

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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*(As read a first time)*

**AUSTRALIAN TELECOMMUNICATIONS CORPORATION BILL  
1989**

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1987-88-89

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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Presented and read a first time, 13 April 1989

*(Minister for Telecommunications and Aviation Support)*

**A BILL**

FOR

**An Act relating to the Australian Telecommunications Corporation**

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

**PART 1—PRELIMINARY**

**Short title**

- 5     **1.** This Act may be cited as the *Australian Telecommunications Corporation Act 1989*.

**Commencement**

- 10     **2. (1)** Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.
- (2)** If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which it receives the Royal Assent, it commences on the first day after the end of the period.

**Interpretation—definitions**

3. In this Act, unless the contrary intention appears:

“Australia”, when used in a geographical sense, includes the external Territories to which this Act extends;

“authorised auditor” means:

(a) the Auditor-General; or

(b) a person authorised, in writing, by the Auditor-General;

“Board” means the Board of Directors of Telecom;

“borrow” includes raise money or credit;

“Chairperson” means the Chairperson of the Board;

“community service obligations” means obligations under section 27;

“convention” means a convention to which Australia is a party or an agreement or arrangement between Australia and a foreign country;

“Deputy Chairperson” means the Deputy Chairperson of the Board;

“director” means a director of the Board and includes the Chairperson, the Deputy Chairperson and the Managing Director;

“government director” means a director who was an officer of the Australian Public Service at the time of his or her appointment;

“Managing Director” means the Managing Director of Telecom;

“subsidiary” has the meaning given by section 6;

“Telecom” means the Australian Telecommunications Corporation;

“telecommunications service” means a service for carrying communications by means of guided or unguided electromagnetic energy or both.

**Interpretation—expressions used in Telecommunications Act**

4 Unless the contrary intention appears, expressions used in this Act, and in the *Telecommunications Act 1989*, have the same respective meanings as in that Act.

**Interpretation—provisions authorising Telecom to enter on land etc.**

5. Where, under a provision of this Act, Telecom is empowered to enter on, and inspect, occupy or do anything else on, over or under land, the provision also empowers an employee of Telecom, a person acting for Telecom under a contract, and an employee of such a person, to do that thing.

**Interpretation—meaning of subsidiary**

6. For the purposes of this Act, the question whether a body corporate is a subsidiary of another body corporate shall be determined in the same manner as the question whether a corporation is a subsidiary of another corporation is determined under the *Companies Act 1981*.

**Extraterritorial operation of Act**

7. This Act applies both within and outside Australia.

**Extension of Act to certain external Territories**

8. This Act extends to the external Territories (other than Norfolk Island, Christmas Island and Cocos (Keeling) Islands).

**Extension of Act to adjacent areas**

5       9. (1) Subject to subsection (2), this Act applies in relation to the adjacent areas of the States and Territories as if references to Australia (when used in a geographical sense) included references to the adjacent areas.

10       (2) The application of this Act in relation to the adjacent areas of the States and Territories extends only in relation to acts, matters and things touching, concerning, arising out of or connected with the exploration of, or the exploitation of the resources of, the continental shelf of Australia.

15       (3) Without limiting subsection (2), the application of this Act in relation to the adjacent areas of the States and Territories because of subsection (1) extends in relation to all acts done by or in relation to, and all matters, circumstances and things affecting, any person who is in the adjacent area of a State or Territory for a reason touching, concerning, arising out of or connected with the exploration of, or the exploitation of the resources of, the continental shelf of Australia.

20       (4) In this section:

“adjacent area”, in relation to a State or Territory, has the same meaning as in the *Petroleum (Submerged Lands) Act 1967*;

“Territory” does not include Norfolk Island, Christmas Island or Cocos (Keeling) Islands.

25       **Act binds the Crown**

10. This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

**Act subject to Radiocommunications Act and Telecommunications Act**

30       11 This Act has effect subject to the *Radiocommunications Act 1983* and the *Telecommunications Act 1989*.

**PART 2—TELECOM AND ITS BOARD**

***Division 1—Constitution, functions and powers of Telecom***

**Telecom continues in existence**

35       12. The Australian Telecommunications Corporation continues in existence.

**Telecom continues to be body corporate etc.**

**13. The Australian Telecommunications Corporation:**

- (a) continues to be a body corporate;
- (b) shall have a seal; and
- (c) may sue and be sued in its corporate name.

5

**Functions—the principal function**

**14.** The principal function of Telecom is to supply telecommunications services within Australia.

**Functions—subsidiary function**

**15.** A subsidiary function of Telecom is to carry on, outside Australia, any business or activity relating to telecommunications. 10

**Functions—incidental businesses and activities**

**16. (1)** The functions of Telecom include the carrying on, within or outside Australia, of any business or activity that is incidental to:

- (a) the supplying of telecommunications services under section 14; or 15
- (b) the carrying on of any business or activity under section 15.

**(2)** Without limiting subsection (1), the functions of Telecom include the carrying on, within or outside Australia, of any business or activity that is capable of being conveniently carried on:

- (a) by the use of resources that are not immediately required in carrying out Telecom's principal or subsidiary function; or 20
- (b) in the course of:
  - (i) supplying telecommunications services under section 14; or
  - (ii) carrying on any business or activity under section 15.

**General powers**

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**17. (1)** Telecom has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

**(2)** Subsection (1) is not limited by any other provision of this or any other Act that confers a power on Telecom.

**Specific telecommunications and telecommunications related powers**

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**18.** Telecom has power, for or in connection with the performance of its functions:

- (a) to supply value added services;
- (b) to publish telecommunications directories, and to supply directory information services; 35
- (c) to supply, install and maintain customer equipment and customer lines;
- (d) to supply telecommunications services for Norfolk Island, Christmas Island, Cocos (Keeling) Islands and foreign countries; and



- (e) to conduct research into, and develop, manufacture and market, facilities and software.

**Other powers**

- 5 **19.** (1) Telecom has, for or in connection with the performance of its functions, all the powers of a natural person, and may, for example:
- (a) enter into contracts;
  - (b) acquire, hold and dispose of real and personal property;
  - (c) appoint agents and attorneys, and act as agent for other persons;
  - (d) form, and participate in the formation of, companies;
  - 10 (e) subscribe for and purchase shares in, and debentures and other securities of, companies;
  - (f) participate in partnerships, trusts, unincorporated joint ventures and other arrangements for the sharing of profits;
  - (g) issue debentures and grant floating charges on its property;
  - 15 (h) make charges and fix terms and conditions for work done, or services, goods and information supplied, by it;
  - (j) engage consultants;
  - (k) accept gifts, grants, bequests and devises made to it, and act as trustee of money and other property vested in it on trust;
  - 20 (m) offer and pay rewards;
  - (n) deal in futures and other contracts;
  - (p) provide consultancy and project management services; and
  - (q) do such other things as it is authorised to do by or under this Act or any other law of the Commonwealth or any law of a State or
  - 25 Territory.

(2) Telecom has, in addition to its other powers, power to do all things necessary or convenient to be done for, or in connection with, the performance of its obligation under section 26, and may, for example:

- 30 (a) purchase and otherwise acquire land and buildings that it may require;
- (b) sell and otherwise dispose of land and buildings that it does not require;
- (c) develop land and buildings to enable their more efficient utilisation;
- (d) develop and lease land and buildings not immediately required by
- 35 it; and
- (e) develop land and buildings for the purpose of sale.

***Division 2—Telecom's Board and Managing Director***

**The Board**

**20.** There shall be a Board of Directors of Telecom.

40 **The Managing Director**

**21.** There shall be a Managing Director of Telecom.

**Constitution of the Board**

22. The Board consists of:

- (a) the Chairperson;
- (b) the Deputy Chairperson;
- (c) the Managing Director; and
- (d) not more than 6 other directors.

5

**Role of the Board**

23. It is the role of the Board:

- (a) to decide the objectives, strategies and policies to be followed by Telecom; and
- (b) to ensure that Telecom performs its functions in a proper, efficient and economical manner.

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**Duties of the Managing Director**

24. (1) The Managing Director shall, under the Board, manage Telecom.

(2) All acts and things done in the name of, or on behalf of, Telecom by the Managing Director shall be taken to have been done by Telecom.

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**PART 3—TELECOM'S OBLIGATIONS**

**Obligations generally**

25. Telecom has the following obligations:

- (a) its commercial obligation under section 26;
- (b) its community service obligations under section 27;
- (c) its general governmental obligations under section 28.

20

**Commercial obligation**

26. Telecom shall, as far as practicable, perform its functions in a manner consistent with sound commercial practice.

25

**Community service obligations**

27. (1) Telecom shall supply a standard telephone service between places within Australia.

(2) The public switched telephone service shall be the standard telephone service.

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(3) Telecom shall supply the standard telephone service as efficiently and economically as practicable.

(4) Telecom shall ensure:

- (a) that, in view of the social importance of the standard telephone service, the service is reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business; and

35

- (b) that the performance standards for the standard telephone service reasonably meet the social, industrial and commercial needs of the Australian community.

(5) In this section:

- 5 “Australia” does not include an external Territory to which this Act extends.

### **General governmental obligations**

28. Telecom shall perform its functions in a way consistent with:

- 10 (a) any general policies of the Commonwealth Government notified by the Minister under section 44;
- (b) any directions given by the Minister under section 45; and
- (c) Australia’s obligations under any convention.

## **PART 4—TELECOM’S OPERATIONS**

### ***Division 1—Terms and conditions applying to services***

#### **15 Terms and conditions generally**

29. (1) Subject to any express provision of this or any other Act, the terms and conditions of a service supplied by Telecom for a person (including a person who is not authorised by Telecom to use the service) are:

- 20 (a) so far as Telecom and the person agree on terms and conditions for the supply of the service—the agreed terms and conditions; and
- (b) so far as Telecom and the person do not agree on terms and conditions—the terms and conditions determined by the Board that are applicable to the supply of the service.

25 (2) Without limiting subsection (1), the terms and conditions determined by the Board may make provision with respect to the charges payable for services supplied by Telecom.

(3) The Board shall ensure that copies of a determination made by it under this section are made available for inspection and purchase at all business offices of Telecom as soon as practicable after it is made.

30 (4) A contravention of subsection (3) in relation to a determination does not affect the validity of the determination.

#### **Immunity from certain actions**

35 30. An action or proceeding does not lie against Telecom or any other person in relation to any loss or damage suffered, or that may be suffered, by a person because of any act or omission (whether negligent or otherwise) by or on behalf of Telecom in relation to the supply of a reserved service.

***Division 2—Corporate plans***

**Corporate plans**

31. (1) The Board shall prepare corporate plans.

(2) The first corporate plan shall be for a period of not less than 3 years, and not more than 5 years, beginning on 1 July 1989. 5

(3) Each subsequent corporate plan shall be for a period of not less than 3 years, and not more than 5 years, beginning immediately after the period of the previous corporate plan.

(4) The Board may review and revise a corporate plan at any time.

**General matters to be included in corporate plans 10**

32. Each corporate plan shall:

- (a) set out the objectives of Telecom and its subsidiaries;
- (b) outline the overall strategies and policies that Telecom and its subsidiaries are to follow to achieve the objectives;
- (c) include a statement of the strategies and policies that Telecom is to follow to carry out its community service obligations; and 15
- (d) include such performance indicators and targets (whether financial or operational) as the Board considers appropriate.

**Financial matters to be included in corporate plans**

33. Each corporate plan shall: 20

- (a) include a financial target;
- (b) outline the overall financial strategies for Telecom and its subsidiaries, including pricing, borrowing, investment, and purchasing and disposal, strategies;
- (c) include a forecast of the revenue and expenditure of Telecom and its subsidiaries, including a forecast of capital expenditure and borrowings; 25
- (d) estimate the cost of carrying out Telecom's community service obligations; and
- (e) estimate the cost of Telecom's other obligations under this or any other Act that require it to act otherwise than in accordance with normal commercial practice. 30

**Matters to be considered in setting financial target**

34. In preparing or revising a financial target, the Board shall have regard to: 35

- (a) the need to earn a reasonable rate of return on Telecom's assets;
- (b) the need to maintain the extent of the Commonwealth's equity in Telecom;
- (c) the expectation of the Commonwealth that Telecom will pay a reasonable dividend; 40

- (d) the need to maintain Telecom's financial viability;
- (e) the need to maintain a reasonable level of reserves, especially to make provision for:
  - (i) any estimated future demand for telecommunications services; and
  - (ii) any need to improve the accessibility of, and the performance standards for, the standard telephone service;
- (f) any other commercial matters the Board considers appropriate;
- (g) the cost of carrying out Telecom's community service obligations;
- (h) the cost of performing Telecom's functions in a manner consistent with the general policies of the Commonwealth Government notified by the Minister under section 44;
- (j) the cost of implementing any directions given by the Minister under section 45; and
- (k) the cost of any other obligations of Telecom under this or any other Act that require it to act otherwise than in accordance with normal commercial practice.

**Corporate plans to be given to Minister**

35. When the Board prepares or revises a corporate plan, it shall immediately give a copy of the plan to the Minister.

**Minister may direct certain variations of corporate plans**

36. (1) When the Board prepares or revises a corporate plan and gives a copy of the plan to the Minister, the Minister may, within 30 days after receiving the copy of the plan and after consultation with the Board, direct the Board to vary either or both of the following:

- (a) the statement included in the plan of the strategies and policies that Telecom is to follow to carry out its community service obligations;
- (b) the financial target under the plan.

(2) In exercising powers under paragraph (1) (b), the Minister shall have regard to:

- (a) the matters referred to in section 34 (other than the matter referred to in paragraph (f)); and
- (b) any other matters the Minister considers appropriate.

(3) A direction under subsection (1) shall be in writing and shall set out the Minister's reasons for the direction.

**Board to notify Minister of significant affecting events etc.**

37. If the Board forms the opinion that matters have arisen:

- (a) that may prevent, or significantly affect, achievement of the objectives of Telecom and its subsidiaries under the corporate plan;
- (b) that may significantly affect the strategies and policies that Telecom is following to carry out its community service obligations; or

- (c) that may prevent, or significantly affect, achievement of the financial target under the plan;

the Board shall immediately notify the Minister of its opinion and the reasons for the opinion.

**Division 3—Other accountability requirements** 5

**Annual reports and financial statements**

38. (1) The Board shall, as soon as practicable after the end of each financial year, prepare and give to the Minister a report of Telecom's operations during that year, together with financial statements for the year.

(2) Before submitting financial statements to the Minister, the Board shall submit them to the Auditor-General, who shall report to the Minister and the Board: 10

- (a) whether, in the Auditor-General's opinion, the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records and, in the Auditor-General's opinion, show fairly the financial transactions and state of affairs of Telecom; 15
- (c) whether, in the Auditor-General's opinion, the receipt, expenditure and investment of money, and the acquisition and disposal of assets, by Telecom during the year have been in accordance with this Act; 20  
and
- (d) as to any other matters arising out of the statements the Auditor-General considers should be reported to the Minister.

(3) The Minister shall cause a copy of the report and financial statements, together with a copy of the report of the Auditor-General, to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister. 25

**General matters to be included in annual reports**

39. The report of Telecom's operations for a financial year shall:

- (a) include the objectives of Telecom and its subsidiaries under the corporate plan; 30
- (b) include an outline of:
  - (i) the overall strategies and policies of Telecom and its subsidiaries under the corporate plan; and
  - (ii) the performance indicators and targets under the plan; 35
- (c) include an assessment of the extent to which the operations of Telecom and its subsidiaries during the year have achieved those objectives;
- (d) include an outline of the strategies and policies that Telecom is following to carry out its community service obligations; 40
- (e) if the Minister has, under subsection 36 (1), directed the Board to vary the statement included in the corporate plan of Telecom's

strategies and policies to carry out its community service obligations—include an outline of the strategies and policies that the Minister directed the Board to vary;

5 (f) include an assessment of the appropriateness and adequacy of the strategies and policies that Telecom is following to carry out its community service obligations;

(g) include particulars of:

(i) any general policies of the Commonwealth Government notified under section 44 that are applicable to the year; and

10 (ii) any directions given by the Minister under section 45 that are applicable to the year;

(h) deal specifically with the effect on Telecom's operations during the year of:

(i) each such policy and direction; and

15 (ii) any other obligations of Telecom under this or any other Act that require it to act otherwise than in accordance with normal commercial practice;

(j) include particulars of:

20 (i) companies that Telecom and its subsidiaries formed, and companies in whose formation Telecom and its subsidiaries participated, during the year;

(ii) companies that became or ceased to be subsidiaries of Telecom and its subsidiaries during the year; and

25 (iii) interests in partnerships, trusts, unincorporated joint ventures and other arrangements for the sharing of profits that Telecom and its subsidiaries acquired or disposed of during the year; and

(k) include an outline of:

30 (i) shares that Telecom subscribed for, purchased or disposed of during the year;

(ii) other business interests that Telecom and its subsidiaries acquired or disposed of during the year; and

(iii) other activities of Telecom's subsidiaries during the year.

#### **Financial matters to be included in annual reports**

35 **40.** The report of Telecom's operations for a financial year shall:

(a) specify the financial target applicable to the year under the corporate plan;

40 (b) if the Minister has, under subsection 36 (1), directed the Board to vary the financial target—specify the financial target that the Minister directed the Board to vary and set out the reasons given to the Board by the Minister for the direction;

(c) include an assessment of Telecom's progress in achieving the financial target under the corporate plan;

(d) specify the dividend payable to the Commonwealth for the year;

- (e) if the Minister has, under subsection 50 (3), directed the payment of a dividend, or a different dividend, for the year—specify the recommendation made by the Board to the Minister in relation to the dividend for the year;
- (f) include particulars of any amounts of capital repaid to the Commonwealth during the year; and 5
- (g) include an assessment of:
  - (i) the cost of carrying out Telecom's community service obligations;
  - (ii) the cost of performing Telecom's functions in a manner consistent with the general policies of the Commonwealth Government notified by the Minister under section 44; 10
  - (iii) the cost of implementing any directions given by the Minister under section 45; and
  - (iv) the cost of any other obligations of Telecom under this or any other Act that require it to act otherwise than in accordance with normal commercial practice. 15

#### **Requirements for financial statements**

**41. (1)** The financial statements in relation to Telecom's operations for a financial year shall: 20

- (a) be in such form as is required by any written guidelines issued by the Minister for Finance in relation to the financial statements of Telecom or Commonwealth undertakings generally; and
- (b) comply with the requirements prescribed under the *Companies Act 1981* for the accounts of a listed corporation so far as those requirements relate to the income of executive officers of a listed corporation. 25

**(2)** For the purposes of paragraph (1) (b):

- (a) Telecom shall be taken to be a listed corporation; and
- (b) the Managing Director shall be taken to be an executive officer of Telecom. 30

**(3)** Expressions used in paragraph (1) (b) or subsection (2), and in the *Companies Act 1981*, have the same respective meanings as in that Act.

#### **Board to notify Minister of significant business activities**

**42. (1)** If Telecom, or a subsidiary of Telecom, proposes: 35

- (a) to form, or participate in the formation of, a company;
- (b) to participate in a partnership, trust, unincorporated joint venture or other arrangement for the sharing of profits;
- (c) to acquire a major shareholding in a company;
- (d) to acquire a substantial business; 40
- (e) to undertake a significant new business activity; or



- (f) to make a significant change in the nature or extent of its interest in a company, partnership, trust, unincorporated joint venture or other arrangement for the sharing of profits;

5 the Board shall immediately give written notice of particulars of the proposed activity to the Minister.

(2) The Minister may, by written notice given to the Board, make guidelines to be applied by the Board in determining whether an activity is an activity falling within paragraph (1) (c), (d), (e) or (f).

(3) This section does not limit the operation of section 43.

10 **Board to keep Minister informed**

43. The Board shall keep the Minister informed of the operations of Telecom and its subsidiaries, and shall give the Minister such reports, documents and information in relation to those operations as the Minister requires.

15 **Minister may notify Board of general policies of Commonwealth Government**

44. (1) The Minister may notify the Board of general policies of the Commonwealth Government that are to apply in relation to Telecom.

20 (2) The Board shall ensure that the policies are carried out in relation to Telecom and shall, as far as practicable, ensure that the policies are carried out in relation to its subsidiaries.

(3) A notification under subsection (1) shall be given in writing.

**Minister may give directions to the Board**

25 45. (1) Subject to subsection (2), the Minister may, after consultation with the Board, give to the Board such written directions in relation to the performance of Telecom's functions as appear to the Minister to be necessary in the public interest.

30 (2) The Minister shall not give a direction under subsection (1) in relation to the amounts to be charged for work done, or services, goods or information supplied, by Telecom.

(3) Where the Minister gives a direction under subsection (1), the Minister shall cause a copy of the direction to be laid before each House of the Parliament within 15 sitting days of that House after giving the direction.

**Telecom and Board not otherwise subject to government direction**

35 46. Except as otherwise provided by or under this or any other Act, Telecom and its Board are not subject to direction by or on behalf of the Commonwealth Government.

## PART 5—FINANCE

### **Determination of Telecom's initial capital under Act**

47. (1) The Minister shall, as soon as practicable after the commencement of this Act and after consultation with the Board, determine the amount of Telecom's initial capital under this Act. 5

(2) In making the determination, the Minister shall have regard to any relevant advice that the Board has given to the Minister.

(3) The determination shall be made in writing.

### **Telecom's capital**

48. (1) Telecom's capital is equal to the sum of: 10

- (a) the amount of Telecom's initial capital under this Act (as determined by the Minister under subsection 47 (1));
- (b) any part of Telecom's liabilities to the Commonwealth at the commencement of this Act that is subsequently converted into capital at the direction of the Minister; 15
- (c) any amounts paid to Telecom after the commencement of this Act out of money appropriated by the Parliament for the purpose of providing capital; and
- (d) any part of Telecom's reserves that, after the commencement of this Act, is converted into capital at the direction of the Minister after consultation with the Board; 20

less any amounts of capital repaid under subsection (2).

(2) Interest is not payable to the Commonwealth on Telecom's capital, but the capital is repayable to the Commonwealth at such times, and in such amounts, as the Minister directs after consultation with the Board. 25

(3) In giving such a direction, the Minister shall have regard to any advice that the Board has given to the Minister in relation to Telecom's financial affairs.

(4) A direction under this section shall be given in writing.

### **Revaluation of assets** 30

49. The Board shall ensure that, at least once every 5 years, Telecom's assets are revalued in accordance with normal commercial practice.

### **Payments of dividends to Commonwealth**

50. (1) The Board shall, within 4 months after the end of each financial year, by written notice to the Minister, recommend that Telecom pay a specified dividend, or not pay a dividend, to the Commonwealth for the financial year. 35

(2) In making the recommendation, the Board shall have regard to the matters referred to in section 34 (other than the matter referred to in paragraph (a)). 40

(3) The Minister shall, within 30 days after receiving the recommendation, by written notice to the Board, either:

- (a) approve the recommendation; or
- (b) direct the payment of a dividend or a different specified dividend, as the case requires.

(4) In exercising powers under subsection (3), the Minister shall have regard to:

- (a) the matters referred to in section 34 (other than the matters referred to in paragraphs (a) and (f)); and
- (b) any other matters the Minister considers appropriate.

(5) Telecom's dividend for a financial year shall not exceed its profit for the year, after provision has been made for income tax.

(6) Subject to section 51, the dividend payable for a financial year shall be paid within 6 months after the end of the financial year or such further period as the Minister directs after consultation with the Board.

(7) In exercising powers under subsection (6), the Minister shall have regard to any recommendation of the Board in relation to the time of payment of the dividend.

(8) A direction under subsection (6) shall be given in writing.

## **Interim dividends**

**51. (1)** The Minister may, at any time before or during a financial year, by written notice to the Board, require the Board to make a recommendation in relation to the payment of amounts to the Commonwealth on account of the dividend that may become payable under section 50 for the financial year.

(2) The Board shall, within 30 days after receiving the notice, by written notice to the Minister, make such a recommendation to the Minister.

(3) The Minister shall, within 30 days after receiving the recommendation, by written notice to the Board, either:

- (a) approve the recommendation; or
- (b) give directions to the Board in relation to the payment of amounts to the Commonwealth on account of the dividend that may become payable under section 50 for the financial year.

(4) In exercising powers under subsection (3), the Minister shall have regard to:

- (a) the matters referred to in section 34 (other than the matters referred to in paragraphs (a) and (f)); and
- (b) any other matters the Minister considers appropriate.

### **Reimbursement of cost of complying with directions**

**52. (1)** Where Telecom satisfies the Minister that it has suffered financial detriment as a result of complying with a direction given by the Minister under section 45, Telecom is entitled to be reimbursed by the Commonwealth the amount that the Minister determines, after consultation with the Board, to be the amount of the financial detriment. 5

**(2)** In making such a determination, the Minister shall have regard to any advice that the Board has given to the Minister as to the amount of the financial detriment.

**(3)** The reference in subsection (1) to suffering financial detriment includes a reference to: 10

- (a) incurring costs that are greater than would otherwise have been incurred; or
- (b) forgoing revenue that would otherwise have been received.

**(4)** A determination under subsection (1) shall be made in writing. 15

### **Expenditure of Telecom's money**

**53. (1)** Telecom's money may be expended only:

- (a) in payment of amounts properly payable in the performance of its functions;
- (b) in payment of remuneration and allowances payable under this Act; and 20
- (c) in making any other payments that Telecom is authorised or required to make by or under this or any other Act.

**(2)** Money of Telecom not immediately required by it may be invested in any manner that is consistent with sound commercial practice. 25

### **Proper accounts and records to be kept**

**54.** The Board shall:

- (a) cause proper accounts and records of Telecom's transactions and affairs to be kept in accordance with accounting principles generally applied in commercial practice; and 30
- (b) do all things necessary to ensure:
  - (i) that all payments by Telecom are correctly made and properly authorised; and
  - (ii) that adequate control is maintained over:
    - (A) Telecom's assets and assets in Telecom's custody; and 35
    - (B) the incurring of liabilities by Telecom.

### **Audit**

**55. (1)** The Auditor-General shall:

- (a) inspect and audit:
  - (i) the accounts and records of Telecom's financial transactions; and 40

(ii) the records relating to Telecom's assets and assets in Telecom's custody; and

(b) immediately draw the attention of the Minister and the Board to any irregularity disclosed by the inspection and audit that, in the opinion of the Auditor-General, is of sufficient importance to justify doing so.

(2) The Auditor-General may dispense with all or any part of the detailed inspection and audit of any accounts or records.

(3) The Auditor-General shall, at least once in each financial year, report to the Minister and the Board the results of the inspection and audit.

(4) An authorised auditor is entitled, at all reasonable times, to full and free access to all of Telecom's accounts, records and other documents that relate directly or indirectly to:

(a) the receipt or payment of money by it; or

(b) the acquisition, receipt, custody or disposal of assets by it.

(5) An authorised auditor may make copies of, or take extracts from, any accounts, records or documents referred to in subsection (4).

(6) An authorised auditor may require any person to give such information in the possession of the person, or to which the person has access, as the authorised auditor considers necessary for the purposes of the Auditor-General's functions under this Act.

(7) A person shall not refuse or fail to comply with a requirement under subsection (6) to the extent that the person is capable of complying with it.

Penalty: \$1,000 or imprisonment for 6 months, or both.

(8) A person shall not, in purported compliance with a requirement under subsection (6), knowingly give information that is false or misleading in a material particular.

Penalty: \$2,000 or imprisonment for 12 months, or both.

(9) A person is not excused from giving information under a requirement under subsection (6) on the ground that the information may tend to incriminate the person, but any information given under the requirement is not admissible in evidence against the person in any criminal proceedings (other than proceedings for an offence against subsection (7) or (8)).

### **Borrowings from Commonwealth**

**56.** The Minister for Finance may, on behalf of the Commonwealth, out of money appropriated by the Parliament for the purpose, lend money to Telecom on such terms and conditions as the Minister for Finance determines in writing.

**Borrowings from persons other than Commonwealth**

57. (1) Telecom may borrow money from persons other than the Commonwealth.

(2) Money may be borrowed wholly or partly in foreign currency.

**Security for borrowings**

5

58. Telecom may give security over the whole or any part of its assets for the due performance of obligations incurred by it under section 57.

**Liability to taxation**

59. (1) Telecom is subject to taxation under the laws of the Commonwealth and the States and Territories. 10

(2) Telecom is not a public authority for the purposes of paragraph 23 (d) of the *Income Tax Assessment Act 1936*.

(3) Subsection (1) has effect subject to the regulations and to Division 2 of Part 10 of the *Telecommunications and Postal Services (Transitional Provisions and Consequential Amendments) Act 1989*. 15

**PART 6—DIRECTORS OF TELECOM**

***Division 1—Meetings of the Board***

**Interpretation—meaning of “the required minimum number of directors”**

60. In this Division:

“the required minimum number of directors” means: 20

(a) if there are 9 directors—5 directors; and

(b) in any other case—4 directors.

**Times and places of meetings**

61. (1) Subject to subsection (2), meetings of the Board shall be held at such times and places as the Board determines. 25

(2) The Chairperson:

(a) may at any time convene a meeting; and

(b) shall convene a meeting when requested by at least the required minimum number of directors.

**Presiding at meetings**

30

62. (1) The Chairperson shall preside at all meetings at which the Chairperson is present.

(2) If the Chairperson and Deputy Chairperson are not present at a meeting, the directors present shall appoint one of the directors present to preside. 35

### **Quorum and voting at meetings**

63. (1) At a meeting of the Board:

(a) subject to subsection (2), the required minimum number of directors constitute a quorum;

(b) a question shall be decided by a majority of votes of the directors present and voting; and

(c) the director presiding has a deliberative vote and, if there is an equality of votes, also has a casting vote.

(2) If, because of subsection 67 (2), a director is not present at a meeting of the Board during a deliberation of the Board in relation to a matter, but there would be a quorum if the director were present, the remaining directors present constitute a quorum for the purpose of any deliberation or decision of the Board at the meeting in relation to the matter.

### **Conduct of meetings**

64. (1) The Board may, subject to this Division, regulate its proceedings as it considers appropriate.

(2) Without limiting subsection (1), the Board may permit directors to participate in a particular meeting, or all meetings, by:

(a) telephone;

(b) closed-circuit television; or

(c) any other means of communication.

(3) A director who participates in a meeting of the Board under a permission under subsection (2) shall be taken to be present at the meeting.

(4) Without limiting subsection (1), the Board may invite a person to attend a meeting for the purpose of advising or informing it on any matter.

### **Resolutions without meetings**

65. (1) If at least the required minimum number of directors sign a document containing a statement that they are in favour of a resolution in terms set out in the document, a resolution in those terms shall be taken to have been passed at a meeting of the Board held on the day on which the document is signed or, if the directors do not sign it on the same day, on the day on which the last director signs the document.

(2) If a resolution is, under subsection (2), taken to have been passed at a meeting of the Board, each director shall immediately be advised of the matter and given a copy of the terms of the resolution.

(3) For the purposes of subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more directors, shall be taken to constitute one document.

### **Minutes**

66. The Board shall keep minutes of its proceedings.

## Disclosure of interests

### 67. (1) If:

- (a) a director has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Board; and
- (b) the interest could conflict with the proper performance of the director's duties in relation to the consideration of the matter; 5

the director shall, as soon as practicable after the relevant facts come to the director's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting and, unless the Minister or the Board otherwise determines, the director shall not: 10

- (a) be present during any deliberation of the Board in relation to the matter; or
- (b) take part in any decision of the Board in relation to the matter. 15

(3) For the purpose of the making of a determination by the Board under subsection (2) in relation to a director who has made a disclosure under subsection (1), a director who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not:

- (a) be present during any deliberation of the Board for the purpose of making the determination; or 20
- (b) take part in the making by the Board of the determination.

(4) Subsection (1) does not apply in relation to a matter relating to the supply of goods or services for the director if the goods or services are, or are to be, available to members of the public on the same terms and conditions. 25

## ***Division 2—Provisions relating to directors other than the Managing Director***

### **Division applies to directors other than Managing Director**

68. This Division applies in relation to the directors other than the Managing Director. 30

### **Appointment of directors**

69. (1) The directors shall be appointed by the Governor-General.

(2) In appointing a person as a director, the Governor-General shall have regard to the need to ensure that the directors collectively possess an appropriate balance of expertise, and, in particular, that the directors include a person who the Governor-General, having regard to consultations between the Minister and representatives of industrial organisations representing employees, is satisfied has an appropriate understanding of the interests of employees. 35 40



(3) The appointment of a person as a director is not invalid merely because of a defect or irregularity in relation to the appointment.

**Term of appointment**

70. A director holds office, subject to this Act:

- 5 (a) in the case of a director other than a government director—for such term (not longer than 5 years) as is specified in the instrument of appointment; and
- (b) in the case of a government director—during the Governor-General's pleasure.

10 **Directors hold office on part time basis**

71. Directors hold office on a part time basis.

**Remuneration and allowances**

72. (1) A director shall be paid such remuneration as is determined by the Remuneration Tribunal.

- 15 (2) If no determination of that remuneration by the Tribunal is in operation, the director shall be paid such remuneration as is prescribed.

(3) A director shall be paid such allowances as are prescribed.

(4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

20 **Leave of absence**

73. The Board may grant leave of absence to a director on such terms and conditions as the Board considers appropriate.

**Resignation**

- 25 74. A director may resign by writing signed and delivered to the Governor-General.

**Termination of appointment**

75. (1) The Governor-General may terminate the appointment of a director for misbehaviour or physical or mental incapacity.

(2) If a director:

- 30 (a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (b) without reasonable excuse, contravenes section 67; or
- 35 (c) is absent, without the Board's leave and without reasonable excuse, from 3 consecutive meetings of the Board;

the Governor-General shall terminate the director's appointment.

(3) Where:

- (a) the Minister is of the opinion that the performance of the Board or Telecom has been unsatisfactory for a significant period of time; and
- (b) the Minister proposes that the appointment of all directors or specified directors be terminated; 5

the Governor-General shall terminate the appointment of all directors or the specified directors, as the case may be.

(4) Where:

- (a) the Minister is of the opinion that the performance of a particular director has been unsatisfactory for a significant period of time; and 10
- (b) the Minister proposes that the appointment of the director be terminated;

the Governor-General shall terminate the appointment of the director.

(5) If a person who is a government director ceases to be an officer of the Australian Public Service, the person ceases to be a director. 15

(6) Subsections (1), (2), (3) and (4) do not apply in relation to a government director.

**Terms and conditions of appointment not provided for by Act**

76. A director holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are determined by the Minister in writing. 20

**Deputy Chairperson**

77. (1) When:

- (a) the office of Chairperson is vacant; or 25
- (b) the Chairperson is absent from Australia or is, for any reason, unable to attend meetings of the Board or otherwise unable to perform the duties of the office;

the Deputy Chairperson shall act as Chairperson.

(2) While the Deputy Chairperson is acting as Chairperson, the Deputy Chairperson has and may exercise all the powers, and shall perform all the duties, of the Chairperson. 30

(3) Anything done by or in relation to the Deputy Chairperson while the Deputy Chairperson is purporting to act as Chairperson is not invalid merely because the occasion for the Deputy Chairperson to act as Chairperson had not arisen or had ceased. 35

**Acting appointments**

78. (1) The Minister may appoint a director to act as Deputy Chairperson:

- (a) during a vacancy in the office of Deputy Chairperson; or 40

- (b) during any period, or during all periods, when the Deputy Chairperson is acting as Chairperson or is unable, for any reason, to attend meetings of the Board.

5 (2) The Minister may appoint a person to act as a director referred to in paragraph 22 (d):

- (a) during a vacancy in the office of such a director; or
- (b) during any period, or during all periods, when such a director is acting as Deputy Chairperson or is unable, for any reason, to attend meetings of the Board.

10 (3) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:

- (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in relation to the appointment;
- (c) the appointment had ceased to have effect; or
- 15 (d) the occasion to act had not arisen or had ceased.

### ***Division 3—Provisions relating to the Managing Director***

#### **Appointment**

79. (1) The Managing Director shall be appointed by the Minister after the Minister has received a recommendation from the Board.

20 (2) The Minister shall not appoint the Chairperson, the Deputy Chairperson or a director referred to in paragraph 22 (d) as Managing Director.

(3) The appointment of a person as Managing Director is not invalid merely because of a defect or irregularity in relation to the appointment.

25 **Managing Director holds office during Board's pleasure**

80. The Managing Director holds office during the Board's pleasure.

#### **Managing Director holds office on full time basis**

81. The Managing Director holds office on a full time basis.

#### **Terms and conditions of appointment not provided for by Act**

30 82. The Managing Director holds office on such terms and conditions (including terms and conditions relating to remuneration and allowances) in relation to matters not provided for by this Act as are determined by the Board.

#### **Disclosure of interests**

35 83. The Managing Director shall give written notice to the Chairperson of all direct and indirect pecuniary interests that the Managing Director has or acquires in any business or in any body corporate carrying on any business.

### **Acting Managing Director**

**84. (1)** The Minister may appoint a director or another person to act as Managing Director during a vacancy in the office of Managing Director.

**(2)** The Board may appoint a director or another person to act as Managing Director during any period, or during all periods, when the Managing Director is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office. 5

**(3)** Anything done by or in relation to a person purporting to act as Managing Director is not invalid merely because:

- (a)** the occasion for the appointment had not arisen; 10
- (b)** there was a defect or irregularity in relation to the appointment;
- (c)** the appointment had ceased to have effect; or
- (d)** the occasion for the person to act had not arisen or had ceased.

## **PART 7—TELECOM'S STAFF**

### **Staff** 15

**85. (1)** Telecom may engage such employees as are necessary for the performance of its functions.

**(2)** The terms and conditions of employment shall be determined by Telecom.

### **Telecom as employer** 20

**86.** Telecom shall endeavour to achieve and maintain high standards as an employer in relation to terms and conditions of employment, occupational health, industrial safety, industrial democracy, non-discriminatory employment practices and other matters.

## **PART 8—TELECOM'S POWERS RELATING TO LAND** 25

### **Power to inspect land etc.**

**87. (1)** Telecom may:

- (a)** for the purpose of determining whether any land is suitable for its purposes:
  - (i)** enter on, and inspect, the land; and 30
  - (ii)** do anything on the land that is necessary or desirable for that purpose, including, for example, making surveys, taking levels, sinking bores, taking samples, digging pits and examining the soil; and
- (b)** for the purpose of surveying or obtaining information in relation to any land that, in the opinion of Telecom, is or may be suitable for its purposes: 35
  - (i)** enter on any other land; and

- (ii) do anything on the entered land that is necessary or desirable for that purpose, including, for example, making surveys and taking levels.

5 (2) Before exercising its powers under subsection (1) in relation to any land, Telecom shall give reasonable written notice of its intention to do so to:

- (a) the owner of the land; and
- (b) if the land is occupied by a person other than the owner—the occupier.

10 (3) The notice shall specify the purpose for which Telecom intends to exercise its powers in relation to the land.

**Powers relating to installation of facilities etc.**

88. (1) Subject to subsections (5) and (6), Telecom may, for purposes connected with the supply of a telecommunications service:

- 15
- (a) construct a facility on, over or under any land; or
  - (b) attach a facility to any building or other structure.

(2) Without limiting subsection (1) or section 90, but subject to this subsections (5) and (6), Telecom may, for purposes connected with the installation, maintenance or operation of a facility:

- 20
- (a) enter on, and occupy, any land; and
  - (b) on, over or under the land do anything necessary or desirable for those purposes, including, for example:
    - (i) constructing, erecting and placing any plant, machinery, equipment and goods;
    - 25 (ii) felling and lopping trees and clearing and removing other vegetation and undergrowth;
    - (iii) making cuttings and excavations;
    - (iv) restoring the surface of the land and, for that purpose, removing and disposing of soil, vegetation and other material;
    - 30 (v) erecting temporary workshops, sheds and other buildings; and
    - (vi) levelling the surface of the land and making roads.

(3) Before exercising its powers under this section in relation to any land, Telecom shall give reasonable written notice of its intention to do so to:

- 35
- (a) the owner of the land; and
  - (b) if the land is occupied by a person other than the owner—the occupier.

40 (4) The notice shall specify the purpose for which Telecom intends to exercise its powers in relation to the land.

(5) Telecom shall not:

- (a) close, divert or narrow a road or bridge;
- (b) install a facility on, over or under a road or bridge;
- (c) alter the position of a water, sewerage or gas main or pipe; or
- (d) alter the position of an electricity cable or wire;

unless it has given reasonable written notice of its intention to do so to the person or authority responsible for the care and management of the road, bridge, main, pipe, cable or wire. 5

(6) Telecom shall ensure that a facility installed over a road, bridge, path or navigable water is installed in a way that will allow reasonable passage by persons, vehicles and vessels. 10

**Trees may be cut etc.**

89. (1) If any tree, undergrowth or vegetation on or over land owned or occupied by the Commonwealth or a State or Territory, or an authority of the Commonwealth or of a State or Territory, obstructs, or is likely to obstruct, the operation of a facility, Telecom may cut down or lop the tree or clear the undergrowth or vegetation. 15

(2) Before exercising its powers under subsection (1) in relation to any land, Telecom shall give reasonable written notice of its intention to do so to the person or authority responsible for the care and management of the land. 20

(3) If any tree, undergrowth or vegetation on or over any private land obstructs, or is likely to obstruct, the operation of a facility, Telecom may, by written notice served on the owner of the land, require the owner to cut down or lop the tree, or to clear and remove the undergrowth or vegetation, in the manner, and within the period, specified in the notice. 25

(4) If the owner does not comply with the requirement, Telecom may enter the land and cut down or lop the tree, or clear and remove the undergrowth or vegetation, in the manner specified in the notice.

**Telecom may replace, repair and maintain facilities etc.**

90. (1) Telecom may, at any time, alter, move, remove, replace or maintain: 30

- (a) a facility constructed on, over or under any land; or
- (b) a facility attached to a building or other structure.

(2) For the purpose of exercising powers under subsection (1), Telecom may enter on, and occupy, land and may remove, or erect a gate in, any fence. 35

(3) Before removing, or erecting a gate in, a fence, Telecom shall take all reasonable steps to give written notice of its intention to do so to the owner of the land on which, or on the boundary of which, the fence is erected. 40

**Subdivider to pay for necessary alterations**

5 91. (1) Where it becomes necessary, in the opinion of Telecom, because of the subdivision of any land, to remove, or alter the position of, a facility on, over or under the land, Telecom may enter the land and do anything necessary or desirable for that purpose.

(2) The person who subdivided the land is liable to pay to Telecom the reasonable cost of anything reasonably done by Telecom under subsection (1) and that amount may be recovered in a court of competent jurisdiction as a debt due to Telecom.

10 **Telecom to take steps to do as little damage as practicable etc.**

92. (1) In exercising its powers under this Part, Telecom shall take all reasonable steps to ensure that it causes as little detriment and inconvenience, and does as little damage, as is practicable.

15 (2) If a person suffers financial loss or damage because of anything done by Telecom under section 87, 88 or 90 in relation to any property owned by the person or in which the person has an interest, there is payable to the person by Telecom such reasonable amount of compensation as is agreed between them or, failing agreement, as is determined by a court of competent jurisdiction.

20 (3) Compensation payable under subsection (2) includes compensation in relation to:

- (a) damage of a temporary character as well as of a permanent character; and
- 25 (b) the taking of sand, soil, stone, gravel, timber, water and other things.

(4) In this section:

“court of competent jurisdiction”, in relation to property owned by a person or in which a person has an interest, means:

- 30 (a) the Supreme Court of the State or Territory in which the property is situated or was situated at the time of the relevant loss or damage; or
- (b) an inferior court that has jurisdiction:
  - (i) for the recovery of debts up to an amount not less than the amount of compensation claimed by the person; and
  - 35 (ii) in relation to the locality in which the property, or part of the property, is situated or was situated at the time of the relevant loss or damage;

“inferior court” means:

- 40 (a) a County Court, District Court or Local Court of a State or Territory; or
- (b) a court of summary jurisdiction exercising civil jurisdiction.

## Service of notices

### 93. (1) If:

- (a) Telecom is unable, after diligent inquiry, to ascertain the identity of the owner of land; or
- (b) Telecom is unable to serve a notice under this Part on the owner of land either personally or by post; 5

Telecom may serve a notice under this Part on the owner by publishing a copy of the notice in a newspaper circulating in a district in which the land is situated and:

- (c) if the land is occupied—serving a copy of the notice on the occupier; or 10
- (d) if the land is not occupied—attaching, if practicable, a copy of the notice to a conspicuous part of the land.

### (2) If Telecom is unable, after diligent inquiry, to ascertain:

- (a) whether land is occupied; or 15
- (b) the identity of a person occupying land;

it may treat the land as unoccupied land.

(3) If Telecom is unable to serve a notice under this Part on the occupier of land either personally or by post, Telecom may serve a notice under this Part on the occupier by: 20

- (a) publishing a copy of the notice in a newspaper circulating in a district in which the land is situated; and
- (b) attaching, if practicable, a copy of the notice to a conspicuous part of the land.

(4) This section does not affect the operation of any other law of the Commonwealth, or any law of a State or Territory, that authorises the service of a document otherwise than as provided in this section. 25

## PART 9—PROTECTION OF TELECOM'S PROPERTY

### Compensation for interference or damage

#### 94. (1) Where: 30

- (a) a person does work (whether personally or by a servant or agent) in circumstances in which the person (whether personally or through a servant or agent) has reasonable cause to believe that the doing of the work is likely to interfere with or damage Telecom's property; and 35
- (b) the person (whether negligently or otherwise) interferes with or damages the property in doing the work;

the person is liable to pay Telecom compensation for the interference or damage.

(2) In a proceeding under subsection (1) against the person for the recovery of compensation, it is a defence if the person proves: 40



- (a) that, before the work was started, Telecom was given reasonable written notice of the work and a reasonable opportunity to discuss with the person the manner in which the work was to be done; and
- (b) that Telecom's employees were permitted to be present, and observe the work, while it was being done.

(3) This section does not affect the liability of the person in relation to the interference or damage under any other law, but Telecom is not entitled to be compensated twice for the interference or damage.

(4) This section does not apply in relation to:

- (a) any impairment or potential impairment of the normal operation of a telecommunications network; or
- (b) any hazard or potential hazard to:
  - (i) a telecommunications network or facility;
  - (ii) Telecom's employees in the course of their duties; or
  - (iii) users of a telecommunications service supplied by Telecom;

that results, or may result, from the transmission of electricity over an electricity line or through any apparatus connected to an electricity line, from the use of electricity in or in connection with any machinery, engines, meters, lamps, transformers, fittings, apparatus or works or from the generation or supply of electricity.

#### **Work done by Telecom to protect property**

95. (1) Where:

- (a) a person does, or proposes to do, work in the vicinity of any of Telecom's property;
- (b) because of the work, it is necessary for Telecom, for reasons of safety or for the purpose of protecting the property or ensuring the efficiency or integrity of a telecommunications network operated by it, to alter, move, remove, replace, or do other work in relation to, the property; and
- (c) Telecom does that work;

the person is liable to pay to Telecom such reasonable amount (not exceeding the cost of the work done by Telecom) as Telecom determines.

(2) Where:

- (a) a person proposes to do work in the vicinity of any of Telecom's property;
- (b) the person requests Telecom to alter, move, remove, replace, or do some other work in relation to, the property for a purpose connected with the doing of the proposed work; and
- (c) Telecom does work in accordance with the request;

the person is liable to pay to Telecom such reasonable amount (not exceeding the cost of the work done by Telecom) as Telecom determines.

(3) Telecom may require the person to give security for the payment of any amount that the person may become liable to pay under subsection (2).

(4) An amount payable under subsection (1) or (2) may be recovered as a debt due to Telecom in a court of competent jurisdiction.

(5) A determination under subsection (1) or (2) shall be made in writing. 5

## PART 10—MISCELLANEOUS

### Application of State and Territory laws

96. (1) Subject to section 59 and subsection (2) of this section, Telecom is not subject to any requirement, obligation, liability, penalty or disability under a law of a State or Territory to which the Commonwealth is not subject. 10

(2) Subject to the regulations, subsection (1) applies only in relation to the period beginning at the commencement of this Act and ending on 31 December 1990. 15

### Duty of Telecom's employees not to disclose contents of communications etc.

97. (1) Subject to subsection (2), it is the duty of a person who is an employee of Telecom not to disclose any fact or document that: 20

(a) relates to:

(i) the contents or substance of a communication that has been carried by Telecom or a communication in the course of telecommunications carriage;

(ii) telecommunications services supplied, or intended to be supplied, to another person by Telecom; or 25

(iii) the affairs or personal particulars (including any unlisted telephone number or any address) of another person; and

(b) comes to the person's knowledge, or into the person's possession, because the person is an employee of Telecom.

(2) Subsection (1) does not apply in relation to a disclosure by a person: 30

(a) in the performance of the person's duties as an employee of Telecom;

(b) as a witness summonsed to give evidence, or to produce documents, in a court of law;

(c) under the requirements of a law of the Commonwealth; or

(d) in prescribed circumstances. 35

(3) This section does not limit by implication any duty that a person who is or has been an employee of Telecom has apart from this section.

(4) In this section:

"communication in the course of telecommunications carriage" means a communication that is being carried by Telecom, and includes a 40

communication that has been collected or received by Telecom for carriage by it but has not been delivered by it;

“employee”, in relation to Telecom, includes a person who performs services for or on behalf of Telecom and an employee of such a person.

#### Delegation of Telecom’s powers

98. (1) An authorised person may, in writing, delegate all or any of Telecom’s powers to an employee of Telecom.

(2) In subsection (1):

“authorised person” means:

- (a) the Managing Director; or
- (b) an employee of Telecom who is, for the time being, authorised by the Board for the purposes of this section.

#### Delegation of Board’s powers

99. (1) The Board may, by resolution, delegate all or any of its powers (other than its powers under section 98 and Division 3 of Part 6) to a director or an employee of Telecom.

(2) The delegate is, in the exercise of a delegated power, subject to the directions of the Board.

(3) A delegation of a power under subsection (1):

- (a) may be revoked by resolution of the Board (whether or not constituted by the persons who constituted the Board when the power was delegated); and
- (b) continues in force in spite of a change in the membership of the Board.

(4) A certificate signed by the Chairperson stating any matter in relation to a delegation of a power under subsection (1) is *prima facie* evidence of the matter.

(5) A document purporting to be a certificate under subsection (4) shall, unless the contrary is established, be taken to be such a certificate and to have been properly given.

#### Telecom’s seal

100. (1) Telecom’s seal shall be kept in such custody as the Board directs and shall be used only as authorised by the Board.

(2) All courts, judges and persons acting judicially shall take judicial notice of the imprint of Telecom’s seal appearing on a document and shall presume that the document was properly sealed.

**Confirmation of contracts and authentication and execution of documents**

**101. (1)** So far as concerns the formalities of making, varying or discharging a contract, a person acting under Telecom's express or implied authority may make, vary or discharge a contract in the name of, or on behalf of, Telecom in the same manner as if the contract were made, varied or discharged by a natural person. 5

**(2)** The making, varying or discharging of a contract in accordance with subsection (1) is effectual in law and binds Telecom and other parties to the contract.

**(3)** A contract or other document executed, or purporting to have been executed, under Telecom's seal is not invalid merely because a person attesting the affixing of the seal is in any way (whether directly or indirectly) interested in the contract or other document or in the matter to which the contract or other document relates. 10

**(4)** This section does not prevent Telecom from making, varying or discharging a contract under its seal. 15

**(5)** This section does not affect the operation of any law that requires some consent or sanction to be obtained, or some procedure to be complied with, in relation to the making, varying or discharging of a contract.

**Ownership of telecommunications facilities** 20

**102.** Unless the circumstances indicate otherwise, a facility, or part of a facility, that is supplied, installed, maintained or operated by Telecom remains the property of Telecom, whether or not it has become (in whole or part) a fixture.

**Lands Acquisition Act** 25

**103. (1)** The *Lands Acquisition Act 1989* does not apply in relation to the acquisition of land, or an interest in land, by Telecom by agreement.

**(2)** In subsection (1):

"interest", in relation to land, means:

- (a) a legal or equitable estate or interest in the land; or 30
- (b) a right, power or privilege over, or in relation to, the land.

**Public Works Committee Act**

**104.** The *Public Works Committee Act 1969* does not apply in relation to Telecom.

**Regulations** 35

**105.** The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or

- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and may, for example, make regulations:

- (c) with respect to the making of deductions from amounts due to any of Telecom's employees on account of judgment debts; and
- (d) prescribing fines not exceeding \$1,000 for offences against the regulations.

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