



Appendix A – Part 14, *Telecommunications Act 1997*

Part 14—National interest matters

311 Simplified outline

The following is a simplified outline of this Part:

- The ACMA, carriers and carriage service providers must do their best to prevent telecommunications networks and facilities from being used to commit offences.
- The ACMA, carriers and carriage service providers must give the authorities such help as is reasonably necessary for the purposes of:
 - (a) enforcing the criminal law and laws imposing pecuniary penalties; and
 - (b) protecting the public revenue; and
 - (c) safeguarding national security.
- A carriage service provider may suspend the supply of a carriage service in an emergency if requested to do so by a senior police officer.

312 ACMA's obligations

(1) The ACMA must, in performing its telecommunications functions or exercising its telecommunications powers, do its best to prevent:

- (a) telecommunications networks; and
- (b) facilities;

from being used in, or in relation to, the commission of offences against the laws of the Commonwealth and of the States and Territories.

(2) The ACMA must, in performing its telecommunications functions or exercising its telecommunications powers, give officers and authorities of the Commonwealth and of the States and Territories such help as is reasonably necessary for the following purposes:

- (a) enforcing the criminal law and laws imposing pecuniary penalties;
- (b) protecting the public revenue;
- (c) safeguarding national security.

(3) The ACMA is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in performance of the duty imposed by subsection (1) or (2).

(4) An officer, employee or agent of the ACMA is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in connection with an act done or omitted by the ACMA as mentioned in subsection (3).

313 Obligations of carriers and carriage service providers

(1) A carrier or carriage service provider must, in connection with:

- (a) the operation by the carrier or provider of telecommunications networks or facilities; or
- (b) the supply by the carrier or provider of carriage services;

do the carrier's best or the provider's best to prevent telecommunications networks and facilities from being used in, or in relation to, the commission of offences against the laws of the Commonwealth or of the States and Territories.

(2) A carriage service intermediary must do the intermediary's best to prevent telecommunications networks and facilities from being used in, or in relation to, the commission of offences against the laws of the Commonwealth or of the States and Territories.

(3) A carrier or carriage service provider must, in connection with:

- (a) the operation by the carrier or provider of telecommunications networks or facilities; or
- (b) the supply by the carrier or provider of carriage services;

give officers and authorities of the Commonwealth and of the States and Territories such help as is reasonably necessary for the following purposes:

- (c) enforcing the criminal law and laws imposing pecuniary penalties;
- (ca) assisting the enforcement of the criminal laws in force in a foreign country;
- (d) protecting the public revenue;
- (e) safeguarding national security.

Note: Section 314 deals with the terms and conditions on which such help is to be provided.

(4) A carriage service intermediary who arranges for the supply by a carriage service provider of carriage services must, in connection with:

- (a) the operation by the provider of telecommunications networks or facilities; or
- (b) the supply by the provider of carriage services;

give officers and authorities of the Commonwealth and of the States and Territories such help as is reasonably necessary for the following purposes:

- (c) enforcing the criminal law and laws imposing pecuniary penalties;
- (ca) assisting the enforcement of the criminal laws in force in a foreign country;
- (d) protecting the public revenue;
- (e) safeguarding national security.

Note: Section 314 deals with the terms and conditions on which such help is to be provided.

(5) A carrier or carriage service provider is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith:

- (a) in performance of the duty imposed by subsection (1), (2), (3) or (4); or
- (b) in compliance with a direction that the ACMA gives in good faith in performance of its duties under section 312.

(6) An officer, employee or agent of a carrier or of a carriage service provider is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in connection with an act done or omitted by the carrier or provider as mentioned in subsection (5).

(7) A reference in this section to giving help includes a reference to giving help by way of:

(a) the provision of interception services, including services in executing an interception warrant under the *Telecommunications (Interception and Access) Act 1979*; or

(b) giving effect to a stored communications warrant under that Act; or

(c) providing relevant information about:

(i) any communication that is lawfully intercepted under such an interception warrant; or

(ii) any communication that is lawfully accessed under such a stored communications warrant; or

(ca) complying with a domestic preservation notice or a foreign preservation notice that is in force under Part 3-1A of that Act; or

(d) giving effect to authorisations under Division 3 or 4 of Part 4-1 of that Act; or

(e) disclosing information or a document in accordance with section 280 of this Act.

Note: Additional obligations concerning interception capability and delivery capability are, or may be, imposed on a carrier or carriage service provider under Chapter 5 of the *Telecommunications (Interception and Access) Act 1979*.

314 Terms and conditions on which help is to be given

- (1) This section applies if a person is required to give help to an officer or authority of the Commonwealth, a State or a Territory as mentioned in subsection 313(3) or (4).
- (2) The person must comply with the requirement on the basis that the person neither profits from, nor bears the costs of, giving that help.
- (3) The person must comply with the requirement on such terms and conditions as are:
 - (a) agreed between the following parties:
 - (i) the person;
 - (ii) the Commonwealth, the State or the Territory, as the case may be; or
 - (b) failing agreement, determined by an arbitrator appointed by the parties.

If the parties fail to agree on the appointment of an arbitrator, the ACMA is to appoint the arbitrator.

- (4) An arbitrator appointed by the ACMA under subsection (3) must be a person specified in a written determination made by the Minister.

Note: A person may be specified by name, by inclusion in a specified class or in any other way.

- (5) Before making a determination under subsection (4), the Minister must consult the Attorney-General.
- (6) If an arbitration under this section is conducted by an arbitrator appointed by the ACMA, the cost of the arbitration must be apportioned equally between the parties.
- (7) The regulations may make provision for and in relation to the conduct of an arbitration under this section.
- (8) This section does not apply in relation to the obligation of carriers or carriage service providers under Part 5-3 or 5-5 of the *Telecommunications (Interception and Access) Act 1979* (about interception capability and delivery capability).

Note: Part 5-6 of the *Telecommunications (Interception and Access) Act 1979* contains provisions about the allocation of costs in relation to interception capability and delivery capability.

315 Suspension of supply of carriage service in an emergency

- (1) If a senior officer of a police force or service has reasonable grounds to believe that:
 - (a) an individual has access to a particular carriage service; and

(b) the individual has:

- (i) done an act that has resulted, or is likely to result, in loss of life or in the infliction of serious personal injury; or
 - (ii) made an imminent threat to kill, or seriously injure, another person; or
 - (iii) made an imminent threat to cause serious damage to property; or
 - (iv) made an imminent threat to take the individual's own life; or
 - (v) made an imminent threat to do an act that will, or is likely to, endanger the individual's own life or create a serious threat to the individual's health or safety;
- and

(c) the suspension of the supply of the carriage service is reasonably necessary to:

- (i) prevent a recurrence of the act mentioned in subparagraph (b)(i); or
- (ii) prevent or reduce the likelihood of the carrying out of a threat mentioned in subparagraph (b)(ii), (iii), (iv) or (v);

the officer may request a carriage service provider to suspend the supply of the carriage service.

(2) The carriage service provider may comply with the request.

(3) This section does not, by implication, limit any other powers that the provider may have to suspend the supply of the carriage service.

(3A) The provider is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in compliance with the request.

(3B) An officer, employee or agent of the provider is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in connection with an act done or omitted by the provider as mentioned in subsection (3A).

(4) In this section:

senior officer, in relation to a police force or service, means a commissioned officer of the force or service who holds a rank not lower than the rank of Assistant Commissioner.

316 Generality of Part not limited

Nothing in this Part limits the generality of anything else in it.

