***declared service*** only  
27                    to the extent to which the service falls within the scope of the  
28                    limitations.

29                    (8F) The Commission may declare a service under subsection (8A) even  
30                    if the service is, to any extent, covered by subsection (8E).

## 31                    **34 Subsections 152ALA(8) and (9)**

32                    After “and (c)”, insert “, or paragraphs 152AL(8A)(a), (b) and (c), as  
33                    the case requires,”.

## 34                    **35 Subsections 152AM(1) and (3)**

35                    After “152AL(3)(a)”, insert “or (8A)(a)”.

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## Schedule 1 Amendments

### Part 1 General amendments

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1 **36 Subsection 152AN(1)**

2 After “152AL(3)(a)”, insert “, or (8A)(a)”.

3 **37 Subsection 152AO(3)**

4 After “152AL(3)”, insert “or (8A)”.

5 **38 Paragraph 152AQ(2)(c)**

6 After “152AL(3)(a)”, insert “or (8A)(a)”.

7 **39 Before section 152AR**

8 Insert:

9 **Subdivision A—Category A standard access obligations**

10 **40 Subsection 152AR(1)**

11 Omit “*standard access obligations*”, substitute “*category A standard*  
12 *access obligations*”.

13 Note: The heading to section 152AR is altered by omitting “**Standard**” and substituting  
14 “**Category A standard**”.

15 **41 Subsection 152AR(2)**

16 Omit “carrier or a carriage service provider”, substitute “carrier (other  
17 than an NBN corporation) or a carriage service provider (other than an  
18 NBN corporation)”.

19 Note 1: The heading to section 152ASA is altered by omitting “**standard**” and substituting  
20 “**category A standard**”.

21 Note 2: The heading to section 152ATA is altered by omitting “**standard**” and substituting  
22 “**category A standard**”.

23 **42 Before section 152AY**

24 Insert:

25 **Subdivision B—Category B standard access obligations**

26 **152AXB Category B standard access obligations**

27 (1) This section sets out the *category B standard access obligations*.



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## Schedule 1 Amendments

### Part 1 General amendments

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- 1 the NBN corporation must, if requested to do so by a service  
2 provider:
- 3 (c) permit interconnection of those facilities with the facilities of  
4 the service provider for the purpose of enabling the service  
5 provider to be supplied with declared services in order that  
6 the service provider can provide carriage services and/or  
7 content services; and
- 8 (d) take all reasonable steps to ensure that, if a standard is in  
9 force under section 384 of the *Telecommunications Act 1997*,  
10 the interconnection complies with the standard.

#### 11 *Exceptions*

- 12 (5) This section does not impose an obligation on an NBN corporation  
13 if there are reasonable grounds to believe that:
- 14 (a) the access seeker would fail, to a material extent, to comply  
15 with the terms and conditions on which the NBN corporation  
16 complies, or on which the NBN corporation is reasonably  
17 likely to comply, with that obligation; or
- 18 (b) the access seeker would fail, in connection with that  
19 obligation, to protect:
- 20 (i) the integrity of a telecommunications network; or  
21 (ii) the safety of individuals working on, or using services  
22 supplied by means of, a telecommunications network or  
23 a facility.

#### 24 *Examples—paragraph (5)(a) grounds*

- 25 (6) Examples of grounds for believing as mentioned in  
26 paragraph (5)(a) include:
- 27 (a) evidence that the access seeker is not creditworthy; and  
28 (b) repeated failures by the access seeker to comply with the  
29 terms and conditions on which the same or similar access has  
30 been provided (whether or not by the NBN corporation).

#### 31 *Definition*

- 32 (7) In this section:
- 33 ***pre-request right***, in relation to a request made for the purposes of  
34 subsection (2), means a right under a contract that was in force at  
35 the time when the request was made.
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# EXPOSURE DRAFT

Amendments **Schedule 1**  
General amendments **Part 1**

---

1 **152AXC Declared services to be supplied on a non-discriminatory**  
2 **basis**

3 *No discrimination between access seekers*

- 4 (1) An NBN corporation must not, in complying with any of its  
5 category B standard access obligations, discriminate between  
6 access seekers.
- 7 (2) The rule in subsection (1) does not prevent discrimination on  
8 grounds relating to creditworthiness.
- 9 (3) The rule in subsection (1) does not prevent discrimination if:  
10 (a) the discrimination aids efficiency; and  
11 (b) all access seekers with like circumstances have an equal  
12 opportunity to benefit from the discrimination.
- 13 (4) The rule in subsection (1) does not prevent discrimination on  
14 grounds specified in a legislative instrument made by the  
15 Commission.
- 16 (5) The rule in subsection (1) does not prevent discrimination in  
17 circumstances specified in a legislative instrument made by the  
18 Commission.
- 19 (6) The Commission must not make an instrument under  
20 subsection (4) or (5) unless the Commission has first:  
21 (a) published the instrument on its website and invited people to  
22 make submissions to the Commission on the instrument; and  
23 (b) considered any submissions that were received within the  
24 time limit specified by the Commission when it published the  
25 instrument.

26 **Subdivision C—Compliance with standard access obligations**

27 **43 After paragraph 152AZ(a)**

28 Insert:

- 29 (aa) any rule in section 152AXC that is applicable to the carrier;  
30 and

31 **44 After paragraph 152BA(2)(a)**

32 Insert:

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## Schedule 1 Amendments

### Part 1 General amendments

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- 1 (aa) any rule in section 152AXC that is applicable to the provider;  
2 and

#### 3 **44A After subsection 152BB(1)**

4 Insert:

- 5 (1AA) If the Federal Court is satisfied that an NBN corporation has  
6 contravened the rule in subsection 152AXC(1), the Court may, on  
7 the application of:  
8 (a) the Commission; or  
9 (b) any person whose interests are affected by the contravention;  
10 make all or any of the following orders:  
11 (c) an order directing the NBN corporation to comply with that  
12 rule;  
13 (d) an order directing the NBN corporation to compensate any  
14 other person who had suffered loss or damage as a result of  
15 the contravention;  
16 (e) any other order that the Court thinks appropriate.

#### 17 **45 Section 152BBD**

18 Before “The Commission”, insert “(1)”.

#### 19 **46 Section 152BBD**

20 After “152BBC”, insert “in relation to any of the category A standard  
21 access obligations”.

#### 22 **47 At the end of section 152BBD**

23 Add:

- 24 (2) The Commission must, in exercising its powers under  
25 sections 152BBA and 152BBC in relation to any of the category B  
26 standard access obligations, have regard to the desirability of NBN  
27 corporations and access seekers agreeing on terms and conditions  
28 as mentioned in paragraph 152AY(2)(a) in a timely manner.

#### 29 **48 At the end of subsection 152BC(3)**

30 Add:

- 31 ; or (j) provide that any or all of the obligations referred to in  
32 section 152AXB are not applicable to a carrier (other than

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- 1 NBN Co) or carriage service provider (other than NBN Co),  
2 either:  
3 (i) unconditionally; or  
4 (ii) subject to such conditions or limitations as are specified  
5 in the determination; or  
6 (k) restrict or limit the application to a carrier (other than NBN  
7 Co) or carriage service provider (other than NBN Co) of any  
8 or all of the obligations referred to in section 152AXB.

9 **49 After subsection 152BC(4)**

10 Insert:

- 11 (4A) An access determination may be expressed to be an NBN-specific  
12 access determination.
- 13 (4B) An access determination does not apply in relation to access to a  
14 declared service to the extent to which the service is supplied, or is  
15 capable of being supplied, by an NBN corporation unless the  
16 access determination is expressed to be an NBN-specific access  
17 determination.
- 18 (4C) If an access determination is expressed to be an NBN-specific  
19 access determination, the access determination does not apply in  
20 relation to access to a declared service to the extent to which the  
21 service is supplied, or is capable of being supplied, by a person  
22 other than an NBN corporation.

23 **50 At the end of paragraphs 152BCB(1)(a) and (b)**

24 Add “or 152AXB”.

25 **51 After subsection 152BCB(4)**

26 Insert:

- 27 (4A) The Commission must not make an access determination that:  
28 (a) relates to any or all of the category B standard access  
29 obligations applicable to an NBN corporation; and  
30 (b) has the effect (whether direct or indirect) of discriminating  
31 between access seekers.
- 32 (4B) Subsection (4A) does not prevent discrimination on grounds  
33 relating to creditworthiness.

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- 1 (4C) Subsection (4A) does not prevent discrimination if:  
2 (a) the discrimination aids efficiency; and  
3 (b) all access seekers with like circumstances have an equal  
4 opportunity to benefit from the discrimination.

- 5 (4D) Subsection (4A) does not prevent discrimination on grounds  
6 specified under subsection 152AXC(4).

- 7 (4E) Subsection (4A) does not prevent discrimination in circumstances  
8 specified under subsection 152AXC(5).

#### 9 **52 Subsection 152BCB(5)**

10 Omit “or (3)”, substitute “, (3) or (4A)”.

#### 11 **53 Before subsection 152BCF(4)**

12 Insert:

- 13 (3B) If the declared service is covered by subsection 152AL(8D), the  
14 specified day must not be earlier than the day on which the service  
15 became a declared service under that subsection.

- 16 (3C) If the declared service is covered by subsection 152AL(8E), the  
17 specified day must not be earlier than the day on which the service  
18 became a declared service under that subsection.

#### 19 **54 At the end of subsection 152BCK(1)**

20 Add “, and the declared service to which the access determination  
21 relates is not covered by subsection 152AL(8D)”.

#### 22 **55 At the end of subsection 152BD(3)**

23 Add:

- 24 ; or (j) provide that any or all of the obligations referred to in  
25 section 152AXB are not applicable to a carrier (other than  
26 NBN Co) or carriage service provider (other than NBN Co),  
27 either:  
28 (i) unconditionally; or  
29 (ii) subject to such conditions or limitations as are specified  
30 in the determination; or  
31 (k) restrict or limit the application to a carrier (other than NBN  
32 Co) or carriage service provider (other than NBN Co) of any  
33 or all of the obligations referred to in section 152AXB.
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1 **56 After subsection 152BD(4)**

2 Insert:

3 (4A) Binding rules of conduct may be expressed to be NBN-specific  
4 binding rules of conduct.

5 (4B) Binding rules of conduct do not apply in relation to access to a  
6 declared service to the extent to which the service is supplied, or is  
7 capable of being supplied, by an NBN corporation unless the  
8 binding rules of conduct are expressed to be NBN-specific binding  
9 rules of conduct.

10 (4C) If binding rules of conduct are expressed to be NBN-specific  
11 binding rules of conduct, the binding rules of conduct do not apply  
12 in relation to access to a declared service to the extent to which the  
13 service is supplied, or is capable of being supplied, by a person  
14 other than an NBN corporation.

15 **57 At the end of paragraphs 152BDA(1)(a) and (b)**

16 Add “or 152AXB”.

17 **58 After subsection 152BDA(4)**

18 Insert:

19 (4A) The Commission must not make binding rules of conduct that:

20 (a) relate to any or all of the category B standard access  
21 obligations applicable to an NBN corporation; and

22 (b) have the effect (whether direct or indirect) of discriminating  
23 between access seekers.

24 (4B) Subsection (4A) does not prevent discrimination on grounds  
25 relating to creditworthiness.

26 (4C) Subsection (4A) does not prevent discrimination if:

27 (a) the discrimination aids efficiency; and

28 (b) all access seekers with like circumstances have an equal  
29 opportunity to benefit from the discrimination.

30 (4D) Subsection (4A) does not prevent discrimination on grounds  
31 specified under subsection 152AXC(4).

32 (4E) Subsection (4A) does not prevent discrimination in circumstances  
33 specified under subsection 152AXC(5).

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1       **59 Subsection 152BDA(5)**

2               Omit “or (3)”, substitute “, (3) or (4A)”.

3       **60 After section 152BEB**

4               Insert:

5       **152BEBA Publication by NBN corporation of statement about the**  
6               **differences between an access agreement and a standard**  
7               **form of access agreement**

8               *Access agreement*

9               (1) If:

- 10               (a) an access agreement is covered by subsection 152BE(1); and  
11               (b) the carrier or carriage service provider who supplies, or  
12               proposes to supply, the declared service is an NBN  
13               corporation; and  
14               (c) immediately before the access agreement was entered into, a  
15               standard form of access agreement relating to access to the  
16               service was available on the NBN corporation’s website; and  
17               (d) the terms and conditions set out in the access agreement are  
18               not the same as the terms and conditions set out in the  
19               standard form of access agreement;

20               the NBN corporation must, within 7 days after the day on which  
21               the access agreement was entered into, publish on the NBN  
22               corporation’s website a statement:

- 23               (e) identifying the parties to the access agreement; and  
24               (f) describing the differences between the terms and conditions  
25               set out in the access agreement and the terms and conditions  
26               set out in the standard form of access agreement; and  
27               (g) if any or all of those differences are authorised by subsection  
28               152AXC(3) (which deals with discrimination that aids  
29               efficiency):  
30               (i) identifying the differences that are authorised by that  
31               subsection; and  
32               (ii) describing what access seekers must do in order to have  
33               the like circumstances mentioned in that subsection; and  
34               (h) if any or all of those differences are authorised by subsection  
35               152AXC(4) (which deals with discrimination on grounds
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- 1 specified in a legislative instrument made by the  
2 Commission)—identifying the differences that are authorised  
3 by that subsection; and  
4 (i) if any or all of those differences are authorised by subsection  
5 152AXC(5) (which deals with discrimination in  
6 circumstances specified in a legislative instrument made by  
7 the Commission)—identifying the differences that are  
8 authorised by that subsection.

9 *Variation agreement*

- 10 (2) If:
- 11 (a) a variation agreement is entered into after the commencement  
12 of this section; and  
13 (b) the carrier or carriage service provider who supplies, or  
14 proposes to supply, the service to which the relevant access  
15 agreement relates is an NBN corporation; and  
16 (c) immediately before the variation agreement was entered into,  
17 a standard form of access agreement relating to access to the  
18 service was available on the NBN corporation's website; and  
19 (d) the terms and conditions set out in the relevant access  
20 agreement (as varied by the variation agreement) are not the  
21 same as the terms and conditions set out in the standard form  
22 of access agreement;
- 23 the NBN corporation must, within 7 days after the day on which  
24 the variation agreement was entered into, publish on the NBN  
25 corporation's website a statement:
- 26 (e) identifying the parties to the relevant access agreement (as  
27 varied by the variation agreement); and  
28 (f) describing the differences between the terms and conditions  
29 set out in the relevant access agreement (as varied by the  
30 variation agreement) and the terms and conditions set out in  
31 the standard form of access agreement; and  
32 (g) if any or all of those differences are authorised by subsection  
33 152AXC(3) (which deals with discrimination that aids  
34 efficiency):  
35 (i) identifying the differences that are authorised by that  
36 subsection; and  
37 (ii) describing what access seekers must do in order to have  
38 the like circumstances mentioned in that subsection; and

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- 1 (h) if any or all of those differences are authorised by subsection  
2 152AXC(4) (which deals with discrimination on grounds  
3 specified in a legislative instrument made by the  
4 Commission)—identifying the differences that are authorised  
5 by that subsection; and  
6 (i) if any or all of those differences are authorised by subsection  
7 152AXC(5) (which deals with discrimination in  
8 circumstances specified in a legislative instrument made by  
9 the Commission)—identifying the differences that are  
10 authorised by that subsection.

11 **152BEBB Publication by NBN corporation of statement about the**  
12 **differences between an access agreement and a special**  
13 **access undertaking**

14 *Access agreement*

- 15 (1) If:  
16 (a) an access agreement is covered by subsection 152BE(1); and  
17 (b) the carrier or carriage service provider who supplies, or  
18 proposes to supply, the declared service is an NBN  
19 corporation; and  
20 (c) immediately before the access agreement was entered into, a  
21 special access undertaking that:  
22 (i) relates to access to the service; and  
23 (ii) was given by the NBN corporation;  
24 was in operation; and  
25 (d) the terms and conditions set out in the access agreement are  
26 not the same as the terms and conditions set out in the special  
27 access undertaking;  
28 the NBN corporation must, within 7 days after the day on which  
29 the access agreement was entered into, publish on the NBN  
30 corporation's website a statement:  
31 (e) identifying the parties to the access agreement; and  
32 (f) describing the differences between the terms and conditions  
33 set out in the access agreement and the terms and conditions  
34 set out in the special access undertaking; and  
35 (g) if any or all of those differences are authorised by subsection  
36 152AXC(3) (which deals with discrimination that aids  
37 efficiency):
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- 1 (i) identifying the differences that are authorised by that  
2 subsection; and  
3 (ii) describing what access seekers must do in order to have  
4 the like circumstances mentioned in that subsection; and  
5 (h) if any or all of those differences are authorised by subsection  
6 152AXC(4) (which deals with discrimination on grounds  
7 specified in a legislative instrument made by the  
8 Commission)—identifying the differences that are authorised  
9 by that subsection; and  
10 (i) if any or all of those differences are authorised by subsection  
11 152AXC(5) (which deals with discrimination in  
12 circumstances specified in a legislative instrument made by  
13 the Commission)—identifying the differences that are  
14 authorised by that subsection.

## *Variation agreement*

- 15  
16 (2) If:  
17 (a) a variation agreement is entered into after the commencement  
18 of this section; and  
19 (b) the carrier or carriage service provider who supplies, or  
20 proposes to supply, the service to which the relevant access  
21 agreement relates is an NBN corporation; and  
22 (c) immediately before the variation agreement was entered into,  
23 a special access undertaking given that:  
24 (i) relates to access to the service; and  
25 (ii) was given by the NBN corporation;  
26 was in operation; and  
27 (d) the terms and conditions set out in the relevant access  
28 agreement (as varied by the variation agreement) are not the  
29 same as the terms and conditions set out in the special access  
30 undertaking;  
31 the NBN corporation must, within 7 days after the day on which  
32 the variation agreement was entered into, publish on the NBN  
33 corporation's website a statement:  
34 (e) identifying the parties to the relevant access agreement (as  
35 varied by the variation agreement); and  
36 (f) describing the differences between the terms and conditions  
37 set out in the relevant access agreement (as varied by the

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- 1 variation agreement) and the terms and conditions set out in  
2 the special access undertaking; and
- 3 (g) if any or all of those differences are authorised by subsection  
4 152AXC(3) (which deals with discrimination that aids  
5 efficiency):
- 6 (i) identifying the differences that are authorised by that  
7 subsection; and
- 8 (ii) describing what access seekers must do in order to have  
9 the like circumstances mentioned in that subsection; and
- 10 (h) if any or all of those differences are authorised by subsection  
11 152AXC(4) (which deals with discrimination on grounds  
12 specified in a legislative instrument made by the  
13 Commission)—identifying the differences that are authorised  
14 by that subsection; and
- 15 (i) if any or all of those differences are authorised by subsection  
16 152AXC(5) (which deals with discrimination in  
17 circumstances specified in a legislative instrument made by  
18 the Commission)—identifying the differences that are  
19 authorised by that subsection.

#### 20 **152BEBC Publication by NBN corporation of statement about the** 21 **differences between an access agreement and an access** 22 **determination**

##### 23 *Access agreement*

- 24 (1) If:
- 25 (a) an access agreement is covered by subsection 152BE(1); and
- 26 (b) the carrier or carriage service provider who supplies, or  
27 proposes to supply, the declared service is an NBN  
28 corporation; and
- 29 (c) immediately before the access agreement was entered into, an  
30 access determination relating to access to the service was in  
31 force; and
- 32 (d) the terms and conditions set out in the access agreement are  
33 not the same as the terms and conditions set out in the access  
34 determination;
- 35 the NBN corporation must, within 7 days after the day on which  
36 the access agreement was entered into, publish on the NBN  
37 corporation's website a statement:

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- 1 (e) identifying the parties to the access agreement; and  
2 (f) describing the differences between the terms and conditions  
3 set out in the access agreement and the terms and conditions  
4 set out in the access determination; and  
5 (g) if any or all of those differences are authorised by subsection  
6 152AXC(3) (which deal with discrimination that aids  
7 efficiency):  
8 (i) identifying the differences that are authorised by that  
9 subsection; and  
10 (ii) describing what access seekers must do in order to have  
11 the like circumstances mentioned in that subsection; and  
12 (h) if any or all of those differences are authorised by subsection  
13 152AXC(4) (which deals with discrimination on grounds  
14 specified in a legislative instrument made by the  
15 Commission)—identifying the differences that are authorised  
16 by that subsection; and  
17 (i) if any or all of those differences are authorised by subsection  
18 152AXC(5) (which deals with discrimination in  
19 circumstances specified in a legislative instrument made by  
20 the Commission)—identifying the differences that are  
21 authorised by that subsection.

## 22 *Variation agreement*

- 23 (2) If:  
24 (a) a variation agreement is entered into after the commencement  
25 of this section; and  
26 (b) the carrier or carriage service provider who supplies, or  
27 proposes to supply, the service to which the relevant access  
28 agreement relates is an NBN corporation; and  
29 (c) immediately before the variation agreement was entered into,  
30 an access determination relating to access to the service was  
31 in force; and  
32 (d) the terms and conditions set out in the relevant access  
33 agreement (as varied by the variation agreement) are not the  
34 same as the terms and conditions set out in the access  
35 determination;  
36 the NBN corporation must, within 7 days after the day on which  
37 the variation agreement was entered into, publish on the NBN  
38 corporation's website a statement:

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- 1 (e) identifying the parties to the relevant access agreement (as  
2 varied by the variation agreement); and
- 3 (f) describing the differences between the terms and conditions  
4 set out in the relevant access agreement (as varied by the  
5 variation agreement) and the terms and conditions set out in  
6 the access determination; and
- 7 (g) if any or all of those differences are authorised by subsection  
8 152AXC(3) (which deals with discrimination that aids  
9 efficiency):
- 10 (i) identifying the differences that are authorised by that  
11 subsection; and
- 12 (ii) describing what access seekers must do in order to have  
13 the like circumstances mentioned in that subsection; and
- 14 (h) if any or all of those differences are authorised by subsection  
15 152AXC(4) (which deals with discrimination on grounds  
16 specified in a legislative instrument made by the  
17 Commission)—identifying the differences that are authorised  
18 by that subsection; and
- 19 (i) if any or all of those differences are authorised by subsection  
20 152AXC(5) (which deal with discrimination in circumstances  
21 specified in a legislative instrument made by the  
22 Commission)—identifying the differences that are authorised  
23 by that subsection.

#### 24 **61 Section 152BEC**

25 Omit “and 152BEB”, substitute “, 152BEB, 152BEBA, 152BEBB and  
26 152BEBC”.

#### 27 **62 Subsection 152BED(2)**

28 Omit “and 152BEB”, substitute “, 152BEB, 152BEBA, 152BEBB and  
29 152BEBC”.

#### 30 **63 Subsection 152CBA(1)**

31 Repeal the subsection, substitute:

##### 32 *Scope*

33 (1) This section applies to:

- 34 (a) a person (other than an NBN corporation) who is, or expects  
35 to be, a carrier or a carriage service provider supplying:
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- 1 (i) a listed carriage service (within the meaning of the  
2 *Telecommunications Act 1997*); or  
3 (ii) a service that facilitates the supply of a listed carriage  
4 service (within the meaning of that Act);  
5 whether to itself or to other persons, so long as the service is  
6 not a declared service; or  
7 (b) a person who is an NBN corporation and who is, or expects  
8 to be, a carrier or carriage service provider supplying or  
9 capable of supplying:  
10 (i) a listed carriage service (within the meaning of the  
11 *Telecommunications Act 1997*); or  
12 (ii) a service that facilitates the supply of a listed carriage  
13 service (within the meaning of that Act);  
14 whether to itself or to other persons, so long as:  
15 (iii) the service is not a declared service under subsection  
16 152AL(8A); and  
17 (iv) there is no access determination that applies in relation  
18 to access to the service.

## 64 Subsection 152CBA(3)

19 Omit “The undertaking”, substitute “If paragraph (1)(a) applies, the  
20 undertaking”.

## 65 After subsection 152CBA(3)

21 Insert:

- 22 (3A) If paragraph (1)(b) applies, the undertaking must state that, in the  
23 event that the person supplies, or becomes or capable of supplying,  
24 the service (whether to itself or to other persons), the person:  
25 (a) agrees to be bound by the obligations referred to in  
26 section 152AXB, to the extent that those obligations would  
27 apply to the person in relation to the service if the service  
28 were treated as a declared service; and  
29 (b) undertakes to comply with the terms and conditions specified  
30 in the undertaking in relation to the obligations referred to in  
31 section 152AXB.

32 Note: The undertaking need not specify all terms and conditions—see  
33 subparagraph 152AY(2)(b)(ii).

## 66 Subsection 152CBA(11)

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1 Omit “paragraph (1)(b)”, substitute “subparagraphs (1)(a)(ii) and  
2 (b)(ii)”.

#### 3 **67 Paragraphs 152CBD(2)(a) and (b)**

4 Repeal the paragraphs, substitute:

- 5 (a) if paragraph 152CBA(1)(a) applies—the Commission is  
6 satisfied that:
- 7 (i) the terms and conditions referred to in paragraph  
8 152CBA(3)(b) would be consistent with the obligations  
9 referred to in paragraph 152CBA(3)(a); and
  - 10 (ii) those terms and conditions are reasonable; and
- 11 (b) if paragraph 152CBA(1)(b) applies—the Commission is  
12 satisfied that:
- 13 (i) the terms and conditions referred to in subsection  
14 152CBA(3A) would be consistent with the obligations  
15 referred to in section 152AXB; and
  - 16 (ii) those terms and conditions are reasonable; and

#### 17 **68 Paragraph 152CBF(2)(b)**

18 After “even if”, insert “, in the case of an undertaking covered by  
19 subsection 152CBA(3),”.

#### 20 **69 Subsection 152CBI(3)**

21 Omit “subsection 152AL(7)”, substitute “subsections 152AL(7) and  
22 (8E)”.

#### 23 **70 After Division 6 of Part XIC**

24 Insert:

### 25 **Division 6A—Supply of services by NBN corporations**

#### 26 **152CJA Supply of services by NBN corporations**

- 27 (1) An NBN corporation must not supply an eligible service (within  
28 the meaning of section 152AL) to another person unless:
- 29 (a) the service is a declared service under subsection  
30 152AL(8A); or
  - 31 (b) both:

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- 1 (i) the NBN corporation has formulated a standard form of  
2 access agreement that relates to access to the service;  
3 and  
4 (ii) the standard form of access agreement is available on  
5 the NBN corporation's website; or  
6 (c) both:  
7 (i) a special access undertaking given by the NBN  
8 corporation is in operation; and  
9 (ii) the undertaking relates to the service.
- 10 (2) If:  
11 (a) as the result of a request made by an access seeker under  
12 section 152AXB, an NBN corporation is subject to a  
13 category B standard access obligation in relation to a  
14 declared service; and  
15 (b) the NBN corporation has formulated a standard form of  
16 access agreement that relates to access to the service; and  
17 (c) the standard form of access agreement is available on the  
18 NBN corporation's website; and  
19 (d) the access seeker requests the NBN corporation to enter into  
20 an access agreement that:  
21 (i) relates to access to the service; and  
22 (ii) sets out terms and conditions that are the same as the  
23 terms and conditions set out in the standard form of  
24 access agreement;  
25 the NBN corporation must comply with the request mentioned in  
26 paragraph (d).
- 27 (3) If an access seeker does not make a request under paragraph (2)(d),  
28 this Part does not, by implication, prevent the NBN corporation  
29 and the access seeker from entering into an access agreement that  
30 sets out terms and conditions that are not the same as the terms and  
31 conditions set out in the standard form of access agreement.

## 152CJB Mandatory NBN services

### *Scope*

- 34 (1) This section applies if a condition of a carrier licence held by an  
35 NBN corporation requires the NBN corporation to comply with  
36 this section in relation to a specified eligible service (within the
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1 meaning of section 152AL) that is supplied, or is capable of being  
2 supplied, by the NBN corporation (whether to itself or other  
3 persons).

4 Note 1: See section 15 of the *National Broadband Network Companies Act*  
5 *2010*.

6 Note 2: For declaration of carrier licence conditions, see section 63 of the  
7 *Telecommunications Act 1997*.

#### 8 *Compliance by NBN corporation*

9 (2) The NBN corporation must, within 90 days after the carrier licence  
10 condition comes into force:

11 (a) both:

12 (i) formulate a standard form of access agreement that  
13 relates to access to the service; and

14 (ii) make the standard form of access agreement available  
15 on the NBN corporation's website; or

16 (b) give the Commission a special access undertaking in  
17 connection with the provision of access to the service.

18 (3) If:

19 (a) the NBN corporation, in accordance with paragraph (2)(b),  
20 gives the Commission a special access undertaking in  
21 connection with the provision of access to the service; and

22 (b) the Commission rejects the undertaking;

23 the NBN corporation must, within 90 days after the rejection of the  
24 undertaking:

25 (c) formulate a standard form of access agreement that relates to  
26 access to the service; and

27 (d) make the standard form of access agreement available on the  
28 NBN corporation's website.

29 (4) If the NBN corporation, in accordance with

30 (a) subparagraph (2)(a)(ii); or

31 (b) paragraph (3)(d);

32 makes a standard form of access agreement available on the NBN  
33 corporation's website, the NBN corporation must ensure that a  
34 standard form of access agreement that:

35 (c) relates to access to the service; and

36 (d) is formulated by the NBN corporation;

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1 is available on the NBN corporation's website at all times during  
2 the remainder of the period when the carrier licence condition is in  
3 force.

4 (5) If:

5 (a) the NBN corporation, in accordance with paragraph (2)(b),  
6 gives the Commission a special access undertaking in  
7 connection with the provision of access to the service; and

8 (b) the Commission accepts the undertaking; and

9 (c) the undertaking subsequently ceases to be in operation;

10 the NBN corporation must ensure that a standard form of access  
11 agreement that:

12 (d) relates to access to the service; and

13 (e) is formulated by the NBN corporation;

14 is available on the NBN corporation's website at all times during  
15 the remainder of the period when the carrier licence condition is in  
16 force.

## 17 **152CJC Carrier licence condition**

18 A carrier licence held by an NBN corporation is subject to a  
19 condition that the NBN corporation must comply with any rules in  
20 section 152CJA that are applicable to the NBN corporation.

21 Note: See also section 62D of the *Telecommunications Act 1997*.

## 22 **152CJD Service provider rule**

23 (1) In addition to the rules mentioned in section 98 of the  
24 *Telecommunications Act 1997*, the rule set out in subsection (2) of  
25 this section is a service provider rule for the purposes of that Act.

26 (2) If an NBN corporation is a service provider, the NBN corporation  
27 must comply with any rules in section 152CJA that are applicable  
28 to the NBN corporation.

## 29 **152CJE Judicial enforcement of obligations**

30 (1) If the Federal Court is satisfied that an NBN corporation has  
31 contravened an obligation imposed by section 152CJA or 152CJB,  
32 the Court may, on the application of:

33 (a) the Commission; or

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 1 General amendments

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- 1 (b) any person whose interests are affected by the contravention;  
2 make all or any of the following orders:  
3 (c) an order directing the NBN corporation to comply with the  
4 obligation;  
5 (d) an order directing the NBN corporation to compensate any  
6 other person who has suffered loss or damage as a result of  
7 the contravention;  
8 (e) any other order that the Court thinks appropriate.
- 9 (2) The Federal Court may discharge or vary an order granted under  
10 this section.

#### 11 **152CJF Standard form of access agreement**

12 For the purposes of this Part, if, at a particular time, a service is not  
13 a declared service, a standard form of access agreement relating to  
14 access to the service may be formulated by an NBN corporation at  
15 that time on the assumption that the service is a declared service.

#### 16 **152CJG When NBN corporation is not capable of supplying a** 17 **carriage service**

- 18 (1) This section applies if a condition of a carrier licence held by an  
19 NBN corporation prohibits the NBN corporation from supplying a  
20 specified carriage service to carriers or service providers.

21 Note: See subsection ^15(3) of the *National Broadband Network Companies*  
22 *Act 2010*.

- 23 (2) For this purposes of:  
24 (a) this Part; and  
25 (b) subsections ^15(1) and (2) of the *National Broadband*  
26 *Network Companies Act 2010*;  
27 the NBN corporation is taken not to be capable of supplying the  
28 service.

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

#### 30 **71 Subsection 152CK(4)**

31 After “special access undertaking”, insert “given by a person other than  
32 an NBN corporation”.

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Amendments **Schedule 1**  
General amendments **Part 1**

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1 **72 At the end of section 152CK**

2 Add:

3 (5) For the purposes of this section, if a special access undertaking  
4 given by an NBN corporation is in operation, assume that  
5 subsection 152AL(8E) has effect in relation to the undertaking as if  
6 paragraph 152AL(8E)(c) had not been enacted.

7 **73 After paragraph 155(9)(b)**

8 Insert:

9 (ba) the *National Broadband Network Companies Act 2010*; or  
10

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## Schedule 1 Amendments

**Part 2** Amendments contingent on the commencement of Part 7 of Schedule 1 to the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010

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1 **Part 2—Amendments contingent on the**  
2 **commencement of Part 7 of Schedule 1 to**  
3 **the Telecommunications Legislation**  
4 **Amendment (Competition and Consumer**  
5 **Safeguards) Act 2010**

6 *Telecommunications Act 1997*

7 **74 At the end of paragraph 572E(4)(b)**

8 Add:

- 9 or (xiv) the carrier licence condition set out in section 152CJC  
10 of the *Trade Practices Act 1974*; or  
11 (xv) the service provider rule set out in subsection  
12 152CJD(2) of the *Trade Practices Act 1974*; or  
13 (xvi) the carrier licence condition set out in section ^11 of the  
14 *National Broadband Network Companies Act 2010*; or  
15 (xvii) the service provider rule set out in subsection ^12(2) of  
16 the *National Broadband Network Companies Act 2010*;  
17 or  
18 (xviii) a carrier licence condition covered by section ^15 of the  
19 *National Broadband Network Companies Act 2010*;