Trade Practices Act 1974

Act No. 51 of 1974 as amended

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(the Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009)

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An Act relating to certain Trade Practices

Part I—Preliminary

1 Short title [*see* Note 1]

This Act may be cited as the *Trade Practices Act 1974*.

2 Object of this Act

The object of this Act is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.

2A Application of Act to Commonwealth and Commonwealth authorities

(1) Subject to this section and sections 44AC, 44E and 95D, this Act binds the Crown in right of the Commonwealth in so far as the Crown in right of the Commonwealth carries on a business, either directly or by an authority of the Commonwealth.

(2) Subject to the succeeding provisions of this section, this Act applies as if:

(a) the Commonwealth, in so far as it carries on a business otherwise than by an authority of the Commonwealth; and

(b) each authority of the Commonwealth (whether or not acting as an agent of the Crown in right of the Commonwealth) in so far as it carries on a business;

were a corporation.

(3) Nothing in this Act makes the Crown in right of the Commonwealth liable to a pecuniary penalty or to be prosecuted for an offence.

(3A) The protection in subsection (3) does not apply to an authority of the Commonwealth.

(4) Part IV does not apply in relation to the business carried on by the Commonwealth in developing, and disposing of interests in, land in the Australian Capital Territory.

2B Application of Act to States and Territories

(1) The following provisions of this Act bind the Crown in right of each of the States, of the Northern Territory and of the Australian Capital Territory, so far as the Crown carries on a business, either directly or by an authority of the State or Territory:

(a) Part IV;

(aa) Part VB;

(b) Part XIB;

(c) the other provisions of this Act so far as they relate to the above provisions.

(2) Nothing in this Act renders the Crown in right of a State or Territory liable to a pecuniary penalty or to be prosecuted for an offence.

(3) The protection in subsection (2) does not apply to an authority of a State or Territory.

2BA Application of Part IV to local government bodies

(1) Part IV applies in relation to a local government body only to the extent that it carries on a business, either directly or by an incorporated company in which it has a controlling interest.

(2) In this section:

local government body means a body established by or under a law of a State or Territory for the purposes of local government, other than a body established solely or primarily for the purposes of providing a particular service, such as the supply of electricity or water.

2C Activities that are not business

(1) For the purposes of sections 2A, 2B and 2BA, the following do not amount to carrying on a business:

(a) imposing or collecting:

(i) taxes; or

(ii) levies; or

(iii) fees for licences;

(b) granting, refusing to grant, revoking, suspending or varying licences (whether or not they are subject to conditions);

(c) a transaction involving:

(i) only persons who are all acting for the Crown in the same right (and none of whom is an authority of the Commonwealth or an authority of a State or Territory); or

(ii) only persons who are all acting for the same authority of the Commonwealth; or

(iii) only persons who are all acting for the same authority of a State or Territory; or

(iv) only the Crown in right of the Commonwealth and one or more non-commercial authorities of the Commonwealth; or

(v) only the Crown in right of a State or Territory and one or more non-commercial authorities of that State or Territory; or

(vi) only non-commercial authorities of the Commonwealth; or

(vii) only non-commercial authorities of the same State or Territory; or

(viii) only persons who are all acting for the same local government body (within the meaning of section 2BA) or for the same incorporated company in which such a body has a controlling interest;

(d) the acquisition of primary products by a government body under legislation, unless the acquisition occurs because:

(i) the body chooses to acquire the products; or

(ii) the body has not exercised a discretion that it has under the legislation that would allow it not to acquire the products.

(2) Subsection (1) does not limit the things that do not amount to carrying on a business for the purposes of sections 2A, 2B and 2BA.

(3) In this section:

acquisition of primary products by a government body under legislation includes vesting of ownership of primary products in a government body by legislation.

government body means the Commonwealth, a State, a Territory, an authority of the Commonwealth or an authority of a State or Territory.

licence means a licence that allows the licensee to supply goods or services.

primary products means:

(a) agricultural or horticultural produce; or

(b) crops, whether on or attached to the land or not; or

(c) animals (whether dead or alive); or

(d) the bodily produce (including natural increase) of animals.

(4) For the purposes of this section, an authority of the Commonwealth or an authority of a State or Territory is ***non-commercial*** if:

(a) it is constituted by only one person; and

(b) it is neither a trading corporation nor a financial corporation.

3 Repeal

The *Restrictive Trade Practices Act 1971* and the *Restrictive Trade Practices Act 1972* are repealed.

4 Interpretation

(1) In this Act, unless the contrary intention appears:

acquire includes:

(a) in relation to goods—acquire by way of purchase, exchange or taking on lease, on hire or on hire-purchase; and

(b) in relation to services—accept.

AEMC or ***Australian Energy Market Commission*** means the body established by section 5 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia.

AER or ***Australian Energy Regulator*** means the body established by section 44AE.

AER Chair means the Chair of the AER.

AER member means a member of the AER.

arrive at, in relation to an understanding, includes reach or enter into.

authorisation means:

(a) an authorisation under Division 1 of Part VII granted by the Commission or by the Tribunal on a review of a determination of the Commission; or

(b) an authorisation under Division 3 of Part VII granted by the Tribunal.

authority, in relation to a State or Territory (including an external Territory), means:

(a) a body corporate established for a purpose of the State or the Territory by or under a law of the State or Territory; or

(b) an incorporated company in which the State or the Territory, or a body corporate referred to in paragraph (a), has a controlling interest.

authority of the Commonwealth means:

(a) a body corporate established for a purpose of the Commonwealth by or under a law of the Commonwealth or a law of a Territory; or

(b) an incorporated company in which the Commonwealth, or a body corporate referred to in paragraph (a), has a controlling interest.

banker includes, but is not limited to, a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

business includes a business not carried on for profit.

cartel provision has the meaning given by section 44ZZRD.

Chairperson means the Chairperson of the Commission.

clearance means a clearance under Division 3 of Part VII granted by the Commission or by the Tribunal on a review of a determination of the Commission.

commencing date means 1 October 1974.

Commission means the Australian Competition and Consumer Commission established by section 6A, and includes a member of the Commission or a Division of the Commission performing functions of the Commission.

competition includes competition from imported goods or from services rendered by persons not resident or not carrying on business in Australia.

Competition Principles Agreement means the Competition Principles Agreement made on 11 April 1995 between the Commonwealth, New South Wales, Victoria, Queensland, Western Australia, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory, being that agreement as in force from time to time.

Conduct Code Agreement means the Conduct Code Agreement made on 11 April 1995 between the Commonwealth, New South Wales, Victoria, Queensland, Western Australia, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory, being that agreement as in force from time to time.

corporation means a body corporate that:

(a) is a foreign corporation;

(b) is a trading corporation formed within the limits of Australia or is a financial corporation so formed;

(c) is incorporated in a Territory; or

(d) is the holding company of a body corporate of a kind referred to in paragraph (a), (b) or (c).

Council means the National Competition Council established by section 29A.

Councillor means a member of the Council, including the Council President.

Council President means the Council President referred to in subsection 29C(1).

covenant means a covenant (including a promise not under seal) annexed to or running with an estate or interest in land (whether at law or in equity and whether or not for the benefit of other land), and ***proposed covenant*** has a corresponding meaning.

debenture includes debenture stock, bonds, notes and any other document evidencing or acknowledging indebtedness of a body corporate, whether constituting a charge on property of the body corporate or not.

Deputy Chairperson means a Deputy Chairperson of the Commission.

Deputy President means a Deputy President of the Tribunal, and includes a person appointed to act as a Deputy President of the Tribunal.

Deputy Registrar means a Deputy Registrar of the Tribunal.

designated Commonwealth energy law means:

(a) the National Electricity (Commonwealth) Law and Regulations (as defined by the *Australian Energy Market Act 2004*); or

(b) the National Gas (Commonwealth) Law and Regulations (as defined by the *Australian Energy Market Act 2004*); or

(c) the Offshore Western Australian Pipelines (Commonwealth) Law and Regulations (as defined by the *Australian Energy Market Act 2004*).

document includes:

(a) a book, plan, paper, parchment or other material on which there is writing or printing, or on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them; and

(b) a disc, tape, paper or other device from which sounds or messages are capable of being reproduced.

dual listed company arrangement has the same meaning as in section 125-60 of the *Income Tax Assessment Act 1997*.

Family Court Judge means a Judge of the Family Court (including the Chief Judge, the Deputy Chief Judge, a Judge Administrator or a Senior Judge).

financial corporation means a financial corporation within the meaning of paragraph 51(xx) of the Constitution and includes a body corporate that carries on as its sole or principal business the business of banking (other than State banking not extending beyond the limits of the State concerned) or insurance (other than State insurance not extending beyond the limits of the State concerned).

financial product has the same meaning as in Division 2 of Part 2 of the *Australian Securities and Investments Commission Act 2001*.

financial service has the same meaning as in Division 2 of Part 2 of the *Australian Securities and Investments Commission Act 2001*.

foreign corporation means a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and includes a body corporate that is incorporated in an external Territory.

fully-participating jurisdiction means a State or Territory that:

(a) is a participating jurisdiction as defined in section 150A; and

(b) is not named in a notice in operation under section 150K.

give effect to, in relation to a provision of a contract, arrangement or understanding, includes do an act or thing in pursuance of or in accordance with or enforce or purport to enforce.

goods includes:

(a) ships, aircraft and other vehicles;

(b) animals, including fish;

(c) minerals, trees and crops, whether on, under or attached to land or not; and

(d) gas and electricity.

member of the Commission includes the Chairperson and a person appointed to act as a member of the Commission but does not include an associate member of the Commission.

member of the Tribunal includes the President and a person appointed to act as a member of the Tribunal.

New Zealand Commerce Commission means the Commission established by section 8 of the Commerce Act 1986 of New Zealand.

New Zealand Crown corporation means a body corporate that is an instrument of the Crown in respect of the Government of New Zealand.

organisation of employees means an organisation that exists or is carried on for the purpose, or for purposes that include the purpose, of furthering the interests of its members in relation to their employment.

personal injury has (except in section 68B) a meaning affected by section 4KA.

practice of exclusive dealing means the practice of exclusive dealing referred to in subsection 47(2), (3), (4), (5), (6), (7), (8) or (9).

practice of resale price maintenance means the practice of resale price maintenance referred to in Part VIII.

President means the President of the Tribunal and includes a person appointed to act as President of the Tribunal.

presidential member or ***presidential member of the Tribunal*** means the President or a Deputy President.

price includes a charge of any description.

provision, in relation to an understanding, means any matter forming part of the understanding.

Registrar means the Registrar of the Tribunal.

require, in relation to the giving of a covenant, means require or demand the giving of a covenant, whether by way of making a contract containing the covenant or otherwise, and whether or not a covenant is given in pursuance of the requirement or demand.

send includes deliver, and ***sent*** and ***sender*** have corresponding meanings.

services includes any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges or facilities that are, or are to be, provided, granted or conferred in trade or commerce, and without limiting the generality of the foregoing, includes the rights, benefits, privileges or facilities that are, or are to be, provided, granted or conferred under:

(a) a contract for or in relation to:
    (i) the performance of work (including work of a professional nature), whether with or without the supply of goods;
    (ii) the provision of, or the use or enjoyment of facilities for, amusement, entertainment, recreation or instruction; or
    (iii) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction;
(b) a contract of insurance;
(c) a contract between a banker and a customer of the banker entered into in the course of the carrying on by the banker of the business of banking; or
(d) any contract for or in relation to the lending of moneys;

but does not include rights or benefits being the supply of goods or the performance of work under a contract of service.

share includes stock.

South Australian Electricity Legislation means:

(a) the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia as in force from time to time; and
(b) any regulations, as in force from time to time, made under Part 4 of that Act.

The reference in paragraph (a) to the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia as in force from

time to time includes a reference to any Rules or other instruments, as in force from time to time, made or having effect under that Law.

South Australian Gas Legislation means:

(a) the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2008* of South Australia as in force from time to time; and

(b) any regulations, as in force from time to time, made under Part 3 of that Act.

The reference in paragraph (a) to the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2008* of South Australia as in force from time to time includes a reference to any Rules or other instruments, as in force from time to time, made or having effect under that Law.

State/Territory AER member means an AER member referred to in section 44AP.

State/Territory energy law means any of the following laws:

(a) a uniform energy law that applies as a law of a State or Territory;

(b) a law of a State or Territory that applies a law mentioned in paragraph (a) as a law of its own jurisdiction;

(c) any other provisions of a law of a State or Territory that:

(i) relate to energy; and

(ii) are prescribed by the regulations for the purposes of this paragraph;

being those provisions as in force from time to time.

supply, when used as a verb, includes:

(a) in relation to goods—supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and

(b) in relation to services—provide, grant or confer;

and, when used as a noun, has a corresponding meaning, and ***supplied*** and ***supplier*** have corresponding meanings.

Territory means:

(a) an internal Territory; or

(b) the Territory of Christmas Island; or

(c) the Territory of Cocos (Keeling) Islands.

the Court or ***the Federal Court*** means the Federal Court of Australia.

the Family Court means the Family Court of Australia.

trade or commerce means trade or commerce within Australia or between Australia and places outside Australia.

trading corporation means a trading corporation within the meaning of paragraph 51(xx) of the Constitution.

Tribunal means the Australian Competition Tribunal, and includes a member of that Tribunal or a Division of that Tribunal performing functions of that Tribunal.

uniform energy law means:

(a) the South Australian Electricity Legislation; or

(b) the South Australian Gas Legislation; or

(c) the Western Australian Gas Legislation; or

(d) provisions of a law of a State or Territory that:

(i) relate to energy; and

(ii) are prescribed by the regulations for the purposes of this subparagraph;

being those provisions as in force from time to time.

unsolicited goods means goods sent to a person without any request made by him or her or on his or her behalf.

unsolicited services means services supplied to a person without any request made by him or her or on his or her behalf.

Western Australian Gas Legislation means:

(a) the National Gas Access (Western Australia) Law (within the meaning of the *National Gas Access (WA) Act 2009* of Western Australia) as in force from time to time; and

(b) any regulations, as in force from time to time, made under Part 3 of that Act.

The reference in paragraph (a) to the National Gas Access (Western Australia) Law (within the meaning of the *National Gas Access (WA) Act 2009* of Western Australia) as in force from time to time includes a reference to any Rules or other instruments, as in force from time to time, made or having effect under that Law.

(2) In this Act:

(a) a reference to engaging in conduct shall be read as a reference to doing or refusing to do any act, including the making of, or the giving effect to a provision of, a contract or arrangement, the arriving at, or the giving effect to a provision of, an understanding or the requiring of the giving of, or the giving of, a covenant;

(b) a reference to conduct, when that expression is used as a noun otherwise than as mentioned in paragraph (a), shall be read as a reference to the doing of or the refusing to do any act, including the making of, or the giving effect to a provision of, a contract or arrangement, the arriving at, or the giving effect to a provision of, an understanding or the requiring of the giving of, or the giving of, a covenant;

(c) a reference to refusing to do an act includes a reference to:

(i) refraining (otherwise than inadvertently) from doing that act; or

(ii) making it known that that act will not be done; and

(d) a reference to a person offering to do an act, or to do an act on a particular condition, includes a reference to the person making it known that the person will accept applications, offers or proposals for the person to do that act or to do that act on that condition, as the case may be.

(3) Where a provision of this Act is expressed to render a provision of a contract, or to render a covenant, unenforceable if the provision of the contract or the covenant has or is likely to have a particular effect, that provision of this Act applies in relation to the provision of the contract or the covenant at any time when the provision of the contract or the covenant has or is likely to have that effect notwithstanding that:

(a) at an earlier time the provision of the contract or the covenant did not have that effect or was not regarded as likely to have that effect; or

(b) the provision of the contract or the covenant will not or may not have that effect at a later time.

(4) In this Act:

(a) a reference to the acquisition of shares in the capital of a body corporate shall be construed as a reference to an acquisition, whether alone or jointly with another person, of any legal or equitable interest in such shares; and

(b) a reference to the acquisition of assets of a person shall be construed as a reference to an acquisition, whether alone or jointly with another person, of any legal or equitable interest in such assets but does not include a reference to an acquisition by way of charge only or an acquisition in the ordinary course of business.

4A Subsidiary, holding and related bodies corporate

(1) For the purposes of this Act, a body corporate shall, subject to subsection (3), be deemed to be a subsidiary of another body corporate if:

(a) that other body corporate:

(i) controls the composition of the board of directors of the first-mentioned body corporate;

(ii) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the first-mentioned body corporate; or

(iii) holds more than one-half of the allotted share capital of the first-mentioned body corporate (excluding any part of that allotted share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or

(b) the first-mentioned body corporate is a subsidiary of any body corporate that is that other body corporate's subsidiary (including any body corporate that is that other body corporate's subsidiary by another application or other applications of this paragraph).

(2) For the purposes of subsection (1), the composition of a body corporate's board of directors shall be deemed to be controlled by another body corporate if that other body corporate, by the exercise of some power exercisable by it without the consent or concurrence of any other person, can appoint or remove all or a majority of the directors, and for the purposes of this provision that other body corporate shall be deemed to have power to make such an appointment if:

(a) a person cannot be appointed as a director without the exercise in his or her favour by that other body corporate of such a power; or

(b) a person's appointment as a director follows necessarily from his or her being a director or other officer of that other body corporate.

(3) In determining whether a body corporate is a subsidiary of another body corporate:

(a) any shares held or power exercisable by that other body corporate in a fiduciary capacity shall be treated as not held or exercisable by it;

(b) subject to paragraphs (c) and (d), any shares held or power exercisable:

(i) by any person as a nominee for that other body corporate (except where that other body corporate is concerned only in a fiduciary capacity); or

(ii) by, or by a nominee for, a subsidiary of that other body corporate, not being a subsidiary that is concerned only in a fiduciary capacity;

shall be treated as held or exercisable by that other body corporate;

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned body corporate, or of a trust deed for securing any allotment of such debentures, shall be disregarded; and

(d) any shares held or power exercisable by, or by a nominee for, that other body corporate or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other body corporate if the ordinary business of that other body corporate or its subsidiary, as the case may be, includes the lending of money and the shares are held or the power is exercisable by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4) A reference in this Act to the holding company of a body corporate shall be read as a reference to a body corporate of which that other body corporate is a subsidiary.

(5) Where a body corporate:

(a) is the holding company of another body corporate;

(b) is a subsidiary of another body corporate; or

(c) is a subsidiary of the holding company of another body corporate;

that first-mentioned body corporate and that other body corporate shall, for the purposes of this Act, be deemed to be related to each other.

(5A) For the purposes of Parts IV, VI and VII:

(a) a body corporate that is a party to a dual listed company arrangement is taken to be related to the other body corporate that is a party to the arrangement; and

(b) a body corporate that is related to one of the parties to the arrangement is taken to be related to the other party to the arrangement; and

(c) a body corporate that is related to one of the parties to the arrangement is taken to be related to each body corporate that is related to the other party to the arrangement.

(6) In proceedings under this Act, whether in the Court or before the Tribunal or the Commission, it shall be presumed, unless the contrary is established, that bodies corporate are not, or were not at a particular time, related to each other.

4B Consumers

(1) For the purposes of this Act, unless the contrary intention appears:

(a) a person shall be taken to have acquired particular goods as a consumer if, and only if:

(i) the price of the goods did not exceed the prescribed amount; or

(ii) where that price exceeded the prescribed amount—the goods were of a kind ordinarily acquired for personal, domestic or household use or consumption or the goods consisted of a commercial road vehicle;

and the person did not acquire the goods, or hold himself or herself out as acquiring the goods, for the purpose of

re-supply or for the purpose of using them up or transforming them, in trade or commerce, in the course of a process of production or manufacture or of repairing or treating other goods or fixtures on land; and

(b) a person shall be taken to have acquired particular services as a consumer if, and only if:

(i) the price of the services did not exceed the prescribed amount; or

(ii) where that price exceeded the prescribed amount—the services were of a kind ordinarily acquired for personal, domestic or household use or consumption.

(2) For the purposes of subsection (1):

(a) the prescribed amount is $40,000 or, if a greater amount is prescribed for the purposes of this paragraph, that greater amount;

(b) subject to paragraph (c), the price of goods or services purchased by a person shall be taken to have been the amount paid or payable by the person for the goods or services;

(c) where a person purchased goods or services together with other property or services, or with both other property and services, and a specified price was not allocated to the goods or services in the contract under which they were purchased, the price of the goods or services shall be taken to have been:

(i) the price at which, at the time of the acquisition, the person could have purchased from the supplier the goods or services without the other property or services;

(ii) if, at the time of the acquisition, the goods or services were not available for purchase from the supplier except together with the other property or services but, at that time, goods or services of the kind acquired were available for

purchase from another supplier without other property or services—the lowest price at which the person could, at that time, reasonably have purchased goods or services of that kind from another supplier; or

(iii) if, at the time of the acquisition, goods or services of the kind acquired were not available for purchase from any supplier except together with other property or services—the value of the goods or services at that time;

(d) where a person acquired goods or services otherwise than by way of purchase, the price of the goods or services shall be taken to have been:

(i) the price at which, at the time of the acquisition, the person could have purchased the goods or services from the supplier;

(ii) if, at the time of the acquisition, the goods or services were not available for purchase from the supplier or were so available only together with other property or services but, at that time, goods or services of the kind acquired were available for purchase from another supplier—the lowest price at which the person could, at that time, reasonably have purchased goods or services of that kind from another supplier; or

(iii) if goods or services of the kind acquired were not available, at the time of the acquisition, for purchase from any supplier or were not so available except together with other property or services—the value of the goods or services at that time; and

(e) without limiting by implication the meaning of the expression ***services*** in subsection 4(1), the obtaining of credit by a person in connection with the acquisition of goods or services by him or her shall be deemed to be the acquisition by him or her of a service and any amount by which the amount paid or payable by him or her for the goods or services is increased by reason of his or her so obtaining credit shall be deemed to be paid or payable by him or her for that service.

(3) Where it is alleged in any proceeding under this Act or in any other proceeding in respect of a matter arising under this Act that a person was a consumer in relation to particular goods or services, it shall be presumed, unless the contrary is established, that the person was a consumer in relation to those goods or services.

(4) In this section, ***commercial road vehicle*** means a vehicle or trailer acquired for use principally in the transport of goods on public roads.

4C Acquisition, supply and re-supply

In this Act, unless the contrary intention appears:

(a) a reference to the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to, goods in pursuance of a supply of the goods;

(b) a reference to the supply or acquisition of goods or services includes a reference to agreeing to supply or acquire goods or services;

(c) a reference to the supply or acquisition of goods includes a reference to the supply or acquisition of goods together with other property or services, or both;

(d) a reference to the supply or acquisition of services includes a reference to the supply or acquisition of services together with property or other services, or both;

(e) a reference to the re-supply of goods acquired from a person includes a reference to:

(i) a supply of the goods to another person in an altered form or condition; and

(ii) a supply to another person of goods in which the first-mentioned goods have been incorporated;

(f) a reference to the re-supply of services (the ***original services***) acquired from a person (the ***original supplier***) includes a reference to:

(i) a supply of the original services to another person in an altered form or condition; and

(ii) a supply to another person of other services that are substantially similar to the original services, and could not have been supplied if the original services had not been acquired by the person who acquired them from the original supplier.

4D Exclusionary provisions

(1) A provision of a contract, arrangement or understanding, or of a proposed contract, arrangement or understanding, shall be taken to be an exclusionary provision for the purposes of this Act if:

(a) the contract or arrangement was made, or the understanding was arrived at, or the proposed contract or arrangement is to be made, or the proposed understanding is to be arrived at, between persons any 2 or more of whom are competitive with each other; and

(b) the provision has the purpose of preventing, restricting or limiting:

(i) the supply of goods or services to, or the acquisition of goods or services from, particular persons or classes of persons; or

(ii) the supply of goods or services to, or the acquisition of goods or services from, particular persons or classes of persons in particular circumstances or on particular conditions;

by all or any of the parties to the contract, arrangement or understanding or of the proposed parties to the proposed contract, arrangement or understanding or, if a party or proposed party is a body corporate, by a body corporate that is related to the body corporate.

(2) A person shall be deemed to be competitive with another person for the purposes of subsection (1) if, and only if, the first-mentioned person or a body corporate that is related to that person is, or is likely to be, or, but for the provision of any contract, arrangement or understanding or of any proposed contract, arrangement or understanding, would be, or would be likely to be, in competition with the other person, or with a body corporate that is related to the other person, in relation to the supply or acquisition of all or any of the goods or services to which the relevant provision of the contract, arrangement or understanding or of the proposed contract, arrangement or understanding relates.

4E Market

For the purposes of this Act, unless the contrary intention appears, ***market*** means a market in Australia and, when used in relation to any goods or services, includes a market for those goods or services and other goods or services that are substitutable for, or otherwise competitive with, the first-mentioned goods or services.

4F References to purpose or reason

(1) For the purposes of this Act:

(a) a provision of a contract, arrangement or understanding or of a proposed contract, arrangement or understanding, or a covenant or a proposed covenant, shall be deemed to have had, or to have, a particular purpose if:

(i) the provision was included in the contract, arrangement or understanding or is to be included in the proposed contract, arrangement or understanding, or the covenant was required to be given or the proposed covenant is to be required to be given, as the case may be, for that purpose or for purposes that included or include that purpose; and

(ii) that purpose was or is a substantial purpose; and

(b) a person shall be deemed to have engaged or to engage in conduct for a particular purpose or a particular reason if:

(i) the person engaged or engages in the conduct for purposes that included or include that purpose or for reasons that included or include that reason, as the case may be; and

(ii) that purpose or reason was or is a substantial purpose or reason.

(2) This section does not apply for the purposes of subsections 45D(1), 45DA(1), 45DB(1), 45E(2) and 45E(3).

4G Lessening of competition to include preventing or hindering competition

For the purposes of this Act, references to the lessening of competition shall be read as including references to preventing or hindering competition.

4H Application of Act in relation to leases and licences of land and buildings

In this Act:

(a) a reference to a contract shall be construed as including a reference to a lease of, or a licence in respect of, land or a building or part of a building and shall be so construed notwithstanding the express references in this Act to such leases or licences;

(b) a reference to making or entering into a contract, in relation to such a lease or licence, shall be read as a reference to granting or taking the lease or licence; and

(c) a reference to a party to a contract, in relation to such a lease or licence, shall be read as including a reference to any person bound by, or entitled to the benefit of, any provision contained in the lease or licence.

4J Joint ventures

In this Act:

(a) a reference to a joint venture is a reference to an activity in trade or commerce:

(i) carried on jointly by two or more persons, whether or not in partnership; or

(ii) carried on by a body corporate formed by two or more persons for the purpose of enabling those persons to carry on that activity jointly by means of their joint control, or by means of their ownership of shares in the capital, of that body corporate; and

(b) a reference to a contract or arrangement made or understanding arrived at, or to a proposed contract or arrangement to be made or proposed understanding to be arrived at, for the purposes of a joint venture shall, in relation to a joint venture by way of an activity carried on by a body corporate as mentioned in subparagraph (a)(ii), be read as including a reference to the memorandum and articles of association, rules or other document that constitute or constitutes, or are or is to constitute, that body corporate.

4K Loss or damage to include injury

In this Act:

(a) a reference to loss or damage, other than a reference to the amount of any loss or damage, includes a reference to injury; and

(b) a reference to the amount of any loss or damage includes a reference to damages in respect of an injury.

4KA Personal injury

In this Act (except in section 68B):

personal injury includes:

(a) pre-natal injury; or

(b) impairment of a person's physical or mental condition; or

(c) disease;

but does not include an impairment of a person's mental condition unless the impairment consists of a recognised psychiatric illness.

4L Severability

If the making of a contract after the commencement of this section contravenes this Act by reason of the inclusion of a particular provision in the contract, then, subject to any order made under section 87 or 87A, nothing in this Act affects the validity or enforceability of the contract otherwise than in relation to that provision in so far as that provision is severable.

4M Saving of law relating to restraint of trade and breaches of confidence

This Act does not affect the operation of:

(a) the law relating to restraint of trade in so far as that law is capable of operating concurrently with this Act; or

(b) the law relating to breaches of confidence;

but nothing in the law referred to in paragraph (a) or (b) affects the interpretation of this Act.

4N Extended application of Part IIIA

(1) Part IIIA, and the other provisions of this Act so far as they relate to Part IIIA, extend to services provided by means of facilities that are, or will be, wholly or partly within:

(a) an external Territory; or

(b) the offshore area in respect of a State, of the Northern Territory, or of an external Territory, as specified in section 7 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

(3) Nothing in subsection (1) affects the operation of section 15B of the *Acts Interpretation Act 1901* in respect of the application of Part IIIA, and of the other provisions of this Act so far as they relate to Part IIIA, in any part of:

(a) the coastal sea of Australia; or

(b) the coastal sea of an external Territory;

that is on the landward side of each of the offshore areas referred to in that subsection.

(4) For the purposes of this section:

service includes proposed service covered by Division 2A of Part IIIA.

5 Extended application of Parts IV, IVA, V, VB, VC etc.

(1) Each of the following provisions:

(a) Part IV;

(b) Part IVA;

(c) Part V (other than Division 1AA);

(d) Part VB;

(e) Part VC;

(f) the remaining provisions of this Act (to the extent to which they relate to any of the provisions covered by paragraph (a), (b), (c), (d) or (e));

extends to the engaging in conduct outside Australia by:

(g) bodies corporate incorporated or carrying on business within Australia; or

(h) Australian citizens; or

(i) persons ordinarily resident within Australia.

(1A) In addition to the extended operation that section 46A has by virtue of subsection (1), that section extends to the engaging in conduct outside Australia by:

(a) New Zealand and New Zealand Crown corporations; or

(b) bodies corporate carrying on business within New Zealand; or

(c) persons ordinarily resident within New Zealand.

(2) In addition to the extended operation that sections 47 and 48 have by virtue of subsection (1), those sections extend to the engaging in conduct outside Australia by any persons in relation to the supply by those persons of goods or services to persons within Australia.

(3) Where a claim under section 82 is made in a proceeding, a person is not entitled to rely at a hearing in respect of that proceeding on conduct to which a provision of this Act extends by virtue of subsection (1) or (2) of this section except with the consent in writing of the Minister.

(4) A person other than the Minister", the Commission or the Director of Public Prosecutions is not entitled to make an application to the Court for an order under subsection 87(1) or (1A) in a proceeding in respect of conduct to which a provision of this Act extends by virtue of subsection (1) or (2) of this section except with the consent in writing of the Minister.

(5) The Minister shall give a consent under subsection (3) or (4) in respect of a proceeding unless, in the opinion of the Minister:

(a) the law of the country in which the conduct concerned was engaged in required or specifically authorised the engaging in of the conduct; and

(b) it is not in the national interest that the consent be given.

6 Extended application of Parts IV, IVA, IVB, V, VA, VB and VC

(1) Without prejudice to its effect apart from this section, this Act also has effect as provided by this section.

(2) This Act, other than Parts IIIA, VIIA and X, has, by force of this subsection, the effect it would have if:

(a) any references in this Act other than in section 45DB, 55 or 75AZH to trade or commerce were, by express provision, confined to trade or commerce:

(i) between Australia and places outside Australia;

(ii) among the States;

(iii) within a Territory, between a State and a Territory or between two Territories; or

(iv) by way of the supply of goods or services to the Commonwealth or an authority or instrumentality of the Commonwealth;

and

(b) sections 44ZZRF, 44ZZRG, 44ZZRJ, 44ZZRK, 45, 45B, 45D to 45EB (other than section 45DB), 46, 46A, 53B and 60, subsections 64(3) and (4), Division 1AAA of Part V, sections 75A, 75AU, 75AV, 75AW, 75AX, 75AY, 75AZE, 75AZN,

75AZO, subsections 75AZQ(4) to (7) (inclusive) and 75AYA and Part VIII were, by express provision, confined in their operation to engaging in conduct to the extent to which the conduct takes place in the course of or in relation to:

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

(ii) trade or commerce among the States;

(iii) trade or commerce within a Territory, between a State and a Territory or between two Territories; or

(iv) the supply of goods or services to the Commonwealth or an authority or instrumentality of the Commonwealth;

and

(c) any reference in Division 2 of Part V to a contract for the supply of goods or services and any reference in Division 2A of that Part or in Part VA to the supply of goods, were, by express provision, confined to a contract made, or the supply of goods, as the case may be:

(i) in the course of, or in relation to, trade or commerce between Australia and places outside Australia;

(ii) in the course of, or in relation to, trade or commerce among the States; or

(iii) in the course of, or in relation to, trade or commerce within a Territory, between a State and a Territory or between two Territories;

and

(d) in subsection 45(1) and subparagraph 87(3)(a)(i) the words "in so far as it confers rights or benefits or imposes duties or obligations on a corporation" were omitted; and

(e) in subsection 45B(1) and subparagraph 87(3)(a)(ii) the words "in so far as it confers rights or benefits or imposes duties or obligations on a corporation or on a person associated with a corporation" were omitted; and

(ea) subsections 45D(3), 45D(4) and 45DA(3) were repealed, the words "In the circumstances specified in subsections (3) and (4)" were omitted from subsection 45D(1) and the words "In the circumstances specified in subsection (3)" were omitted from subsection 45DA(1); and

(eb) the second sentence in subsection 45E(1) were omitted; and

(g) subsection 96(2) were omitted; and

(h) subject to paragraphs (d), (e), (ea), (eb) and (g), a reference in this Act to a corporation, except a reference in section 4, 48, 49, 50, 50A, 77A, 81, 151AE or 151AJ, included a reference to a person not being a corporation.

(2A) So far as subsection (2) relates to Part IV, that subsection has effect in relation to a participating Territory as if the words "within a Territory," were omitted from subparagraphs (2)(a)(iii) and (2)(b)(iii). For this purpose, ***participating Territory*** means a Territory that is a participating Territory within the meaning of Part XIA but is not named in a notice in operation under section 150K.

(2B) So far as subsection (2) relates to Part VB, that subsection has effect in relation to a Part XIAA scheme Territory as if the words "within a Territory," were omitted from subparagraph (2)(b)(iii). For this purpose, a ***Part XIAA scheme Territory*** is a Territory that has a law applying the New Tax System Price Exploitation Code (see Part XIAA), either with or without modifications, as a law of the Territory.

(2C) In addition to the effect that this Act (other than Parts IIIA, VIIA and X) has as provided by another subsection of this section, this Act (other than Parts IIIA, VIIA and X) has, by force of this subsection, the effect it would have if:

(a) the reference in paragraph 44ZZRD(2)(c) to goods or services supplied, or likely to be supplied, were, by express provision, confined to goods or services supplied, or likely to be supplied, to corporations or classes of corporations; and

(b) the reference in paragraph 44ZZRD(2)(d) to goods or services acquired, or likely to be acquired, were, by express provision, confined to goods or services acquired, or likely to be acquired, from corporations or classes of corporations; and

(c) the reference in paragraph 44ZZRD(2)(e) to goods or services re-supplied, or likely to be re-supplied, were, by express provision, confined to goods or services re-supplied, or likely to be re-supplied, to corporations or classes of corporations; and

(d) the reference in paragraph 44ZZRD(2)(f) to goods or services likely to be re-supplied were, by express provision, confined to goods or services likely to be re-supplied to corporations or classes of corporations; and

(e) the following paragraphs were added at the end of subsection 44ZZRD(2):

"; or (g) goods or services re-supplied, or likely to be re-supplied, by corporations or classes of corporations to whom those goods or services were supplied by any or all of the parties to the contract, arrangement or understanding; or

(h) goods or services likely to be re-supplied by corporations or classes of corporations to whom those goods or services are likely to be supplied by any or all of the parties to the contract, arrangement or understanding."; and

(f) the reference in subparagraph 44ZZRD(3)(a)(i) to the production, or likely production, of goods were, by express provision, confined to the production, or likely production, of goods for supply to corporations or classes of corporations; and

(g) the reference in subparagraph 44ZZRD(3)(a)(ii) to the supply of services were, by express provision, confined to the supply of services to corporations or classes of corporations; and

(h) each reference in subparagraphs 44ZZRD(3)(a)(iii), (b)(i) and (ii) to persons or classes of persons were, by express provision, confined to corporations or classes of corporations; and

(i) the reference in subparagraph 44ZZRD(3)(b)(iii) to the geographical areas in which goods or services are supplied, or likely to be supplied, were, by express provision, confined to the geographical areas in which goods or services are supplied, or likely to be supplied, to corporations or classes of corporations; and

(j) the reference in subparagraph 44ZZRD(3)(b)(iv) to the geographical areas in which goods or services are acquired, or likely to be acquired, were, by express provision, confined to the geographical areas in which goods or services are acquired, or likely to be acquired, from corporations or classes of corporations; and

(k) the reference in paragraph 44ZZRD(3)(c) to the supply or acquisition of goods or services were, by express provision, confined to supply of goods or services to, or the acquisition of goods or services from, corporations or classes of corporations; and

(l) the reference in paragraph 44ZZRD(4)(e) to paragraph (2)(e) or (f) included a reference to paragraph (2)(g) or (h); and

(m) section 44ZZRD also provided that it is immaterial whether the identities of the corporations referred to in subsection (2) or (3) of that section can be ascertained; and

(n) each reference in the following provisions of this Act:

(i) Division 1 of Part IV (other than section 44ZZRD);

(ii) any other provision (other than section 4, 44ZZRD, 151AE or 151AJ or this subsection or subsection (5A)) to the extent to which it relates to Division 1 of Part IV;

to a corporation included a reference to a person not being a corporation.

For the purposes of this subsection, ***likely*** and ***production*** have the same meaning as in Division 1 of Part IV.

(2D) In addition to the effect that this Act (other than Parts IIIA, VIIA and X) has as provided by another subsection of this section, this Act (other than Parts IIIA, VIIA and X) has, by force of this subsection, the effect it would have if:

(a) sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK were, by express provision, confined in their operation to engaging in conduct to the extent to which the conduct involves the use of, or relates to, a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution; and

(b) each reference in the following provisions of this Act:

(i) Division 1 of Part IV;

(ii) any other provision (other than section 4, 151AE or 151AJ or this subsection or subsection (5A)) to the extent to which it relates to Division 1 of Part IV;

to a corporation included a reference to a person not being a corporation.

(2E) In addition to the effect that this Act (other than Parts IIIA, VIIA and X) has as provided by another subsection of this section, this Act (other than Parts IIIA, VIIA and X) has, by force of this subsection, the effect it would have if:

(a) sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK were, by express provision, confined in their operation to engaging in conduct to the extent to which the conduct takes place in, or relates to:

(i) a Territory; or

(ii) a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*); and

(b) each reference in the following provisions of this Act:

(i) Division 1 of Part IV;

(ii) any other provision (other than section 4, 151AE or 151AJ or this subsection or subsection (5A)) to the extent to which it relates to Division 1 of Part IV;

to a corporation included a reference to a person not being a corporation.

(3) In addition to the effect that this Act, other than Parts IIIA, VIIA and X, has as provided by another subsection of this section, the provisions of Part IVA, of Divisions 1, 1A and 1AA of Part V and of Divisions 2 and 3 of Part VC have, by force of this subsection, the effect they would have if:

(a) those provisions (other than sections 55 and 75AZH) were, by express provision, confined in their operation to engaging in conduct to the extent to which the conduct involves the use of postal, telegraphic or telephonic services or takes place in a radio or television broadcast; and

(b) a reference in those provisions to a corporation included a reference to a person not being a corporation.

(4) In addition to the effect that this Act, other than Parts IIIA, VIIA and X, has as provided by another subsection of this section, the provisions of Part IVA and of Division 1 (other than sections 53A and 55) and Divisions 1AAA and 1AA of Part V and of Division 2 of Part VC (other than sections 75AZD, 75AZH and 75AZO) also have, by force of this subsection, the effect they would have if:

(a) those provisions were, by express provision, confined in their operation to engaging in conduct in a Territory; and

(b) a reference in those provisions to a thing done by a corporation in trade or commerce included a reference to a thing done in the course of the promotional activities of a professional person.

(5) In the application of section 73 in relation to a supplier who is a natural person, that section has effect as if there were substituted for paragraph 73(6)(a) the following paragraph:

"(a) the supplier had died or is an undischarged bankrupt or a person whose affairs are being dealt with under Part X of the *Bankruptcy Act 1966*; or".

(5A) Despite anything in section 44ZZRF or 44ZZRG, if a body corporate other than a corporation is convicted of an offence against that section (as that section applies because of this section), the offence is taken to be punishable on conviction as if the body corporate were a corporation.

(5B) Despite anything in section 44ZZRF or 44ZZRG, if a person other than a body corporate is convicted of an offence against that section (as that section applies because of this section), the offence is taken to be punishable on conviction by a term of imprisonment not exceeding 10 years or a fine not exceeding 2,000 penalty units, or both.

(6) Despite anything in Part VC, if a person other than a corporation is convicted of an offence against a provision of that Part, being a provision that applies in relation to the person as provided by this section, the offence is taken to be punishable on conviction by a fine not exceeding 2,000 penalty units.

6AA Application of the *Criminal Code*

(1) Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2) Despite subsection (1), Part 2.5 of the *Criminal Code* does not apply to an offence against Part IIIA, VC or XIC, Division 7 of Part XIB, or section 44ZZRF or 44ZZRG.

Part II—The Australian Competition and Consumer Commission

6A Establishment of Commission

(1) The Australian Competition and Consumer Commission is established by this section.

(2) The Commission:

(a) is a body corporate, with perpetual succession;

(b) shall have an official seal;

(c) may acquire, hold and dispose of real and personal property; and

(d) may sue or be sued in its corporate name.

7 Constitution of Commission

(1) The Commission shall consist of a Chairperson and such number of other members as are from time to time appointed in accordance with this Act.

(2) The members of the Commission shall be appointed by the Governor-General and shall be so appointed as full-time members.

Note: A member of the Commission who is also appointed as an AER member remains a full-time member of the Commission: see section 44AN.

(3) Before the Governor-General appoints a person as a member of the Commission or as Chairperson, the Minister must:

(a) be satisfied that the person qualifies for the appointment because of the person's knowledge of, or experience in, industry, commerce, economics, law, public administration or consumer protection; and

(b) consider whether the person has knowledge of, or experience in, small business matters; and

(c) if there is at least one fully-participating jurisdiction—be satisfied that a majority of such jurisdictions support the appointment.

(4) At least one of the members of the Commission must be a person who has knowledge of, or experience in, consumer protection.

8 Terms and conditions of appointment

(1) Subject to this Part, a member of the Commission holds office for such period, not exceeding 5 years, as is specified in the instrument of his or her appointment and on such terms and conditions as the Governor-General determines, but is eligible for re-appointment.

8A Associate members

(1) The Minister may appoint persons to be associate members of the Commission.

(1A) If there is at least one fully-participating jurisdiction, the Minister must not appoint a person as an associate member unless the Minister is satisfied that a majority of such jurisdictions support the appointment.

(2) An associate member of the Commission shall be appointed for such period not exceeding 5 years as is specified in the instrument of his or her appointment, but is eligible for re-appointment.

(3) Subject to this Part, an associate member of the Commission holds office on such terms and conditions as the Minister determines.

(4) The Chairperson may, by writing signed by him or her, direct that, for the purposes of the exercise of the powers of the Commission under this Act in relation to a specified matter, not being an exercise of those powers by a Division of the Commission, a specified associate member of the Commission or specified associate members of the Commission shall be deemed to be a member or members of the Commission and, in that case, unless the contrary intention appears, a reference in this Act to a member of the Commission shall, for the purposes only of the exercise of the powers of the Commission in relation to that matter, be construed as including a reference to that associate member of the Commission or each of those associate members of the Commission, as the case may be.

(5) Associate members of the Commission shall be deemed to be members of the Commission for the purposes of section 19.

(6) For the purpose of the determination by the Commission of an application for an authorization or a clearance, or the making by the Commission of any decision for the purposes of subsection 93(3) or (3A) or 93AC(1) or (2), the Chairperson shall consider:

(a) whether he or she should give a direction under subsection (4) of this section; or

(b) in the case of a matter in relation to which the Chairperson proposes to give a direction under subsection 19(1), whether he or she should direct that the Division concerned is to include an associate member of the Commission or associate members of the Commission.

(7) Nothing in subsection (4) or (5) deems an associate member of the Commission to be a member of the Commission for any purpose related to the preparation of a report by the Commission under section 171.

8AB State/Territory AER members taken to be associate members

(1) A State/Territory AER member is taken to be an associate member of the Commission during the period for which he or she is an AER member.

Note: A State/Territory AER member who is taken to be an associate member of the Commission can still be appointed as an associate member under section 8A.

(2) However, a State/Territory AER member who is taken to be an associate member under subsection (1), is not taken to be an associate member for the purposes of sections 8A, 9, 14, 15 and 17.

(3) As an associate member, the State/Territory AER member holds office on such terms and conditions as are specified in the instrument of his or her appointment under section 44AP.

9 Remuneration

(1) A member of the Commission shall be paid such remuneration as is determined by the Remuneration Tribunal, but, until that remuneration is so determined, he or she shall be paid such remuneration as is prescribed.

(2) Subject to the *Remuneration Tribunal Act 1973*, a member of the Commission shall be paid such allowances as are prescribed.

(3) In this section, ***member of the Commission*** includes an associate member of the Commission.

10 Deputy Chairpersons

(1) The Governor-General may appoint a person who is, or is to be, a member of the Commission to be a Deputy Chairperson of the Commission.

(1A) If there is at least one fully-participating jurisdiction, the Governor-General must not appoint a person as a Deputy Chairperson unless the Governor-General is satisfied that a majority of such jurisdictions support the appointment.

(1B) Before the Governor-General appoints a person as a Deputy Chairperson, the Minister must be satisfied that, immediately after the appointment, there will be at least one Deputy Chairperson who has knowledge of, or experience in, small business matters.

(2) A person appointed under this section holds office as Deputy Chairperson until the expiration of his or her period of appointment as a member of the Commission or until he or she sooner ceases to be a member of the Commission.

(3) Where a member of the Commission appointed as Deputy Chairperson is, upon ceasing to be a Deputy Chairperson by virtue of the expiration of the period of his or her appointment as a member, re-appointed as a member, he or she is eligible for re-appointment as Deputy Chairperson.

(4) A Deputy Chairperson may resign his or her office of Deputy Chairperson by writing signed by him or her and delivered to the Governor-General.

(5) Not more than 2 persons may hold office as Deputy Chairperson at any one time.

11 Acting Chairperson

(1) Where there is, or is expected to be, a vacancy in the office of Chairperson, the Governor-General may appoint a person to act as Chairperson until the filling of the vacancy.

(1A) A person appointed under subsection (1) to act during a vacancy shall not continue so to act for more than 12 months.

(2) Where the Chairperson is absent from duty or from Australia:

(a) if there are 2 Deputy Chairpersons available to act as Chairperson, the Minister may appoint 1 of them to act as Chairperson during the absence of the Chairperson; or

(b) if there is only 1 Deputy Chairperson available to act as Chairperson, that Deputy Chairperson is to act as Chairperson during the absence of the Chairperson; or

(c) if there are no Deputy Chairpersons or none of the Deputy Chairpersons are available to act as Chairperson, the Minister may appoint a member of the Commission to act as Chairperson during the absence of the Chairperson, but any such appointment ceases to have effect if a person is appointed as a Deputy Chairperson or a Deputy Chairperson becomes available to act as Chairperson.

(3) A person acting as Chairperson shall act in that capacity on such terms and conditions as the Governor-General determines and has all the powers and duties, and shall perform all the functions, conferred on the Chairperson by this Act.

12 Leave of absence

(1) A member of the Commission has such recreation leave entitlements as are determined by the Remuneration Tribunal.

(2) The Minister may grant a member of the Commission leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

13 Termination of appointment of members of the Commission

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

(2) If a member of the Commission:

(a) becomes bankrupt, applies to take the benefit of any 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) fails to comply with his or her obligations under section 17;

(c) without the consent of the Minister engages in any paid employment outside the duties of his or her office; or

(d) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months;

the Governor-General shall terminate the appointment of that member of the Commission.

14 Termination of appointment of associate members of the Commission

(1) The Minister may terminate the appointment of an associate member of the Commission for misbehaviour or physical or mental incapacity.

(2) If an associate member of the Commission:

(a) becomes bankrupt, applies to take the benefit of any 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; or

(b) fails to comply with his or her obligations under section 17;

the Minister shall terminate the appointment of that associate member of the Commission.

15 Resignation

(1) A member of the Commission may resign his or her office by writing signed by him or her and delivered to the Governor-General.

(2) An associate member of the Commission may resign his or her office by writing signed by him or her and delivered to the Minister.

16 Arrangement of business

The Chairperson may give directions as to the arrangement of the business of the Commission.

17 Disclosure of interests by members

(1) Where a member of the Commission other than the Chairperson is taking part, or is to take part, in the determination of a matter before the Commission and the member has or acquires any pecuniary interest that could conflict with the proper performance of his or her functions in relation to the determination of the matter:

(a) the member shall disclose the interest to the Chairperson; and

(b) the member shall not take part, or continue to take part, in the determination of the matter if:

(i) the Chairperson gives a direction under paragraph (2)(a) in relation to the matter; or

(ii) all of the persons concerned in the matter do not consent to the member taking part in the determination of the matter.

(2) Where the Chairperson becomes aware that a member of the Commission is taking part, or is to take part, in the determination of a matter and that the member has in relation to the determination of the matter such an interest:

(a) if the Chairperson considers that the member should not take part, or should not continue to take part, in the determination of the matter—the Chairperson shall give a direction to the member accordingly; or

(b) in any other case—the Chairperson shall cause the interest of the member to be disclosed to the persons concerned in the matter.

(3) The Chairperson shall give written notice to the Minister of all pecuniary interests that the Chairperson has or acquires in any business carried on in Australia or in any body corporate carrying on any such business.

(4) In this section, ***member of the Commission*** includes an associate member of the Commission.

18 Meetings of Commission

(1) Subject to this section, the Chairperson shall convene such meetings of the Commission as he or she thinks necessary for the efficient performance of the functions of the Commission.

(2) Meetings of the Commission shall be held at such places as the Chairperson determines.

(3) The Chairperson shall preside at all meetings of the Commission at which he or she is present.

(4) In the absence of the Chairperson from a meeting of the Commission:

(a) if there are 2 Deputy Chairpersons available to preside at the meeting—the Chairperson may nominate 1 of them to preside at the meeting; or

(b) if there is only 1 Deputy Chairperson available to preside at the meeting—that Deputy Chairperson is to preside at the meeting.

(5) Subject to this Act and the regulations, the member presiding at a meeting of the Commission may give directions regarding the procedure to be followed at or in connexion with the meeting.

(6) At a meeting of the Commission:

(a) three members (including the Chairperson or a Deputy Chairperson) form a quorum;

(b) all questions shall be decided by a majority of votes of the members present and voting; and

(c) the member presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(7) If the Commission so determines, a member or members may participate in, and form part of a quorum at, a meeting of the Commission or a Division of the Commission by means of any of the following methods of communication:

(a) telephone;

(b) closed circuit television;

(c) another method of communication determined by the Commission.

(8) A determination made by the Commission under subsection (7) may be made in respect of a particular meeting or meetings of the Commission or a Division of the Commission or in respect of all meetings of the Commission or a Division of the Commission.

19 Chairperson may direct Commission to sit in Divisions

(1) The Chairperson may, by writing signed by him or her, direct that the powers of the Commission under this Act in relation to a matter shall be exercised by a Division of the Commission constituted by the Chairperson and such other members (not being less than two in number) as are specified in the direction.

(2) Where the Chairperson has given a direction under subsection (1), he or she may, by writing signed by him or her, at any time before the Division of the Commission specified in the direction has made a determination in relation to the matter, revoke the direction or amend the direction in relation to the membership of the Division or in any other respect, and where the membership of a Division of the Commission is changed, the Division as constituted after the change may complete the determination of the matter.

(3) For the purposes of the determination of a matter specified in a direction given under subsection (1), the Commission shall be deemed to consist of the Division of the Commission specified in the direction.

(4) The Chairperson is not required to attend a meeting of a Division of the Commission if he or she does not think fit to do so.

(5) At a meeting of a Division of the Commission at which neither the Chairperson nor a Deputy Chairperson is presiding, a member of the Commission nominated for the purpose by the Chairperson shall preside.

(6) Notwithstanding section 18, at a meeting of a Division of the Commission, two members form a quorum.

(7) A Division of the Commission may exercise powers of the Commission under this Act notwithstanding that another Division of the Commission is exercising powers of the Commission at the same time.

25 Delegation by Commission

(1) The Commission may, by resolution, delegate to a member of the Commission, either generally or otherwise as provided by the instrument of delegation, any of its powers under this Act (other than Part VIIA or section 152ELA), Procedural Rules under Part XIC, the *Telecommunications Act 1997*, the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, the *Water Act 2007*, Rules of Conduct under Part 20 of the *Telecommunications Act 1997* or the *Australian Postal Corporation Act 1989*, other than this power of delegation and its powers to grant, revoke or vary an authorization or a clearance.

Note: Section 95ZD allows the Commission to delegate certain powers under Part VIIA to a member of the Commission.

(2) A power so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation.

(3) A delegation under this section is revocable at will and does not prevent the exercise of a power by the Commission.

26 Delegation by Commission in relation to unconscionable conduct and consumer protection

(1) The Commission may, by resolution, delegate any of its functions and powers under or in relation to Parts IVA, V, VC and VI and any of its powers under Part XII that relate to those Parts, to a staff member of the Australian Securities and Investments Commission within the meaning of section 5 of the *Australian Securities and Investments Commission Act 2001*.

(2) The Commission must not delegate a function or power under subsection (1) unless the Chairperson of the Australian Securities and Investments Commission has agreed to the delegation in writing.

27 Staff of Commission

(1) The staff necessary to assist the Commission shall be persons engaged under the *Public Service Act 1999*.

(2) For the purposes of the *Public Service Act 1999*:

(a) the Chairperson of the Commission and the APS employees assisting the Chairperson together constitute a Statutory Agency; and

(b) the Chairperson is the Head of that Statutory Agency.

27A Consultants

(1) On behalf of the Commonwealth, the Commission may engage persons to give advice to, and perform services for, the Commission.

(2) The terms and conditions of engagement are as determined by the Commission.

28 Functions of Commission in relation to dissemination of information, law reform and research

(1) In addition to any other functions conferred on the Commission, the Commission has the following functions:

(a) to make available to persons engaged in trade or commerce and other interested persons general information for their guidance with respect to the carrying out of the functions, or the exercise of the powers, of the Commission under this Act;

(b) to examine critically, and report to the Minister on, the laws in force in Australia relating to the protection of consumers in respect of matters referred to the Commission by the Minister, being matters with respect to which the Parliament has power to make laws;

(c) to conduct research in relation to matters affecting the interests of consumers, being matters with respect to which the Parliament has power to make laws;

(ca) to conduct research and undertake studies on matters that are referred to the Commission by the Council and that relate to the Commission's other functions;

(d) to make available to the public general information in relation to matters affecting the interests of consumers, being matters with respect to which the Parliament has power to make laws;

(e) to make known for the guidance of consumers the rights and obligations of persons under provisions of laws in force in Australia that are designed to protect the interests of consumers.

(2) Where a matter of a kind mentioned in paragraph (1)(b) is referred by the Minister to the Commission for examination and report:

(a) the Commission shall cause to be published in the *Gazette* and in such newspapers and other journals as the Commission considers appropriate a notice:

(i) stating that the reference has been made and specifying the matter to which the reference relates; and

(ii) inviting interested persons to furnish to the Commission their views on that matter and specifying the time and manner within which those views are to be furnished;

(b) the Commission shall not furnish its report to the Minister until a reasonable opportunity has been given to interested persons to furnish to the Commission their views on the matter to which the reference relates; and

(c) the Commission shall include in its report to the Minister any recommendations that it considers desirable with respect to the reform of the law relating to the matter to which the reference relates, whether those recommendations relate to the amendment of existing laws or the making of new laws.

(3) The Minister shall cause a copy of each report furnished to him or her by the Commission in relation to a matter referred to the Commission under paragraph (1)(b) to be laid before each House of the Parliament as soon as practicable after the report is received by him or her.

29 Commission to comply with directions of Minister and requirements of the Parliament

(1) The Minister may give the Commission directions connected with the performance of its functions or the exercise of its powers under this Act.

(1A) The Minister must not give directions under subsection (1) relating to:

(a) Part IIIA, IV,VII, VIIA, X, XIB or XIC; or

(b) section 65J, 65K, 65M or 65N in relation to individual cases.

(1B) The Commission must comply with a direction.

(2) Any direction given to the Commission under subsection (1) shall be in writing and the Minister shall cause a copy of the direction to be published in the *Gazette* as soon as practicable after the direction is given.

(3) If either House of the Parliament or a Committee of either House, or of both Houses, of the Parliament requires the Commission to furnish to that House or Committee any information concerning the performance of the functions of the Commission under this Act, the Commission shall comply with the requirement.

Part IIA—The National Competition Council

29A Establishment of Council

The National Competition Council is established by this section.

29B Functions and powers of Council

(1) The Council's functions include:

(a) carrying out research into matters referred to the Council by the Minister; and

(b) providing advice on matters referred to the Council by the Minister.

(2) The Council may:

(a) perform any function conferred on it by a law of the Commonwealth, or of a State or Territory; and

(b) exercise any power:

(i) conferred by that law to facilitate the performance of that function; or

(ii) necessary or convenient to permit the performance of that function.

(2A) The Council must not, under subsection (2):

(a) perform a function conferred on it by a law of a State or Territory; or

(b) exercise a power that is so conferred;

unless the conferral of the function or power is in accordance with the Competition Principles Agreement.

(2B) Subsection (2) does not apply to a State/Territory energy law.

Note: Section 29BA provides that a State/Territory energy law may confer functions or powers, or impose duties, on the Council.

(3) In performing its functions, the Council may co-operate with a department, body or authority of the Commonwealth, of a State or of a Territory.

29BA Commonwealth consent to conferral of functions etc. on Council

(1) A State/Territory energy law may confer functions or powers, or impose duties, on the Council for the purposes of that law.

Note: Section 29BC sets out when such a law imposes a duty on the Council.

(2) Subsection (1) does not authorise the conferral of a function or power, or the imposition of a duty, by a State/Territory energy law to the extent to which:

(a) the conferral or imposition, or the authorisation, would contravene any constitutional doctrines restricting the duties that may be imposed on the Council; or

(b) the authorisation would otherwise exceed the legislative power of the Commonwealth.

(3) The Council cannot perform a duty or function, or exercise a power, under a State/Territory energy law unless the conferral of the function or power, or the imposition of the duty, is in accordance with an agreement between the Commonwealth and the State or Territory concerned.

29BB How duty is imposed

Application

(1) This section applies if a State/Territory energy law purports to impose a duty on the Council.

Note: Section 29BC sets out when such a law imposes a duty on the Council.

State or Territory legislative power sufficient to support duty

(2) The duty is taken not to be imposed by this Part (or any other law of the Commonwealth) to the extent to which:

(a) imposing the duty is within the legislative powers of the State or Territory concerned; and

(b) imposing the duty by the law of the State or Territory is consistent with the constitutional doctrines restricting the duties that may be imposed on the Council.

Note: If this subsection applies, the duty will be taken to be imposed by force of the law of the State or Territory (the Commonwealth having consented under section 29BA to the imposition of the duty by that law).

Commonwealth legislative power sufficient to support duty but State or Territory legislative powers are not

(3) If, to ensure the validity of the purported imposition of the duty, it is necessary that the duty be imposed by a law of the Commonwealth (rather than by the law of the State or Territory), the duty is taken to be imposed by this Part to the extent necessary to ensure that validity.

(4) If, because of subsection (3), this Part is taken to impose the duty, it is the intention of the Parliament to rely on all powers available to it under the Constitution to support the imposition of the duty by this Part.

(5) The duty is taken to be imposed by this Part in accordance with subsection (3) only to the extent to which imposing the duty:

(a) is within the legislative powers of the Commonwealth; and

(b) is consistent with the constitutional doctrines restricting the duties that may be imposed on the Council.

(6) Subsections (1) to (5) do not limit section 29BA.

29BC When a State/Territory energy law imposes a duty

For the purposes of sections 29BA and 29BB, a State/Territory energy law ***imposes a duty*** on the Council if:

(a) the law confers a function or power on the Council; and

(b) the circumstances in which the function or power is conferred give rise to an obligation on the Council to perform the function or to exercise the power.

29C Membership of Council

(1) The Council consists of the Council President and up to 4 other Councillors.

(2) Each Councillor is to be appointed by the Governor-General, for a term of up to 5 years.

(3) The Governor-General must not appoint a person as a Councillor or Council President unless the Governor-General is satisfied that:

(a) the person qualifies for the appointment because of the person's knowledge of, or experience in, industry, commerce, economics, law, consumer protection or public administration; and

(b) a majority of the States and Territories that are parties to the Competition Principles Agreement support the appointment.

29D Terms and conditions of office

(1) A Councillor may be appointed to hold office on either a full-time or a part-time basis.

(2) A Councillor holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as the Governor-General determines.

29E Acting Council President

(1) The Minister may appoint a Councillor to act as the Council President:

(a) if there is a vacancy in the office of Council President, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Council President is absent from duty or absent from Australia or is, for any reason, unable to perform the duties of the office.

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

(a) the occasion for appointment had not arisen;

(b) there was a defect or irregularity in the appointment;

(c) the appointment had ceased to have effect;

(d) the occasion to act had not arisen or had ceased.

29F Remuneration of Councillors

(1) A Councillor is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of the Remuneration Tribunal is in operation, the Councillor is to be paid the remuneration that is prescribed.

(2) A Councillor is to be paid such allowances as are prescribed.

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

29G Leave of absence

(1) A full-time Councillor has such recreation leave entitlements as are determined by the Remuneration Tribunal.

(2) The Minister may grant a full-time Councillor leave of absence, other than recreation leave, on such terms and conditions as the Minister determines. The terms and conditions may include terms and conditions relating to remuneration.

29H Termination of appointment of Councillors

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

(2) The Governor-General must terminate the appointment of a Councillor who:

(a) becomes bankrupt, applies to take the benefit of any 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) fails to comply with his or her obligations under section 29K;

(c) in the case of a full-time Councillor—engages in any paid employment outside the duties of the Councillor's office without the consent of the Minister;

(d) in the case of a full-time Councillor—is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months.

29I Resignation of Councillors

A Councillor may resign by giving the Governor-General a signed resignation notice.

29J Arrangement of Council business

(1) Subject to subsection (2), the Council President may give directions about the arrangement of the Council's business.

(2) The Council must not carry out any work (other than work relating to a function under Part IIIA or VIIA) except in accordance with a program agreed to by:

(a) a majority of the parties to the Competition Principles Agreement; or

(b) if the parties to the Agreement are evenly divided on the question of agreeing to a program—the Commonwealth.

29K Disclosure of interests by Councillors

(1) If a Councillor (except the Council President) is taking part, or is to take part, in the Council's consideration of a matter and the Councillor has or acquires any pecuniary interest that could conflict with the proper performance of his or her functions relating to the matter:

(a) the Councillor must disclose the interest to the Council President; and

(b) the Councillor must not take part, or continue to take part, in the consideration of the matter if:

(i) all of the persons concerned in the matter do not consent to the Councillor taking part in the consideration of the matter; or

(ii) the Council President gives a direction to the member under paragraph (2)(b).

(2) If the Council President becomes aware that a Councillor is taking part, or is to take part, in the Council's consideration of a matter and that the Councillor has such an interest relating to the matter:

(a) the Council President must cause the Councillor's interest to be disclosed to the persons concerned in the matter; or

(b) if the Council President considers that the Councillor should not take part or continue to take part in the consideration of the matter—the Council President must direct the Councillor accordingly.

(3) The Council President must give the Minister written notice of all pecuniary interests that the Council President has or acquires in any business carried on in Australia or in any body corporate carrying on such business.

29L Council meetings

(1) The Council President must convene the meetings that the Council President thinks are necessary to perform the Council's functions efficiently.

(2) The meetings must be held in places determined by the Council President.

(3) The Council President must preside at any meeting that he or she attends.

(4) If the Council President is absent from a meeting, a Councillor chosen by the Councillors at the meeting must preside.

(5) The Councillor presiding at a meeting may give directions on the procedure to be followed in relation to the meeting.

(6) The quorum for a meeting is 3 Councillors (including the Council President).

(7) At a meeting, a question must be decided by a majority of votes of the Councillors present and voting. The Councillor presiding has a deliberative vote, and a casting vote if the deliberative votes are equally divided.

29M Staff to help Council

(1) The staff needed to help the Council are to be persons engaged under the *Public Service Act 1999*.

(2) For the purposes of the *Public Service Act 1999*:
   (a) the Council President and the APS employees assisting the Council President together constitute a Statutory Agency; and
   (b) the Council President is the Head of that Statutory Agency.

29N Consultants

(1) On behalf of the Commonwealth, the Council may engage persons to give advice to, and perform services for, the Council.

(2) The terms and conditions of engagement are as determined by the Council.

29O Annual report

(1) Within 60 days after the end of each financial year, the Councillors must give a report on the Council's operations during that year to the Minister for presentation to the Parliament.

(2) The report must also include details of the following:
   (a) the time taken by the Council to make a recommendation on any application under section 44F, 44M or 44NA (about access regime applications under Part IIIA);
   (b) any court or Tribunal decision interpreting:
      (i) paragraph (f) of the definition of ***service*** in section 44B (which is an exclusion to do with production processes); or
      (ii) any of the matters mentioned in subsection 44H(4) (about matters relevant to declaring services under Part IIIA);
   (c) any matter the Council considers has impeded the operation of Part IIIA from delivering efficient access outcomes;
   (d) any evidence of the benefits arising from determinations of the Commission under section 44V (about arbitration determinations under Part IIIA);
   (e) any evidence of the costs of, or the disincentives for, investment in the infrastructure by which declared services (within the meaning of Part IIIA) are provided;
   (f) any implications for the operation of Part IIIA in the future.

Part III—The Australian Competition Tribunal

29P Definition

In this Part, unless the contrary intention appears:

proceedings includes:

(a) applications made to the Tribunal under Subdivision C of Division 3 of Part VII; and

(b) applications made to the Tribunal under section 111 (about review of the Commission's decisions on merger clearances).

30 Constitution of Tribunal

(1) The Trade Practices Tribunal that existed immediately before this subsection commenced continues to exist as the Australian Competition Tribunal.

(2) The Tribunal so continued in existence shall consist of a President and such number of Deputy Presidents and other members as are appointed in accordance with this section.

(3) A member of the Tribunal shall be appointed by the Governor-General.

31 Qualifications of members of Tribunal

(1) A person shall not be appointed as a presidential member of the Tribunal unless he or she is a Judge of a Federal Court, not being the High Court or a court of an external Territory.

(2) A person shall not be appointed as a member of the Tribunal other than a presidential member unless he or she appears to the Governor-General to be qualified for appointment by virtue of his or her knowledge of, or experience in, industry, commerce, economics, law or public administration.

31A Appointment of Judge as presidential member of Tribunal not to affect tenure etc.

The appointment of a Judge of a Federal Court as a presidential member of the Tribunal, or service by a Judge of a Federal Court as a presidential member of the Tribunal, whether the appointment was or is made or the service occurred or occurs before or after the commencement of this section, does not affect, and shall be deemed never to have affected, his or her tenure of office as a Judge of a Federal Court or his or her rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of his or her office as a Judge of a Federal Court and, for all purposes, his or her service, whether before or after the commencement of this section, as a presidential member of the Tribunal shall be taken to have been, or to be, service as the holder of his or her office as a Judge of a Federal Court.

32 Terms and conditions of appointment

Subject to this Part, a member of the Tribunal holds office for such period, not exceeding 7 years, as is specified in the instrument of his or her appointment and on such terms and conditions as the Governor-General determines, but is eligible for re-appointment.

33 Remuneration and allowances of members of Tribunal

(4) A member of the Tribunal other than a presidential member shall be paid such remuneration as is determined by the Remuneration Tribunal.

(5) A member of the Tribunal other than a presidential member shall be paid such allowances as are prescribed.

(6) Subsections (4) and (5) have effect subject to the *Remuneration Tribunal Act 1973*.

34 Acting appointments

(1) Where:

(a) the President is, or is expected to be, absent from duty; or

(b) there is, or is expected to be, a vacancy in the office of President;

the Minister may appoint a Deputy President or an acting Deputy President to act as President during the absence, or while there is a vacancy in the office of President, as the case may be.

(2) Where a presidential member (including the President) of the Tribunal is, or is expected to be, absent from duty, the Governor-General may appoint a person qualified to be appointed as a presidential member to act as a Deputy President during the absence from duty of the member.

(3) Where a member of the Tribunal other than a presidential member is, or is expected to be, absent from duty, the Governor-General may appoint a person qualified to be appointed as a member of the Tribunal other than a presidential member to act as such a member during the absence from duty of the member.

(4) Where a person has been appointed under subsection (2) or (3), the Governor-General may, by reason of pending proceedings or other special circumstances, direct, before the absent member of the Tribunal resumes duty, that the person so appointed shall continue to act under the appointment after the resumption of duty by the absent member until the Governor-General terminates the appointment, but a person shall not continue to act as a member of the Tribunal by virtue of this subsection for more than 12 months after the resumption of duty by the absent member.

(5) Where a person has been appointed under this section to act as a member of the Tribunal during the absence from duty of a member of the Tribunal, and that member ceases to hold office without having resumed duty, the period of appointment of the person so appointed shall be deemed to continue until it is terminated by the Governor-General, or until the expiration of 12 months from the date on which the absent member ceases to hold office, whichever first happens.

35 Suspension and removal of members of Tribunal

(1) The Governor-General may suspend a member of the Tribunal from office on the ground of misbehaviour or physical or mental incapacity.

(2) The Minister shall cause a statement of the ground of the suspension to be laid before each House of the Parliament within 7 sitting days of the House after the suspension.

(3) Where such a statement has been laid before a House of the Parliament, that House may, within 15 sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the member of the Tribunal should be restored to office and, if each House so passes a resolution, the Governor-General shall terminate the suspension.

(4) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House has not passed such a resolution, the Governor-General may remove the member of the Tribunal from office.

(5) If a member of the Tribunal becomes bankrupt, applies to take the benefit of any 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, the Governor-General shall remove him or her from office.

(6) A member of the Tribunal shall not be removed from office except as provided by this section.

(7) A presidential member of the Tribunal ceases to hold office if he or she no longer holds office as a Judge of a Federal Court, not being the High Court or a court of an external Territory.

36 Resignation

A member of the Tribunal may resign his or her office by writing signed by him or her and delivered to the Governor-General.

37 Constitution of Tribunal for particular matters

The Tribunal shall, for the purpose of hearing and determining proceedings, be constituted by a Division of the Tribunal consisting of a presidential member of the Tribunal and two members of the Tribunal who are not presidential members.

38 Validity of determinations

The validity of a determination of the Tribunal shall not be affected or called in question by reason of any defect or irregularity in the constitution of the Tribunal.

39 President may give directions

(1) The President may give directions as to the arrangement of the business of the Tribunal and the constitution of Divisions of the Tribunal.

(2) The President may give directions to the Deputy Presidents in relation to the exercise by the Deputy Presidents of powers with respect to matters of procedure in proceedings before the Tribunal.

Note: Subsection 103(2) provides that any presidential member may exercise powers with respect to matters of procedure in proceedings before the Tribunal.

40 Disclosure of interests by members of Tribunal

(1) Where a member of the Tribunal is, or is to be, a member of a Division of the Tribunal in any proceedings and the member has or acquires any pecuniary interest that could conflict with the proper performance of his or her functions in relation to the proceedings:

(a) the member shall disclose the interest to the President; and

(b) the member shall not take part, or continue to take part, in the proceedings if:

(i) the President gives a direction under paragraph (2)(a) in relation to the proceedings; or

(ii) all of the persons concerned in the proceedings do not consent to the member taking part in the proceedings.

(2) Where the President becomes aware that a member of the Tribunal is, or is to be, a member of a Division of the Tribunal in any proceedings and that the member has in relation to the proceedings such an interest:

(a) if the President considers that the member should not take part, or should not continue to take part, in the proceedings—the President shall give a direction to the member accordingly; or

(b) in any other case—the President shall cause the interest of the member to be disclosed to the persons concerned in the proceedings.

41 Presidential member to preside

The presidential member who is a member of a Division shall preside at proceedings of that Division.

42 Decision of questions

(1) A question of law arising in a matter before a Division of the Tribunal (including the question whether a particular question is one of law) shall be determined in accordance with the opinion of the presidential member presiding.

(2) Subject to subsection (1), a question arising in proceedings before a Division of the Tribunal shall be determined in accordance with the opinion of a majority of the members constituting the Division.

43 Member of Tribunal ceasing to be available

(1) This section applies where the hearing of any proceedings has been commenced or completed by the Tribunal but, before the matter to which the proceedings relate has been determined, one of the members constituting the Tribunal for the purposes of the proceedings has ceased to be a member of the Tribunal or has ceased to be available for the purposes of the proceedings.

(2) Where the President is satisfied that this section applies in relation to proceedings, the President may direct that a specified member of the Tribunal shall take the place of the member referred to in subsection (1) for the purposes of the proceedings.

(3) Where this section applies in relation to proceedings that were being dealt with before the Tribunal, the President may, instead of giving a direction under subsection (2), direct that the hearing and determination, or the determination, of the proceedings be completed by the Tribunal constituted by the members other than the member referred to in subsection (1).

(4) Where the President has given a direction under subsection (3), he or she may, at any time before the determination of the proceedings, direct that a third member be added to the Tribunal as constituted in accordance with subsection (3).

(5) The Tribunal as constituted in accordance with any of the provisions of this section for the purposes of any proceedings may have regard to any record of the proceedings before the Tribunal as previously constituted.

43A Counsel assisting Tribunal

(1) The President may, on behalf of the Commonwealth, appoint a legal practitioner to assist the Tribunal as counsel, either generally or in relation to a particular matter or matters.

(2) In this section:

legal practitioner means a legal practitioner (however described) of the High Court or of the Supreme Court of a State or Territory.

43B Consultants

The Registrar may, on behalf of the Commonwealth, engage persons as consultants to, or to perform services for, the Tribunal.

44 Staff of Tribunal

(1) There shall be a Registrar of the Tribunal and such Deputy Registrars of the Tribunal as are appointed in accordance with this section.

(2) The Registrar and the Deputy Registrars shall be appointed by the Minister and shall have such duties and functions as are provided by this Act and the regulations and such other duties and functions as the President directs.

(3) The Registrar and the Deputy Registrars, and the staff necessary to assist them, shall be persons engaged under the *Public Service Act 1999*.

44A Acting appointments

(1) The Minister may appoint a person who is engaged under the *Public Service Act 1999* to act as the Registrar or as a Deputy Registrar during any period, or during all periods, when:

(a) the Registrar or that Deputy Registrar, as the case may be, is absent from duty or from Australia or is, for any other reason, unable to perform the duties and functions of his or her office; or

(b) there is a vacancy in the office of Registrar or in that office of Deputy Registrar, as the case may be.

(2) A person acting as the Registrar or as a Deputy Registrar by reason of a vacancy in the office of Registrar or of that Deputy Registrar shall not continue so to act after the expiration of 12 months after the occurrence of the vacancy.

(3) A person appointed to act as the Registrar or as a Deputy Registrar has, while acting as the Registrar or as that Deputy Registrar, as the case may be, all the duties and functions of the Registrar or of that Deputy Registrar, and references in this Act to the Registrar or to a Deputy Registrar shall:

(a) if a person is acting as the Registrar—be read as a reference to the person so acting; or

(b) if a person is acting as a Deputy Registrar—be read as including a reference to the person so acting.

(4) The Minister may at any time terminate an appointment of a person to act as the Registrar or as a Deputy Registrar.

(5) A person who holds an appointment to act as the Registrar or as a Deputy Registrar may resign his or her appointment by writing under his or her hand delivered to the Minister.

(6) The validity of an act done by a person appointed to act as the Registrar or as a Deputy Registrar shall not be questioned in any proceeding on a ground arising from the fact that the occasion for the appointment, or for him or her to act under the appointment, had not arisen or that the appointment had ceased to have effect or the occasion for him or her to act under the appointment had passed.

Part IIIAA—The Australian Energy Regulator (AER)

Division 1—Preliminary

44AB Definitions

In this Part, unless the contrary intention appears:

Australian Energy Market Agreement means the agreement, as amended from time to time:

(a) that relates to energy; and

(b) that is between the Commonwealth, all of the States, the Australian Capital Territory and the Northern Territory; and

(c) that is first made in 2004; and

(d) that agrees to the establishment of the AER and the AEMC.

Commonwealth AER member means the member referred to in section 44AM.

full-time AER member means an AER member appointed on a full-time basis.

part-time AER member means an AER member appointed on a part-time basis.

44AC This Part binds the Crown

This Part binds the Crown in each of its capacities.

44AD Extra-territorial operation

It is the intention of the Parliament that the operation of this Part should, as far as possible, include operation in relation to the following:

(a) things situated in or outside Australia;

(b) acts, transactions and matters done, entered into or occurring in or outside Australia;

(c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of a State, a Territory or a foreign country.

Division 2—Establishment of the AER

44AE Establishment of the AER

(1) The Australian Energy Regulator (the ***AER***) is established by this section.

(2) The AER:

(a) is a body corporate with perpetual succession; and

(b) must have a common seal; and

(c) may acquire, hold and dispose of real and personal property; and

(d) may sue and be sued in its corporate name.

44AF AER to hold money and property on behalf of the Commonwealth

The AER holds any money or property for and on behalf of the Commonwealth.

44AG Constitution of the AER

The AER consists of:

(a) a Commonwealth AER member, appointed in accordance with section 44AM; and

(b) 2 State/Territory AER members, appointed in accordance with section 44AP.

Division 3—Functions and powers of the AER

44AH Commonwealth functions

The AER has any functions:

(a) conferred under a law of the Commonwealth; or

(b) prescribed by regulations made under this Act.

Note: The AER may have functions under the *Australian Energy Market Act 2004*.

44AI Commonwealth consent to conferral of functions etc. on AER

(1) A State/Territory energy law may confer functions or powers, or impose duties, on the AER for the purposes of that law.

Note: Section 44AK sets out when such a law imposes a duty on the AER.

(2) Subsection (1) does not authorise the conferral of a function or power, or the imposition of a duty, by a State/Territory energy law to the extent to which:

(a) the conferral or imposition, or the authorisation, would contravene any constitutional doctrines restricting the duties that may be imposed on the AER; or

(b) the authorisation would otherwise exceed the legislative power of the Commonwealth.

(3) The AER cannot perform a duty or function, or exercise a power, under a State/Territory energy law unless the conferral of the function or power, or the imposition of the duty, is in accordance with the Australian Energy Market Agreement, or any other relevant agreement between the Commonwealth and the State or Territory concerned.

44AJ How duty is imposed

Application

(1) This section applies if a State/Territory energy law purports to impose a duty on the AER.

Note: Section 44AK sets out when such a law imposes a duty on the AER.

State or Territory legislative power sufficient to support duty

(2) The duty is taken not to be imposed by this Part (or any other law of the Commonwealth) to the extent to which:

(a) imposing the duty is within the legislative powers of the State or Territory concerned; and

(b) imposing the duty by the law of the State or Territory is consistent with the constitutional doctrines restricting the duties that may be imposed on the AER.

Note: If this subsection applies, the duty will be taken to be imposed by force of the law of the State or Territory (the Commonwealth having consented under section 44AI to the imposition of the duty by that law).

Commonwealth legislative power sufficient to support duty but State or Territory legislative powers are not

(3) If, to ensure the validity of the purported imposition of the duty, it is necessary that the duty be imposed by a law of the Commonwealth (rather than by the law of the State or Territory), the duty is taken to be imposed by this Part to the extent necessary to ensure that validity.

(4) If, because of subsection (3), this Part is taken to impose the duty, it is the intention of the Parliament to rely on all powers available to it under the Constitution to support the imposition of the duty by this Part.

(5) The duty is taken to be imposed by this Part in accordance with subsection (3) only to the extent to which imposing the duty:

(a) is within the legislative powers of the Commonwealth; and

(b) is consistent with the constitutional doctrines restricting the duties that may be imposed on the AER.

(6) Subsections (1) to (5) do not limit section 44AI.

44AK When a State/Territory energy law imposes a duty

For the purposes of sections 44AI and 44AJ, a State/Territory energy law ***imposes a duty*** on the AER if:

(a) the law confers a function or power on the AER; and

(b) the circumstances in which the function or power is conferred give rise to an obligation on the AER to perform the function or to exercise the power.

44AL Powers of the AER

The AER has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

Note: State and Territory laws may also confer powers on the AER in respect of its functions under those laws: see section 44AI.

Division 4—Administrative provisions relating to the AER

Subdivision A—Appointment etc. of members

44AM Appointment of Commonwealth AER member

(1) A Commonwealth AER member is to be appointed by the Governor-General by written instrument.

(2) The Commonwealth AER member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

(3) A person is not eligible for appointment as the Commonwealth AER member unless the person is a member of the Commission. If the person ceases to be a member of the Commission, then the person also ceases to be an AER member.

(4) A person is not eligible for appointment as the Commonwealth AER member unless the person has been chosen for appointment in accordance with the Australian Energy Market Agreement.

44AN Membership of AER and Commission

Member taken to be full-time member of both AER and Commission

(1) For the purposes of this Part, the Commonwealth AER member is taken to be a full-time member of the AER.

(2) However, the Commonwealth AER member remains a full-time member of the Commission.

Paid employment

(3) Paragraph 13(2)(c) does not apply to a member of the Commission in respect of any paid employment of that member as an AER member.

(4) Sections 44AX and 44AAB do not apply to an AER member in respect of the paid employment of that member as a member of the Commission.

44AO Acting appointment of Commonwealth AER member

(1) The Chairperson may appoint a member of the Commission to act as the Commonwealth AER member:

(a) during a vacancy in the office of Commonwealth AER member, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Commonwealth AER member is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: See also section 33A of the *Acts Interpretation Act 1901*, which contains extra rules about acting appointments.

(2) If a person acting as the Commonwealth AER member ceases to be a member of the Commission, then the appointment to act as the Commonwealth AER member also ceases.

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

(a) the occasion for the appointment had not arisen; or

(b) there was a defect or irregularity in connection with the appointment; or

(c) the appointment had ceased to have effect; or

(d) the occasion to act had not arisen or had ceased.

44AP Appointment of State/Territory AER members

(1) A State/Territory AER member is to be appointed by the Governor-General by written instrument, on either a full-time or part-time basis.

Note: A State/Territory AER member is also taken to be an associate member of the Commission: see section 8AB.

(2) A State/Territory AER member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

(3) A person is not eligible for appointment as a State/Territory AER member unless the person, being a person who has knowledge of, or experience in, industry, commerce, economics, law, consumer protection or public administration, has been nominated for appointment in accordance with the Australian Energy Market Agreement.

44AQ Acting appointment of State/Territory AER member

(1) The Minister may appoint a person to act as a State/Territory AER member:

(a) during a vacancy in the office of State/Territory AER member, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the State/Territory AER member is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: See also section 33A of the *Acts Interpretation Act 1901*, which contains extra rules about acting appointments.

(2) A person is not eligible for appointment to act as a State/Territory AER member unless the person, being a person who has knowledge of, or experience in, industry, commerce, economics, law, consumer protection or public administration, has been nominated for appointment in accordance with the Australian Energy Market Agreement.

44AR AER Chair

(1) One of the AER members is to be appointed by the Governor-General as the AER Chair, by written instrument. The appointment as AER Chair may be made at the same time as the appointment as AER member, or at a later time.

(2) A member is not eligible for appointment as AER Chair unless the person has been nominated for appointment as the Chair in accordance with the Australian Energy Market Agreement.

(3) The AER Chair holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

(4) If the AER Chair ceases to be an AER member, then he or she also ceases to be the AER Chair.

Note: A person may cease to be the AER Chair without ceasing to be an AER member.

44AS Acting AER Chair

(1) The Minister may appoint an AER member to act as the AER Chair:

(a) during a vacancy in the office of the AER Chair, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the AER Chair is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: See also section 33A of the *Acts Interpretation Act 1901*, which contains extra rules about acting appointments.

(2) If a person acting as the AER Chair ceases to be an AER member, then the appointment to act as the AER Chair also ceases.

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

(a) the occasion for the appointment had not arisen; or

(b) there was a defect or irregularity in connection with the appointment; or

(c) the appointment had ceased to have effect; or

(d) the occasion to act had not arisen or had ceased.

44AT Remuneration of AER members

(1) An AER member (other than the Commonwealth AER member) is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed.

(2) An AER member (other than the Commonwealth AER member) is to be paid the allowances that are prescribed.

(3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.

(4) The Commonwealth AER member is not entitled to be paid remuneration or allowances.

Note: The Commonwealth AER member is paid as a member of the Commission.

44AU Additional remuneration of AER Chair

(1) The AER Chair (whether or not the Commonwealth AER member) is to be paid additional remuneration (if any) determined by the Remuneration Tribunal.

(2) The AER Chair (whether or not the Commonwealth AER member) is to be paid additional allowances (if any) that are prescribed.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973* other than subsection 7(11) of that Act.

44AV Leave of absence

(1) A full-time AER member has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister may grant a full-time AER member leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

(3) The AER Chair may grant leave of absence to any part-time AER member on the terms and conditions that the AER Chair determines.

44AW Other terms and conditions

An AER member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Governor-General.

44AX Outside employment

(1) A full-time AER member must not engage in paid employment outside the duties of the member's office without the Minister's consent.

(2) A part-time AER member must not engage in any paid employment that conflicts or could conflict with the proper performance of the member's duties.

44AY Disclosure of interests

(1) If an AER member has any direct or indirect interest in a matter being considered, or about to be considered, by the AER, being an interest that could conflict with the proper performance of the member's functions in relation to a matter arising at a meeting of the AER, then the member must as soon as practicable disclose that interest at a meeting of the AER.

(2) The disclosure, and any decision made by the AER in relation to the disclosure, must be recorded in the minutes of the meeting.

44AZ Resignation

(1) An AER member may resign his or her appointment by giving the Governor-General a written resignation.

(2) The AER Chair may resign his or her appointment as AER Chair by giving the Governor-General a written resignation. The resignation does not affect the person's appointment as an AER member.

44AAB Termination of appointment

All AER members

(1) The Governor-General may terminate the appointment of an AER member:
  (a) for misbehaviour or physical or mental incapacity; or
  (b) if the member:
    (i) becomes bankrupt; or
    (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    (iii) compounds with his or her creditors; or
    (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  (c) if the member fails, without reasonable excuse, to comply with section 44AY.

Additional grounds: full-time AER members

(2) The Governor-General may terminate the appointment of a full-time AER member if:
  (a) the member is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  (b) the member engages, except with the Minister's consent, in paid employment outside the duties of his or her office.

Additional grounds: part-time AER members

(3) The Governor-General may terminate the appointment of a part-time AER member if:
  (a) the member is absent, except on leave of absence, from 3 consecutive meetings of the AER; or

(b) the member engages in paid employment that conflicts or could conflict with the proper performance of the duties of his or her office.

Subdivision B—Staff etc. to assist the AER

44AAC Staff etc. to assist the AER

The Chairperson must make available:

(a) persons engaged under section 27; and

(b) consultants engaged under section 27A;

to assist the AER to perform its functions.

Subdivision C—Meetings of the AER etc.

44AAD Meetings

(1) The AER Chair must convene such meetings of the AER as he or she thinks necessary for the efficient performance of the functions of the AER.

Note: See also section 33B of the *Acts Interpretation Act 1901*, which contains extra rules about meetings by telephone etc.

(2) Meetings of the AER must be held at such places as the AER Chair determines.

(3) At a meeting of the AER, 2 members constitute a quorum. The quorum must include the AER Chair and must also include the Commonwealth AER member (if the Commonwealth AER member is not also the AER Chair).

(4) Questions arising at a meeting must be determined by unanimous vote of the members present and voting.

(5) The AER Chair must preside at all meetings of the AER.

(6) The AER Chair may give directions regarding the procedure to be followed at or in connection with a meeting.

44AAE Resolutions without meetings

(1) If all 3 AER members sign a document containing a statement that they are in favour of a resolution in terms set out in the document, then a resolution in those terms is taken to have been passed at a duly constituted meeting of the AER held on the day the document was signed, or, if the members sign the document on different days, on the last of those days.

(2) For the purposes of subsection (1), 2 or more separate documents containing statements in identical terms each of which is signed by one or more members are together taken to constitute one document containing a statement in those terms signed by those members on the respective days on which they signed the separate documents.

(3) A member must not sign a document containing a statement in favour of a resolution if the resolution concerns a matter in which the member has any direct or indirect interest, being an interest that could conflict with the proper performance of the member's functions in relation to any matter.

44AAEA Arbitration

(1) Sections 44AAD and 44AAE do not apply to the AER as constituted for an arbitration under:

(a) the National Electricity (Commonwealth) Law (as defined by the *Australian Energy Market Act 2004*); or

(b) the National Gas (Commonwealth) Law (as defined by the *Australian Energy Market Act 2004*); or

(c) a provision of a State/Territory energy law.

(2) The reference in subsection (1) to an ***arbitration*** includes a reference to each of the following:

(a) the making, variation or revocation of an access determination (within the meaning of the law concerned);

(b) the performance of a function, or the exercise of a power, in connection with the making, variation or revocation of an access determination (within the meaning of the law concerned).

Subdivision D—Miscellaneous

44AAF Confidentiality

(1) The AER must take all reasonable measures to protect from unauthorised use or disclosure information:

(a) given to it in confidence in, or in connection with, the performance of its functions or the exercise of its powers; or

(b) that is obtained by compulsion in the exercise of its powers.

Note: The *Privacy Act 1988* also contains provisions relevant to the use and disclosure of information.

(2) For the purposes of subsection (1), the disclosure of information as required or permitted by a law of the Commonwealth, a State or Territory, is taken to be authorised use and disclosure of the information.

Authorised use

(3) Disclosing information to one of the following is authorised use and disclosure of the information:

(a) the Commission;

(b) the AEMC;

(c) Australian Energy Market Operator Limited (ACN 072 010 327);

(d) any staff or consultant assisting a body mentioned in paragraph (a), (b) or (c) in performing its functions or exercising its powers;

(e) any other person or body prescribed by the regulations for the purpose of this paragraph.

(4) A person or body to whom information is disclosed under subsection (3) may use the information for any purpose connected with the performance of the functions, or the exercise of the powers, of the person or body.

(5) The AER may impose conditions to be complied with in relation to information disclosed under subsection (3).

(6) For the purposes of subsection (1), the use or disclosure of information by a person for the purposes of:

(a) performing the person's functions, or exercising the person's powers, as:

(i) an AER member, a person referred to in section 44AAC or a delegate of the AER; or

(ii) a person who is authorised to perform or exercise a function or power of, or on behalf of, the AER; or

(b) the performance of functions, or the exercise of powers, by the person by way of assisting a delegate of the AER;

is taken to be authorised use and disclosure of the information.

(7) Regulations made for the purposes of this section may specify uses of information and disclosures of information that are authorised uses and authorised disclosures for the purposes of this section.

(8) Nothing in any of the above subsections limits:

(a) anything else in any of those subsections; or

(b) what may otherwise constitute, for the purposes of subsection (1), authorised use or disclosure of information.

44AAG Federal Court may make certain orders

(1) The Federal Court may make an order, on application by the AER on behalf of the Commonwealth, declaring that a person is in breach of:

(a) a uniform energy law that is applied as a law of the Commonwealth; or

(b) a State/Territory energy law.

(2) If the order declares the person to be in breach of such a law, the order may include one or more of the following:

(a) an order that the person pay a civil penalty determined in accordance with the law;

(b) an order that the person cease, within a specified period, the act, activity or practice constituting the breach;

(c) an order that the person take such action, or adopt such practice, as the Court requires for remedying the breach or preventing a recurrence of the breach;

(d) an order that the person implement a specified program for compliance with the law;

(e) an order of a kind prescribed by regulations made under this Act.

(3) If a person has engaged, is engaging or is proposing to engage in any conduct in breach of:

(a) a uniform energy law that is applied as a law of the Commonwealth; or

(b) a State/Territory energy law;

the Federal Court may, on application by the AER on behalf of the Commonwealth, grant an injunction:

(c) restraining the person from engaging in the conduct; and

(d) if, in the court's opinion, it is desirable to do so—requiring the person to do something.

(4) The power of the Federal Court under subsection (3) to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:

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

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

44AAGA Federal Court may order disconnection if an event specified in the National Electricity Rules occurs

(1) If a relevant disconnection event occurs, the Federal Court may make an order, on application by the AER on behalf of the Commonwealth, directing that a Registered participant's loads be disconnected.

(2) In this section:

National Electricity Law means:

(a) the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia as in force from time to time; or

(b) that Law as it applies as a law of another State; or

(c) that Law as it applies as a law of a Territory; or

(d) that Law as it applies as a law of the Commonwealth.

National Electricity Rules means:

(a) the National Electricity Rules, as in force from time to time, made under the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia; or

(b) those Rules as they apply as a law of another State; or

(c) those Rules as they apply as a law of a Territory; or

(d) those Rules as they apply as a law of the Commonwealth.

Registered participant has the same meaning as in the National Electricity Law.

relevant disconnection event means an event specified in the National Electricity Rules as being an event for which a Registered participant's loads may be disconnected, where the event does not constitute a breach of the National Electricity Rules.

44AAH Delegation by the AER

The AER may, by resolution, delegate:

(a) all or any of the AER's functions and powers under this Part or under regulations made under this Act, or under another law of the Commonwealth; or

(b) all or any of the AER's functions and powers under a State/Territory energy law;

to an AER member or to an SES employee, or acting SES employee, assisting the AER as mentioned in section 44AAC.

Note 1: Section 17AA of the *Acts Interpretation Act 1901* contains the definitions of ***SES employee*** and ***acting SES employee***.

Note 2: See also sections 34AA to 34A of the *Acts Interpretation Act 1901*, which contain extra rules about delegations.

44AAI Fees

(1) The AER may charge a fee specified in the regulations for services provided by it in performing any of its functions, or exercising any of its powers, under this Part or under regulations made under this Act, or under another law of the Commonwealth or a State/Territory energy law.

(2) The fee must not be such as to amount to taxation.

44AAJ Annual report

(1) The AER must, within 60 days after the end of each year ending on 30 June, give the Minister a report on its operations during that year, for presentation to the Parliament.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

(2) The Minister must give a copy of the report to the relevant Minister of each of the States, the Australian Capital Territory and the Northern Territory.

44AAK Regulations may deal with transitional matters

(1) The Governor-General may make regulations dealing with matters of a transitional nature relating to the transfer of functions and powers from a body to the AER.

(2) Without limiting subsection (1), the regulations may deal with:

(a) the transfer of any relevant investigations being conducted by the body at the time of the transfer of functions and powers to the AER; or

(b) the transfer of any decisions or determinations being made by the body at the time of the transfer of functions and powers to the AER; or

(c) the substitution of the AER as a party to any relevant proceedings that are pending in any court or tribunal at the time of the transfer of functions and powers to the AER; or

(d) the transfer of any relevant information from the body to the AER.

(3) In this section:

matters of a transitional nature also includes matters of an application or saving nature.

Part IIIA—Access to services

Division 1—Preliminary

44AA Objects of Part

The objects of this Part are to:

(a) promote the economically efficient operation of, use of and investment in the infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets; and

(b) provide a framework and guiding principles to encourage a consistent approach to access regulation in each industry.

44B Definitions

In this Part, unless the contrary intention appears:

access code means a code referred to in section 44ZZAA.

access code application means:

(a) an access code given to the Commission; or

(b) a request made to the Commission for the withdrawal or variation of an access code; or

(c) an application under subsection 44ZZBB(4) for an extension of the period for which an access code is in operation.

access code decision means:

(a) a decision under section 44ZZAA to accept or reject an access code; or

(b) a decision under section 44ZZAA to consent or refuse to consent to the withdrawal or variation of an access code; or

(c) a decision under section 44ZZBB to extend or refuse to extend the period for which an access code is in operation.

access undertaking means an undertaking under section 44ZZA.

access undertaking application means:

(a) an access undertaking given to the Commission; or

(b) a request made to the Commission for the withdrawal or variation of an access undertaking; or

(c) an application under subsection 44ZZBB(1) for an extension of the period for which an access undertaking is in operation.

access undertaking decision means:

(a) a decision under section 44ZZA to accept or reject an access undertaking; or

(b) a decision under section 44ZZA to consent or refuse to consent to the withdrawal or variation of an access undertaking; or

(c) a decision under section 44ZZBB to extend or refuse to extend the period for which an access undertaking is in operation.

Commonwealth Minister means the Minister.

constitutional trade or commerce means any of the following:

(a) trade or commerce among the States;

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

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

declaration means a declaration made by the designated Minister under Division 2.

declaration recommendation means a recommendation made by the Council under section 44F.

declared service means a service for which a declaration is in operation.

designated Minister has the meaning given by section 44D.

determination means a determination made by the Commission under Division 3.

director has the same meaning as in the *Corporations Act 2001*.

entity means a person, partnership or joint venture.

final determination means a determination other than an interim determination.

interim determination means a determination that is expressed to be an interim determination.

modifications includes additions, omissions and substitutions.

National Gas Law means:

(a) the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2008* of South Australia as in force from time to time, as that Law applies as a law of South Australia; or

(b) if an Act of another State or of the Australian Capital Territory or the Northern Territory applies the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2008* of South Australia, as in force from time to time, as a law of that other State or of that Territory—the National Gas Law as so applied; or

(c) the Western Australian Gas Legislation; or

(d) the National Gas (Commonwealth) Law (within the meaning of the *Australian Energy Market Act 2004*); or

(e) the Offshore Western Australian Pipelines (Commonwealth) Law (within the meaning of the *Australian Energy Market Act 2004*).

officer has the same meaning as in the *Corporations Act 2001*.

party means:

(a) in relation to an arbitration of an access dispute—a party to the arbitration, as mentioned in section 44U;

(b) in relation to a determination—a party to the arbitration in which the Commission made the determination.

provider, in relation to a service, means the entity that is the owner or operator of the facility that is used (or is to be used) to provide the service.

responsible Minister means:

(a) the Premier, in the case of a State;

(b) the Chief Minister, in the case of a Territory.

revocation recommendation means a recommendation made by the Council under section 44J.

service means a service provided by means of a facility and includes:

(a) the use of an infrastructure facility such as a road or railway line;

(b) handling or transporting things such as goods or people;

(c) a communications service or similar service;

but does not include:

(d) the supply of goods; or

(e) the use of intellectual property; or

(f) the use of a production process;

except to the extent that it is an integral but subsidiary part of the service.

State or Territory access regime law means:

(a) a law of a State or Territory that establishes or regulates an access regime; or

(b) a law of a State or Territory that regulates an industry that is subject to an access regime; or

(c) a State/Territory energy law.

State or Territory body means:

(a) a State or Territory;

(b) an authority of a State or Territory.

third party, in relation to a service, means a person who wants access to the service or wants a change to some aspect of the person's existing access to the service.

44C How this Part applies to partnerships and joint ventures

(1) This section applies if the provider of a service is a partnership or joint venture that consists of 2 or more corporations. Those corporations are referred to in this section as the ***participants***.

(2) If this Part requires or permits something to be done by the provider, the thing may be done by one or more of the participants on behalf of the provider.

(3) If a provision of this Part refers to the provider bearing any costs, the provision applies as if the provision referred to any of the participants bearing any costs.

(4) If a provision of this Part refers to the provider doing something, the provision applies as if the provision referred to one or more of the participants doing that thing on behalf of the provider.

(5) If:

(a) a provision of this Part requires the provider to do something, or prohibits the provider from doing something; and

(b) a contravention of the provision is an offence;

the provision applies as if a reference to the provider were a reference to any person responsible for the day-to-day management and control of the provider.

(6) If:

(a) a provision of this Part requires a provider to do something, or prohibits a provider doing something; and

(b) a contravention of the provision is not an offence;

the provision applies as if the reference to provider were a reference to each participant and to any other person responsible for the day-to-day management and control of the provider.

44D Meaning of *designated Minister*

(1) The Commonwealth Minister is the designated Minister unless subsection (2) or (3) applies.

(2) In relation to declaring a service in a case where:

(a) the provider is a State or Territory body; and

(b) the State or Territory concerned is a party to the Competition Principles Agreement;

the responsible Minister of the State or Territory is the designated Minister.

(3) In relation to revoking a declaration that was made by the responsible Minister of a State or Territory, the responsible Minister of that State or Territory is the designated Minister.

44DA The principles in the Competition Principles Agreement have status as guidelines

(1) For the avoidance of doubt:

(a) the requirement, under subsection 44G(3), that the Council apply the relevant principles set out in the Competition Principles Agreement in deciding whether an access regime is an effective access regime; and

(b) the requirement, under subsection 44H(5), that the designated Minister apply the relevant principles set out in the Agreement in deciding whether an access regime is an effective access regime; and

(c) the requirement, under subsection 44M(4), that the Council apply the relevant principles set out in the Agreement in deciding whether to recommend to the Commonwealth Minister that he or she should decide that an access regime is, or is not, an effective access regime; and

(d) the requirement, under subsection 44N(2), that the Commonwealth Minister, in making a decision on a recommendation received from the Council, apply the relevant principles set out in the Agreement;

are obligations that the Council and the relevant Ministers must treat each individual relevant principle as having the status of a guideline rather than a binding rule.

(2) An effective access regime may contain additional matters that are not inconsistent with Competition Principles Agreement principles.

44E This Part binds the Crown

(1) This Part binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.

(2) Nothing in this Part makes the Crown liable to be prosecuted for an offence.

(3) The protection in subsection (2) does not apply to an authority of the Commonwealth or an authority of a State or Territory.

Division 2—Declared services

Subdivision A—Recommendation by the Council

44F Person may request recommendation

(1) The designated Minister, or any other person, may make a written application to the Council asking the Council to recommend that a particular service be declared.

(2) After receiving the application, the Council:

(a) must tell the provider of the service that the Council has received the application, unless the provider is the applicant; and

(b) must, after having regard to the objects of this Part, recommend to the designated Minister:

(i) that the service be declared; or

(ii) that the service not be declared.

Note 1: There are target time limits that apply to the Council's recommendation: see section 44GA.

Note 2: The Council may invite public submissions on the application: see section 44GB.

Note 3: The Council must publish its recommendation: see section 44GC.

(3) If the applicant is a person other than the designated Minister, the Council may recommend that the service not be declared if the Council thinks that the application was not made in good faith. This subsection does not limit the grounds on which the Council may decide to recommend that the service not be declared.

(4) In deciding what recommendation to make, the Council must consider whether it would be economical for anyone to develop another facility that could provide part of the service. This subsection does not limit the grounds on which the Council may decide to recommend that the service be declared or not be declared.

(5) The applicant may withdraw the application at any time before the Council makes a recommendation relating to it.

44G Limits on the Council recommending declaration of a service

(1) The Council cannot recommend declaration of a service that is the subject of an access undertaking in operation under Division 6.

(1A) While a decision of the Commission is in force under subsection 44PA(3) approving a tender process, for the construction and operation of a facility, as a competitive tender process, the Council cannot recommend declaration of any service provided by means of the facility that was specified under paragraph 44PA(2)(a).

(2) The Council cannot recommend that a service be declared unless it is satisfied of all of the following matters:

(a) that access (or increased access) to the service would promote a material increase in competition in at least one market (whether or not in Australia), other than the market for the service;

(b) that it would be uneconomical for anyone to develop another facility to provide the service;

(c) that the facility is of national significance, having regard to:

(i) the size of the facility; or

(ii) the importance of the facility to constitutional trade or commerce; or

(iii) the importance of the facility to the national economy;

(d) that access to the service can be provided without undue risk to human health or safety;

(e) that access to the service is not already the subject of an effective access regime;

(f) that access (or increased access) to the service would not be contrary to the public interest.

(3) In deciding whether an access regime established by a State or Territory that is a party to the Competition Principles Agreement is an effective access regime, the Council:

(a) must, subject to subsection (5), apply the relevant principles set out in that agreement; and

(aa) must have regard to the objects of this Part; and

(b) must, subject to section 44DA, not consider any other matters.

(4) If there is in force a decision of the Commonwealth Minister under section 44N that a regime established by a State or Territory for access to the service is an effective access regime, the Council must follow that decision, unless the Council believes that, since the Commonwealth Minister's decision was published, there have been substantial modifications of the access regime or of the relevant principles set out in the Competition Principles Agreement.

Note: The period for which a decision is in force is determined under subsection 44N(3) and paragraph 44P(a).

(5) In deciding whether a regime is an effective access regime, the Council must disregard Chapter 5 of a National Gas Law.

(6) The Council cannot recommend declaration of a service provided by means of a pipeline (within the meaning of a National Gas Law) if:

(a) a 15-year no-coverage determination is in force under the National Gas Law in respect of the pipeline; or

(b) a price regulation exemption is in force under the National Gas Law in respect of the pipeline.

44GA Target time limits on Council recommendation

(1) The Council must use its best endeavours to make a recommendation on an application under section 44F within:

(a) the period (the ***standard period***) of 4 months beginning on the day it received the application; or

(b) if the standard period is extended—that period as extended.

Extensions

(2) If the Council is unable to make a recommendation within the standard period, or that period as extended, it must, by notice in writing, extend the standard period by a specified period.

(3) The Council must give a copy of the notice to:

(a) the applicant; and

(b) if the applicant is not the provider of the service—the provider.

Multiple extensions

(4) The Council may extend the standard period more than once.

Publication

(5) If the Council extends the standard period, it must publish a notice in a national newspaper:
  (a) stating that it has done so; and
  (b) specifying the day by which it must now use its best endeavours to make a recommendation on the application.

44GB Council may invite public submissions on the application

Invitation

(1) The Council may publish, by electronic or other means, a notice inviting public submissions on an application under section 44F if it considers that it is appropriate and practicable to do so.

(2) The notice must specify how submissions may be made and the day by which submissions may be made (which must be at least 14 days after the day the notice is published).

Council to consider any submission

(3) Subject to subsection (6), the Council must have regard to any submission so made in deciding what recommendation to make on the application.

Council may make submissions publicly available

(4) The Council may make any written submission, or a written record (which may be a summary) of any oral submission, publicly available.

Confidentiality

(5) A person may, at the time of making a submission, request that the Council:
  (a) not make the whole or a part of the submission available under subsection (4); and
  (b) not publish or make available the whole or a part of the submission under section 44GC;

because of the confidential commercial information contained in the submission.

(6) If the Council refuses such a request:
  (a) for a written submission—the Council must, if the person who made it so requires, return the whole or the part of it to the person; and
  (b) for an oral submission—the person who made it may inform the Council that the person withdraws the whole or the part of it; and
  (c) if the Council returns the whole or the part of the submission, or the person withdraws the whole or the part of the submission, the Council must not:
    (i) make the whole or the part of the submission available under subsection (4); and
    (ii) publish or make available the whole or the part of the submission under section 44GC; and
    (iii) have regard to the whole or the part of the submission in making its recommendation on the application.

44GC Council must publish its recommendation

(1) The Council must publish, by electronic or other means, a recommendation under section 44F and its reasons for the recommendation.

(2) The Council must give a copy of the publication to:
  (a) the applicant under section 44F; and
  (b) if the applicant is not the provider of the service—the provider.

Timing

(3) The Council must do the things under subsections (1) and (2) on the day the designated Minister publishes his or her decision on the recommendation or as soon as practicable after that day.

Consultation

(4) Before publishing under subsection (1), the Council may give any one or more of the following persons:
  (a) the applicant under section 44F;
  (b) if the applicant is not the provider of the service—the provider;
  (c) any other person the Council considers appropriate;

a notice in writing:
  (d) specifying what the Council is proposing to publish; and
  (e) inviting the person to make a written submission to the Council within 14 days after the notice is given identifying any information the person considers should not be published because of its confidential commercial nature.

(5) The Council must have regard to any submission so made in deciding what to publish. It may have regard to any other matter it considers relevant.

Subdivision B—Declaration by the designated Minister

44H Designated Minister may declare a service

(1) On receiving a declaration recommendation, the designated Minister must either declare the service or decide not to declare it.

Note: The designated Minister must publish his or her decision: see section 44HA.

(1A) The designated Minister must have regard to the objects of this Part in making his or her decision.

(2) In deciding whether to declare the service or not, the designated Minister must consider whether it would be economical for anyone to develop another facility that could provide part of the service. This subsection does not limit the grounds on which the designated Minister may make a decision whether to declare the service or not.

(3) The designated Minister cannot declare a service that is the subject of an access undertaking in operation under Division 6.

(3A) While a decision of the Commission is in force under subsection 44PA(3) approving a tender process, for the construction and operation of a facility, as a competitive tender process, the designated Minister cannot declare any service provided by means of the facility that was specified under paragraph 44PA(2)(a).

(4) The designated Minister cannot declare a service unless he or she is satisfied of all of the following matters:
  (a) that access (or increased access) to the service would promote a material increase in competition in at least one market (whether or not in Australia), other than the market for the service;

(b) that it would be uneconomical for anyone to develop another facility to provide the service;

(c) that the facility is of national significance, having regard to:

(i) the size of the facility; or

(ii) the importance of the facility to constitutional trade or commerce; or

(iii) the importance of the facility to the national economy;

(d) that access to the service can be provided without undue risk to human health or safety;

(e) that access to the service is not already the subject of an effective access regime;

(f) that access (or increased access) to the service would not be contrary to the public interest.

(5) In deciding whether an access regime established by a State or Territory that is a party to the Competition Principles Agreement is an effective access regime, the designated Minister:

(a) must, subject to subsection (6A), apply the relevant principles set out in that agreement; and

(aa) must have regard to the objects of this Part; and

(b) must, subject to section 44DA, not consider any other matters.

(6) If there is in force a decision of the Commonwealth Minister under section 44N that a regime established by a State or Territory for access to the service is an effective access regime, the designated Minister must follow that decision, unless the designated Minister believes that, since the Commonwealth Minister's decision was published, there have been substantial modifications of the access regime or of the relevant principles set out in the Competition Principles Agreement.

Note: The period for which a decision is in force is determined under subsection 44N(3) and paragraph 44P(a).

(6A) In deciding whether a regime is an effective access regime, the designated Minister must disregard Chapter 5 of a National Gas Law.

(6B) The designated Minister cannot declare a service provided by means of a pipeline (within the meaning of a National Gas Law) if:

(a) a 15-year no-coverage determination is in force under the National Gas Law in respect of the pipeline; or

(b) a price regulation exemption is in force under the National Gas Law in respect of the pipeline.

(8) If the designated Minister declares the service, the declaration must specify the expiry date of the declaration.

(9) If the designated Minister does not publish under section 44HA his or her decision on the declaration recommendation within 60 days after receiving the declaration recommendation, the designated Minister is taken, at the end of that 60-day period, to have decided not to declare the service and to have published that decision not to declare the service.

44HA Designated Minister must publish his or her decision

(1) The designated Minister must publish, by electronic or other means, his or her decision on a declaration recommendation and his or her reasons for the decision.

(2) The designated Minister must give a copy of the publication to:

(a) the applicant under section 44F; and

(b) if the applicant is not the provider of the service—the provider.

Consultation

(3) Before publishing under subsection (1), the designated Minister may give any one or more of the following persons:

(a) the applicant under section 44F;

(b) if the applicant is not the provider of the service—the provider;

(c) any other person the designated Minister considers appropriate;

a notice in writing:

(d) specifying what the designated Minister is proposing to publish; and

(e) inviting the person to make a written submission to the designated Minister within 14 days after the notice is given identifying any information the person considers should not be published because of its confidential commercial nature.

(4) The designated Minister must have regard to any submission so made in deciding what to publish. He or she may have regard to any other matter he or she considers relevant.

44I Duration and effect of declaration

(1) Subject to this section, a declaration begins to operate at a time specified in the declaration. The time cannot be earlier than 21 days after the declaration is published.

(2) If an application for review of a declaration is made within 21 days after the declaration is published, the declaration does not begin to operate until the Tribunal makes its decision on the review.

(3) A declaration continues in operation until its expiry date, unless it is earlier revoked.

(4) The expiry or revocation of a declaration does not affect:

(a) the arbitration of an access dispute that was notified before the expiry or revocation; or

(b) the operation or enforcement of any determination made in the arbitration of an access dispute that was notified before the expiry or revocation.

44J Revocation of declaration

(1) The Council may recommend to the designated Minister that a declaration be revoked. The Council must have regard to the objects of this Part in making its decision.

(2) The Council cannot recommend revocation of a declaration unless it is satisfied that, at the time of the recommendation, subsection 44H(4) would prevent the designated Minister from declaring the service concerned.

(3) On receiving a revocation recommendation, the designated Minister must either revoke the declaration or decide not to revoke the declaration.

Note: There are target time limits that apply to the designated Minister's decision: see section 44JA.

(3A) The designated Minister must have regard to the objects of this Part in making his or her decision.

(4) The designated Minister must publish the decision to revoke or not to revoke.

(5) If the designated Minister decides not to revoke, the designated Minister must give reasons for the decision to the provider of the declared service when the designated Minister publishes the decision.

(6) The designated Minister cannot revoke a declaration without receiving a revocation recommendation.

44JA Target time limits on designated Minister's revocation decision

(1) The designated Minister must use his or her best endeavours to make a decision on a recommendation under section 44J within:

(a) the period (the ***standard period***) of 60 days beginning on the day he or she received the recommendation; or

(b) if the standard period is extended—that period as extended.

Extensions

(2) If the designated Minister is unable to make a decision on the recommendation within the standard period, or that period as extended, he or she must, by notice in writing, extend the standard period by a specified period.

(3) The designated Minister must give a copy of the notice to:

(a) the Council; and

(b) the provider of the service.

Multiple extensions

(4) The designated Minister may extend the standard period more than once.

Publication

(5) If the designated Minister extends the standard period, he or she must publish a notice in a national newspaper:

(a) stating that he or she has done so; and

(b) specifying the day by which he or she must now use his or her best endeavours to make a decision on the recommendation.

44K Review of declaration

(1) If the designated Minister declares a service, the provider may apply in writing to the Tribunal for review of the declaration.

(2) If the designated Minister decides not to declare a service, an application in writing for review of the designated Minister's decision may be made by the person who applied for the declaration recommendation.

(3) An application for review must be made within 21 days after publication of the designated Minister's decision.

(4) The review by the Tribunal is a re-consideration of the matter.

Note: There are target time limits that apply to the Tribunal's decision on the review: see section 44ZZOA.

(5) For the purposes of the review, the Tribunal has the same powers as the designated Minister.

(6) The member of the Tribunal presiding at the review may require the Council to give information and other assistance and to make reports, as specified by the member for the purposes of the review.

(7) If the designated Minister declared the service, the Tribunal may affirm, vary or set aside the declaration.

(8) If the designated Minister decided not to declare the service, the Tribunal may either:

(a) affirm the designated Minister's decision; or

(b) set aside the designated Minister's decision and declare the service in question.

(9) A declaration, or varied declaration, made by the Tribunal is to be taken to be a declaration by the designated Minister for all purposes of this Part (except this section).

44L Review of decision not to revoke a declaration

(1) If the designated Minister decides not to revoke a declaration, the provider may apply in writing to the Tribunal for review of the decision.

(2) An application for review must be made within 21 days after publication of the designated Minister's decision.

(3) The review by the Tribunal is a re-consideration of the matter.

Note: There are target time limits that apply to the Tribunal's decision on the review: see section 44ZZOA.

(4) For the purposes of the review, the Tribunal has the same powers as the designated Minister.

(5) The member of the Tribunal presiding at the review may require the Council to give information and other assistance and to make reports, as specified by the member for the purposes of the review.

(6) The Tribunal may either:

(a) affirm the designated Minister's decision; or

(b) set aside the designated Minister's decision and revoke the declaration.

Division 2A—Effective access regimes

Subdivision A—Recommendation by Council

44M Recommendation for a Ministerial decision on effectiveness of access regime

(1) This section applies if a State or Territory that is a party to the Competition Principles Agreement has established at any time a regime for access to a service or a proposed service.

(2) The responsible Minister for the State or Territory may make a written application to the Council asking the Council to recommend that the Commonwealth Minister decide that the regime for access to the service or proposed service is an effective access regime.

(3) The Council must recommend to the Commonwealth Minister:

(a) that he or she decide that the access regime is an effective access regime for the service, or proposed service; or

(b) that he or she decide that the access regime is not an effective access regime for the service, or proposed service.

Note 1: There are target time limits that apply to the Council's recommendation: see section 44NC.

Note 2: The Council may invite public submissions on the application: see section 44NE.

Note 3: The Council must publish its recommendation: see section 44NF.

(4) In deciding what recommendation it should make, the Council:

(a) must, subject to subsection (4A), assess whether the access regime is an effective access regime by applying the relevant principles set out in the Competition Principles Agreement; and

(aa) must have regard to the objects of this Part; and

(b) must, subject to section 44DA, not consider any other matters.

(4A) In deciding what recommendation it should make, the Council must disregard Chapter 5 of a National Gas Law.

(5) When the Council recommends that the Commonwealth Minister make a particular decision, the Council must also recommend the period for which the decision should be in force.

Subdivision B—Decision by Commonwealth Minister

44N Ministerial decision on effectiveness of access regime

(1) On receiving a recommendation under section 44M, the Commonwealth Minister must:

(a) decide that the access regime is an effective access regime for the service or proposed service; or

(b) decide that the access regime is not an effective access regime for the service or proposed service.

Note 1: There are target time limits that apply to the Commonwealth Minister's decision: see section 44ND.

Note 2: The Commonwealth Minister must publish his or her decision: see section 44NG.

(2) In making a decision, the Commonwealth Minister:

(a) must, subject to subsection (2A), apply the relevant principles set out in the Competition Principles Agreement; and

(aa) must have regard to the objects of this Part; and

(b) must, subject to section 44DA, not consider any other matters.

(2A) In making a decision, the Commonwealth Minister must disregard Chapter 5 of a National Gas Law.

(3) The decision must specify the period for which it is in force.

Note: The period for which the decision is in force may be extended: see section 44NB.

Subdivision C—Extensions of Commonwealth Minister's decision

44NA Recommendation by Council

(1) This section applies if a decision of the Commonwealth Minister is in force under section 44N (including as a result of an extension under section 44NB) that a regime established by a State or Territory for access to a service is an effective access regime.

Application to Council

(2) The responsible Minister for the State or Territory may make a written application to the Council asking it to recommend that the Commonwealth Minister decide to extend the period for which the decision is in force.

Note: The Commonwealth Minister may extend the period for which the decision is in force more than once: see section 44NB. This means there may be multiple applications under this subsection.

(3) The responsible Minister for the State or Territory may specify in the application proposed variations to the access regime.

Assessment by Council

(4) The Council must assess whether the access regime (including any proposed variations) is an effective access regime. It must do this in accordance with subsection 44M(4).

(5) If the Council is satisfied that it is, the Council must, in writing, recommend to the Commonwealth Minister that he or she extend the period for which the decision under section 44N is in force. The Council must also recommend an extension period.

(6) If the Council is satisfied that it is not, the Council must, in writing, recommend to the Commonwealth Minister that he or she not extend the period for which the decision under section 44N is in force.

Note 1: There are target time limits that apply to the Council's recommendation: see section 44NC.

Note 2: The Council may invite public submissions on the application: see section 44NE.

Note 3: The Council must publish its recommendation: see section 44NF.

44NB Decision by the Commonwealth Minister

(1) On receiving a recommendation under section 44NA, the Commonwealth Minister must assess whether the access regime (including any proposed variations) is an effective access regime. He or she must do this in accordance with subsection 44N(2).

Note 1: There are target time limits that apply to the Commonwealth Minister's decision: see section 44ND.

Note 2: The Commonwealth Minister must publish his or her decision: see section 44NG.

(2) If the Commonwealth Minister is satisfied that it is, he or she must, by notice in writing, decide to extend the period for which the decision under section 44N is in force. The notice must specify the extension period.

(3) If the Commonwealth Minister is satisfied that it is not, he or she must, by notice in writing, decide not to extend the period for which the decision under section 44N is in force.

Multiple extensions

(4) The Commonwealth Minister may extend the period for which a decision is in force under section 44N more than once.

Subdivision D—Procedural provisions

44NC Target time limits—Council

(1) The Council must use its best endeavours to make a recommendation on an application under section 44M or 44NA within:

(a) the period (the ***standard period***) of 6 months beginning on the day it received the application; or

(b) if the standard period is extended—that period as extended.

Extensions

(2) If the Council is unable to make a recommendation within the standard period, or that period as extended, it must, by notice in writing, extend the standard period by a specified period.

(3) The Council must give a copy of the notice to the applicant and the provider of the service.

Multiple extensions

(4) The Council may extend the standard period more than once.

Publication

(5) If the Council extends the standard period, it must publish a notice in a national newspaper:

(a) stating that it has done so; and

(b) specifying the day by which it must now use its best endeavours to make a recommendation on the application.

44ND Target time limits—Commonwealth Minister

(1) The Commonwealth Minister must use his or her best endeavours to make a decision on a recommendation under section 44M or 44NA within:

(a) the period (the ***standard period***) of 60 days beginning on the day he or she received the recommendation; or

(b) if the standard period is extended—that period as extended.

Extensions

(2) If the Commonwealth Minister is unable to make a decision on the recommendation within the standard period, or that period as extended, he or she must, by notice in writing, extend the standard period by a specified period.

(3) The Commonwealth Minister must give a copy of the notice to:

(a) the Council; and

(b) the applicant under section 44M or 44NA.

Multiple extensions

(4) The Commonwealth Minister may extend the standard period more than once.

Publication

(5) If the Commonwealth Minister extends the standard period, he or she must publish a notice in a national newspaper:
  (a) stating that he or she has done so; and
  (b) specifying the day by which he or she must now use his or her best endeavours to make a decision on the recommendation.

44NE Council may invite public submissions

Invitation

(1) The Council may publish, by electronic or other means, a notice inviting public submissions on an application under section 44M or 44NA if it considers that it is appropriate and practicable to do so.

(2) The notice must specify how submissions may be made and the day by which submissions may be made (which must be at least 14 days after the day the notice is published).

Council to consider any submission

(3) Subject to subsection (6), the Council must have regard to any submission so made in deciding what recommendation to make on the application.

Council may make submissions publicly available

(4) The Council may make any written submission, or a written record (which may be a summary) of any oral submission, publicly available.

Confidentiality

(5) A person may, at the time of making a submission, request that the Council:
  (a) not make the whole or a part of the submission available under subsection (4); and
  (b) not publish or make available the whole or a part of the submission under section 44NF;

because of the confidential commercial information contained in the submission.

(6) If the Council refuses such a request:
  (a) for a written submission—the Council must, if the person who made it so requires, return the whole or the part of it to the person; and
  (b) for an oral submission—the person who made it may inform the Council that the person withdraws the whole or the part of it; and
  (c) if the Council returns the whole or the part of the submission, or the person withdraws the whole or the part of the submission, the Council must not:
    (i) make the whole or the part of the submission available under subsection (4); and
    (ii) publish or make available the whole or the part of the submission under section 44NF; and
    (iii) have regard to the whole or the part of the submission in making its recommendation on the application.

44NF Publication—Council

(1) The Council must publish, by electronic or other means, a recommendation under section 44M or 44NA and its reasons for the recommendation.

(2) The Council must give a copy of the publication to:
  (a) the applicant under section 44M or 44NA; and
  (b) the provider of the service.

Timing

(3) The Council must do the things under subsections (1) and (2) on the day the Commonwealth Minister publishes his or her decision on the recommendation or as soon as practicable after that day.

Consultation

(4) Before publishing under subsection (1), the Council may give any one or more of the following persons:
  (a) the applicant under section 44M or 44NA;
  (b) the provider of the service;
  (c) any other person the Council considers appropriate;

a notice in writing:
  (d) specifying what the Council is proposing to publish; and
  (e) inviting the person to make a written submission to the Council within 14 days after the notice is given identifying any information the person considers should not be published because of its confidential commercial nature.

(5) The Council must have regard to any submission so made in deciding what to publish. It may have regard to any other matter it considers relevant.

44NG Publication—Commonwealth Minister

(1) The Commonwealth Minister must publish, by electronic or other means, his or her decision on a recommendation under section 44M or 44NA and his or her reasons for the decision.

(2) The Commonwealth Minister must give a copy of the publication to:
  (a) the applicant under section 44M or 44NA; and
  (b) the provider of the service.

Consultation

(3) Before publishing under subsection (1), the Commonwealth Minister may give any one or more of the following persons:
  (a) the applicant under section 44M or 44NA;
  (b) the provider of the service;
  (c) any other person the Minister considers appropriate;

a notice in writing:
  (d) specifying what the Minister is proposing to publish; and
  (e) inviting the person to make a written submission to the Minister within 14 days after the notice is given identifying any information the person considers should not be published because of its confidential commercial nature.

(4) The Commonwealth Minister must have regard to any submission so made in deciding what to publish. He or she may have regard to any other matter he or she considers relevant.

Subdivision E—Review of decisions

44O Review of Ministerial decision on effectiveness of access regime

(1) The responsible Minister of the State or Territory:

(a) who applied for a recommendation under section 44M that the Commonwealth Minister decide that the access regime is an effective access regime; or

(b) who applied for a recommendation under section 44NA that the Commonwealth Minister decide to extend the period for which the decision under section 44N is in force;

may apply to the Tribunal for review of the Commonwealth Minister's decision.

(2) An application for review must be made within 21 days after publication of the Commonwealth Minister's decision.

(3) The review by the Tribunal is a reconsideration of the matter.

Note: There are target time limits that apply to the Tribunal's decision on the review: see section 44ZZOA.

(4) For the purposes of the review, the Tribunal has the same powers as the Commonwealth Minister.

(5) The member of the Tribunal presiding at the review may require the Council to give information and other assistance, and to make reports, as specified by the member for the purposes of the review.

(6) The Tribunal may affirm, vary or reverse the Commonwealth Minister's decision.

(7) A decision made by the Tribunal is to be taken to be a decision of the Commonwealth Minister for all purposes of this Part (except this section).

Subdivision F—State or Territory ceasing to be a party to Competition Principles Agreement

44P State or Territory ceasing to be a party to Competition Principles Agreement

If a State or Territory that has established a regime for access to a service or proposed service ceases to be a party to the Competition Principles Agreement:

(a) a decision by the Commonwealth Minister that the regime is an effective access regime ceases to be in force; and

(b) the Council, the Commonwealth Minister and the Tribunal need not take any further action relating to an application for a decision by the Commonwealth Minister that the regime is an effective access regime.

Division 2B—Competitive tender processes for government owned facilities

44PA Approval of competitive tender process

Application to Commission

(1) The Commonwealth Minister, or the responsible Minister of a State or Territory, may make a written application to the Commission asking it to approve a tender process, for the construction and operation of a facility that is to be owned by the Commonwealth, State or Territory, as a competitive tender process.

(2) The application must:
  (a) specify the service or services proposed to be provided by means of the facility; and
  (b) be in accordance with the regulations.

Decision of Commission

(3) The Commission must, by notice in writing, approve or refuse to approve the tender process as a competitive tender process.

Note 1: While a decision is in force approving a tender process as a competitive tender process, the designated Minister cannot declare any service provided by means of the facility that was specified under paragraph (2)(a): see subsection 44H(3A).

Note 2: There are target time limits that apply to the Commission's decision: see section 44PD.

Note 3: The Commission may invite public submissions on the application: see section 44PE.

Note 4: The Commission must publish its decision: see section 44PF.

(4) The Commission must not approve a tender process as a competitive tender process unless:
  (a) it is satisfied that reasonable terms and conditions of access to any service specified under paragraph (2)(a) will be the result of the process; and
  (b) it is satisfied that the tender process meets the requirements prescribed by the regulations.

Period for which decision in force

(5) If the Commission approves the tender process as a competitive tender process, it may specify in the notice the period for which the decision is in force.

Note: Section 44PC provides for revocation of the decision.

(6) The Commission may, by writing, extend that period by a specified period. The Commission may do so more than once.

Legislative Instruments Act

(7) A notice under subsection (3) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

44PB Report on conduct of tender process

Report

(1) If the Commission approves a tender process as a competitive tender process, it must, after a tenderer is chosen, ask the applicant under subsection 44PA(1), by notice in writing, to give the Commission a written report on the conduct of the tender process.

(2) The report must be in accordance with the regulations.

Commission may ask for further information

(3) After the Commission receives the report, it may ask the applicant under subsection 44PA(1), by notice in writing, to give the Commission further information in relation to the conduct of the tender process.

Legislative Instruments Act

(4) A report under subsection (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

44PC Revocation of approval decision

Discretionary revocation

(1) The Commission may, by writing, revoke a decision to approve a tender process as a competitive tender process if it is satisfied that the assessment of the tenders was not in accordance with that process.

Note 1: The Commission may invite public submissions on any proposed revocation decision: see section 44PE.

Note 2: The Commission must publish its decision: see section 44PF.

(2) The Commission may, by writing, revoke a decision to approve a tender process as a competitive tender process if it is satisfied that the provider of a service:

(a) specified under paragraph 44PA(2)(a); and

(b) being provided by means of the facility concerned;

is not complying with the terms and conditions of access to the service.

Note 1: The Commission may invite public submissions on any proposed revocation decision: see section 44PE.

Note 2: The Commission must publish its decision: see section 44PF.

(3) Before making a decision under subsection (2), the Commission must give the applicant under subsection 44PA(1), and the provider of the service, a written notice:

(a) stating that the Commission is proposing to make such a decision and the reasons for it; and

(b) inviting the person to make a written submission to the Commission on the proposal; and

(c) stating that any submission must be made within the period of 40 business days after the notice is given.

(4) The Commission must consider any written submission received within that period.

Mandatory revocation

(5) If:

(a) the Commission approves a tender process as a competitive tender process; and

(b) the Commission gives the applicant a notice under subsection 44PB(1) or (3); and

(c) the applicant does not comply with the notice within the period of 40 business days beginning on the day on which the notice is given;

the Commission must, by writing, revoke the approval decision at the end of that period. The Commission must give notice of the revocation to the applicant.

Definition

(6) In this section:

business day means a day that is not a Saturday, a Sunday, or a public holiday in the Australian Capital Territory.

44PD Target time limits for Commission decisions

(1) The Commission must use its best endeavours to make a decision on an application under subsection 44PA(1) within:

(a) the period (the ***standard period***) of 6 months beginning on the day it received the application; or

(b) if the standard period is extended—that period as extended.

Extensions

(2) If the Commission is unable to make a decision within the standard period, or that period as extended, it must, by notice in writing, extend the standard period by a specified period.

(3) The Commission must give a copy of the notice to the applicant.

Multiple extensions

(4) The Commission may extend the standard period more than once.

Publication

(5) If the Commission extends the standard period, it must publish a notice in a national newspaper:

(a) stating that it has done so; and

(b) specifying the day by which it must now use its best endeavours to make a decision on the application.

44PE Commission may invite public submissions

Invitation

(1) The Commission may publish, by electronic or other means, a notice inviting public submissions:

(a) on an application under subsection 44PA(1); or

(b) on any proposed decision under subsection 44PC(1) or (2) to revoke a decision under subsection 44PA(3) to approve a tender process as a competitive tender process;

if it considers that it is appropriate and practicable to do so.

(2) The notice must specify how submissions may be made and the day by which submissions may be made (which must be at least 14 days after the day the notice is published).

Commission to consider any submission

(3) Subject to subsection (6), the Commission must have regard to any submission so made in making its decision.

Commission may make submissions publicly available

(4) The Commission may make any written submission, or a written record (which may be a summary) of any oral submission, publicly available.

Confidentiality

(5) A person may, at the time of making a submission, request that the Commission:
  (a) not make the whole or a part of the submission available under subsection (4); and
  (b) not publish or make available the whole or a part of the submission under section 44PF;

because of the confidential commercial information contained in the submission.

(6) If the Commission refuses such a request:
  (a) for a written submission—the Commission must, if the person who made it so requires, return the whole or the part of it to the person; and
  (b) for an oral submission—the person who made it may inform the Commission that the person withdraws the whole or the part of it; and
  (c) if the Commission returns the whole or the part of the submission, or the person withdraws the whole or the part of the submission, the Commission must not:
    (i) make the whole or the part of the submission available under subsection (4); and
    (ii) publish or make available the whole or the part of the submission under section 44PF; and
    (iii) have regard to the whole or the part of the submission in making its decision.

44PF Commission must publish its decisions

(1) The Commission must publish, by electronic or other means, a decision under subsection 44PA(3) or 44PC(1) or (2) and its reasons for the decision.

(2) The Commission must give a copy of the publication to:
  (a) for any decision—the applicant under subsection 44PA(1); and
  (b) for a decision under subsection 44PC(2)—the provider of the service.

It may also give a copy to any other person the Commission considers appropriate.

Consultation

(3) Before publishing under subsection (1), the Commission may give the following persons:
  (a) for any decision—the applicant under subsection 44PA(1) or any other person the Commission considers appropriate;
  (b) for a decision under subsection 44PC(2)—the provider of the service;

a notice in writing:
  (c) specifying what the Commission is proposing to publish; and
  (d) inviting the person to make a written submission to the Commission within 14 days after the notice is given identifying any information the person considers should not be published because of its confidential commercial nature.

(4) The Commission must have regard to any submission so made in deciding what to publish. It may have regard to any other matter it considers relevant.

44PG Review of Commission's initial decision

Application

(1) A person whose interests are affected by a decision of the Commission under subsection 44PA(3) may apply in writing to the Tribunal for review of the decision.

(2) The person must apply for review within 21 days after the Commission publishes its decision.

Review

(3) The review by the Tribunal is a reconsideration of the matter.

Note: There are target time limits that apply to the Tribunal's decision on the review: see section 44ZZOA.

(4) For the purposes of the review, the Tribunal has the same powers as the Commission.

(5) The member of the Tribunal presiding at the review may require the Commission to give information and other assistance, and to make reports, as specified by the member for the purposes of the review.

Tribunal's decision

(6) If the Commission refused to approve a tender process as a competitive tender process, the Tribunal must, by writing:

(a) affirm the Commission's decision; or

(b) set aside the Commission's decision and approve the process as a competitive tender process.

(7) A decision of the Tribunal to approve a process as a competitive tender process is taken to be a decision by the Commission for all purposes of this Part (except this section).

(8) If the Commission approved a tender process as a competitive tender process, the Tribunal must, by writing, affirm or set aside the Commission's decision.

Note: If the Tribunal sets aside a decision of the Commission to approve a tender process as a competitive tender process, the Commission's decision is no longer in force. This means the designated Minister is no longer prevented by subsection 44H(3A) from declaring a service provided by means of the facility concerned.

44PH Review of decision to revoke an approval

Application

(1) If the Commission makes a decision under subsection 44PC(1) or (2), the following persons may apply in writing to the Tribunal for review of the decision:

(a) for either decision—the applicant under subsection 44PA(1) or any other person whose interests are affected by the decision;

(b) for a decision under subsection 44PC(2)—the provider of the service.

(2) The person must apply for review within 21 days after the Commission publishes its decision.

Review

(3) The review by the Tribunal is a reconsideration of the matter.

Note: There are target time limits that apply to the Tribunal's decision on the review: see section 44ZZOA.

(4) For the purposes of the review, the Tribunal has the same powers as the Commission.

(5) The member of the Tribunal presiding at the review may require the Commission to give information and other assistance, and to make reports, as specified by the member for the purposes of the review.

Tribunal's decision

(6) The Tribunal must, by writing, affirm or set aside the Commission's decision.

Division 2C—Register of decisions and declarations

44Q Register of decisions and declarations

The Commission must maintain a public register that includes:

(a) each decision of the Commonwealth Minister that a regime established by a State or Territory for access to a service is an effective access regime for the service or proposed service; and

(aa) each decision of the Commonwealth Minister to extend the period for which a decision under section 44N is in force; and

(b) each declaration (including a declaration that is no longer in force); and

(c) each decision of the Commission under subsection 44PA(3) to approve a tender process as a competitive tender process; and

(d) each decision of the Commission under section 44PC to revoke a decision under subsection 44PA(3).

Division 3—Access to declared services

Subdivision A—Scope of Division

44R Constitutional limits on operation of this Division

This Division does not apply in relation to a third party's access to a service unless:

(a) the provider is a corporation (or a partnership or joint venture consisting wholly of corporations); or

(b) the third party is a corporation; or

(c) the access is (or would be) in the course of, or for the purposes of, constitutional trade or commerce.

Subdivision B—Notification of access disputes

44S Notification of access disputes

(1) If a third party is unable to agree with the provider on one or more aspects of access to a declared service, either the provider or the third party may notify the Commission in writing that an access dispute exists, but only to the extent that those aspects of access are not the subject of an access undertaking that is in operation in relation to the service.

Note: An example of one of the things on which a provider and third party might disagree is whether a previous determination ought to be varied.

(2) On receiving the notification, the Commission must give notice in writing of the access dispute to:

(a) the provider, if the third party notified the access dispute;

(b) the third party, if the provider notified the access dispute;

(c) any other person whom the Commission thinks might want to become a party to the arbitration.

44T Withdrawal of notifications

(1) A notification may be withdrawn as follows (and not otherwise):

(a) if the provider notified the dispute:

(i) the provider may withdraw the notification at any time before the Commission makes its final determination;

(ii) the third party may withdraw the provider's notification at any time after the Commission issues a draft final determination, but before it makes its final determination;

(b) if the third party notified the dispute, the third party may withdraw the notification at any time before the Commission makes its determination.

(2) Despite subparagraph (1)(a)(ii), if the provider notified a dispute over variation of a final determination, the third party may not withdraw the provider's notification.

(3) If the notification is withdrawn, it is taken for the purposes of this Part never to have been given.

Subdivision C—Arbitration of access disputes

44U Parties to the arbitration

The parties to the arbitration of an access dispute are:

(a) the provider;

(b) the third party;

(c) any other person who applies in writing to be made a party and is accepted by the Commission as having a sufficient interest.

44V Determination by Commission

(1) Unless it terminates the arbitration under section 44Y or 44ZZCB, the Commission:

(a) must make a written final determination; and

(b) may make a written interim determination;

on access by the third party to the service.

Note 1: There are target time limits that apply to the Commission's final determination: see section 44XA.

Note 2: The Commission may defer arbitration of the access dispute if it is also considering an access undertaking: see section 44ZZCB.

(2) A determination may deal with any matter relating to access by the third party to the service, including matters that were not the basis for notification of the dispute. By way of example, the determination may:

(a) require the provider to provide access to the service by the third party;

(b) require the third party to accept, and pay for, access to the service;

(c) specify the terms and conditions of the third party's access to the service;

(d) require the provider to extend the facility;

(da) require the provider to permit interconnection to the facility by the third party;

(e) specify the extent to which the determination overrides an earlier determination relating to access to the service by the third party.

(3) A determination does not have to require the provider to provide access to the service by the third party.

(4) Before making a determination, the Commission must give a draft determination to the parties.

(5) When the Commission makes a determination, it must give the parties to the arbitration its reasons for making the determination.

(6) A determination is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

44W Restrictions on access determinations

(1) The Commission must not make a determination that would have any of the following effects:

(a) preventing an existing user obtaining a sufficient amount of the service to be able to meet the user's reasonably anticipated requirements, measured at the time when the dispute was notified;

(b) preventing a person from obtaining, by the exercise of a pre-notification right, a sufficient amount of the service to be able to meet the person's actual requirements;

(c) depriving any person of a protected contractual right;

(d) resulting in the third party becoming the owner (or one of the owners) of any part of the facility, or of extensions of the facility, without the consent of the provider;

(e) requiring the provider to bear some or all of the costs of extending the facility or maintaining extensions of the facility;

(f) requiring the provider to bear some or all of the costs of interconnections to the facility or maintaining interconnections to the facility.

(2) Paragraphs (1)(a) and (b) do not apply in relation to the requirements and rights of the third party and the provider when the Commission is making a determination in arbitration of an access dispute relating to an earlier determination of an access dispute between the third party and the provider.

(3) A determination is of no effect if it is made in contravention of subsection (1).

(4) If the Commission makes a determination that has the effect of depriving a person (the ***second person***) of a pre-notification right to require the provider to supply the service to the second person, the determination must also require the third party:

(a) to pay to the second person such amount (if any) as the Commission considers is fair compensation for the deprivation; and

(b) to reimburse the provider and the Commonwealth for any compensation that the provider or the Commonwealth agrees, or is required by a court order, to pay to the second party as compensation for the deprivation.

Note: Without infringing paragraph (1)(b), a determination may deprive a second person of the right to be supplied with an amount of service equal to the difference between the total amount of service the person was entitled to under a pre-notification right and the amount that the person actually needs to meet his or her actual requirements.

(5) In this section:

existing user means a person (including the provider) who was using the service at the time when the dispute was notified.

pre-notification right means a right under a contract, or under a determination, that was in force at the time when the dispute was notified.

protected contractual right means a right under a contract that was in force at the beginning of 30 March 1995.

44X Matters that the Commission must take into account

Final determinations

(1) The Commission must take the following matters into account in making a final determination:

(aa) the objects of this Part;

(a) the legitimate business interests of the provider, and the provider's investment in the facility;

(b) the public interest, including the public interest in having competition in markets (whether or not in Australia);

(c) the interests of all persons who have rights to use the service;

(d) the direct costs of providing access to the service;

(e) the value to the provider of extensions whose cost is borne by someone else;

(ea) the value to the provider of interconnections to the facility whose cost is borne by someone else;

(f) the operational and technical requirements necessary for the safe and reliable operation of the facility;

(g) the economically efficient operation of the facility;

(h) the pricing principles specified in section 44ZZCA.

(2) The Commission may take into account any other matters that it thinks are relevant.

Interim determinations

(3) The Commission may take the following matters into account in making an interim determination:
  (a) a matter referred to in subsection (1);
  (b) any other matter it considers relevant.

(4) In making an interim determination, the Commission does not have a duty to consider whether to take into account a matter referred to in subsection (1).

44XA Target time limits for Commission's final determination

(1) The Commission must use its best endeavours to make a final determination within:
  (a) the period (the ***standard period***) of 6 months beginning on the day it received notification of the access dispute; or
  (b) if the standard period is extended—that period as extended.

Extensions

(2) If the Commission is unable to make a final determination within the standard period, or that period as extended, it must, by notice in writing, extend the standard period by a specified period.

(3) The Commission must give a copy of the notice to each party to the arbitration.

Multiple extensions

(4) The Commission may extend the standard period more than once.

Publication

(5) If the Commission extends the standard period, it must publish a notice in a national newspaper:
  (a) stating that it has done so; and
  (b) specifying the day by which it must now use its best endeavours to make a final determination.

44Y Commission may terminate arbitration in certain cases

(1) The Commission may at any time terminate an arbitration (without making a final determination) if it thinks that:
  (a) the notification of the dispute was vexatious; or
  (b) the subject matter of the dispute is trivial, misconceived or lacking in substance; or
  (c) the party who notified the dispute has not engaged in negotiations in good faith; or
  (d) access to the service should continue to be governed by an existing contract between the provider and the third party.

(2) In addition, if the dispute is about varying an existing determination, the Commission may terminate the arbitration if it thinks there is no sufficient reason why the previous determination should not continue to have effect in its present form.

Subdivision D—Procedure in arbitrations

44Z Constitution of Commission for conduct of arbitration

For the purposes of a particular arbitration, the Commission is to be constituted by 2 or more members of the Commission nominated in writing by the Chairperson.

44ZA Member of the Commission presiding at an arbitration

(1) Subject to subsection (2), the Chairperson is to preside at an arbitration.

(2) If the Chairperson is not a member of the Commission as constituted under section 44Z in relation to a particular arbitration, the Chairperson must nominate a member of the Commission to preside at the arbitration.

44ZB Reconstitution of Commission

(1) This section applies if a member of the Commission who is one of the members who constitute the Commission for the purposes of a particular arbitration:
  (a) stops being a member of the Commission; or
  (b) for any reason, is not available for the purpose of the arbitration.

(2) The Chairperson must either:
  (a) direct that the Commission is to be constituted for the purposes of finishing the arbitration by the remaining member or members; or
  (b) direct that the Commission is to be constituted for that purpose by the remaining member or members together with one or more other members of the Commission.

(3) If a direction under subsection (2) is given, the Commission as constituted in accordance with the direction must continue and finish the arbitration and may, for that purpose, have regard to any record of the proceedings of the arbitration made by the Commission as previously constituted.

44ZC Determination of questions

If the Commission is constituted for an arbitration by 2 or more members of the Commission, any question before the Commission is to be decided:
  (a) unless paragraph (b) applies—according to the opinion of the majority of those members; or
  (b) if the members are evenly divided on the question—according to the opinion of the member who is presiding.

44ZD Hearing to be in private

(1) Subject to subsection (2), an arbitration hearing for an access dispute is to be in private.

(2) If the parties agree, an arbitration hearing or part of an arbitration hearing may be conducted in public.

(3) The member of the Commission who is presiding at an arbitration hearing that is conducted in private may give written directions as to the persons who may be present.

(4) In giving directions under subsection (3), the member presiding must have regard to the wishes of the parties and the need for commercial confidentiality.

44ZE Right to representation

In an arbitration hearing before the Commission under this Part, a party may appear in person or be represented by someone else.

44ZF Procedure of Commission

(1) In an arbitration hearing about an access dispute, the Commission:
  (a) is not bound by technicalities, legal forms or rules of evidence; and

(b) must act as speedily as a proper consideration of the dispute allows, having regard to the need to carefully and quickly inquire into and investigate the dispute and all matters affecting the merits, and fair settlement, of the dispute; and

(c) may inform itself of any matter relevant to the dispute in any way it thinks appropriate.

(2) The Commission may determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the parties to an access dispute, and may require that the cases be presented within those periods.

(3) The Commission may require evidence or argument to be presented in writing, and may decide the matters on which it will hear oral evidence or argument.

(4) The Commission may determine that an arbitration hearing is to be conducted by:

(a) telephone; or

(b) closed circuit television; or

(c) any other means of communication.

44ZG Particular powers of Commission

(1) The Commission may do any of the following things for the purpose of arbitrating an access dispute:

(a) give a direction in the course of, or for the purposes of, an arbitration hearing;

(b) hear and determine the arbitration in the absence of a person who has been summoned or served with a notice to appear;

(c) sit at any place;

(d) adjourn to any time and place;

(e) refer any matter to an expert and accept the expert's report as evidence;

(f) generally give all such directions, and do all such things, as are necessary or expedient for the speedy hearing and determination of the access dispute.

(2) A person must not do any act or thing in relation to the arbitration of an access dispute that would be a contempt of court if the Commission were a court of record.

Penalty: Imprisonment for 6 months.

(3) Subsection (1) has effect subject to any other provision of this Part and subject to the regulations.

(4) The Commission may give an oral or written order to a person not to divulge or communicate to anyone else specified information that was given to the person in the course of an arbitration unless the person has the Commission's permission.

(5) A person who contravenes an order under subsection (4) is guilty of an offence, punishable on conviction by imprisonment for a term not exceeding 6 months.

44ZH Power to take evidence on oath or affirmation

(1) The Commission may take evidence on oath or affirmation and for that purpose a member of the Commission may administer an oath or affirmation.

(2) The member of the Commission who is presiding may summon a person to appear before the Commission to give evidence and to produce such documents (if any) as are referred to in the summons.

(3) The powers in this section may be exercised only for the purposes of arbitrating an access dispute.

44ZI Failing to attend as a witness

A person who is served, as prescribed, with a summons to appear as a witness before the Commission must not, without reasonable excuse:

(a) fail to attend as required by the summons; or

(b) fail to appear and report himself or herself from day to day unless excused, or released from further attendance, by a member of the Commission.

Penalty: Imprisonment for 6 months.

44ZJ Failing to answer questions etc.

(1) A person appearing as a witness before the Commission must not, without reasonable excuse:

(a) refuse or fail to be sworn or to make an affirmation; or

(b) refuse or fail to answer a question that the person is required to answer by the Commission; or

(c) refuse or fail to produce a document that he or she was required to produce by a summons under this Part served on him or her as prescribed.

Penalty: Imprisonment for 6 months.

(2) It is a reasonable excuse for the purposes of subsection (1) for an individual to refuse or fail to answer a question or produce a document on the ground that the answer or the production of the document might tend to incriminate the individual or to expose the individual to a penalty. This subsection does not limit what is a reasonable excuse for the purposes of subsection (1).

44ZK Intimidation etc.

A person must not:

(a) threaten, intimidate or coerce another person; or

(b) cause or procure damage, loss or disadvantage to another person;

because that other person:

(c) proposes to produce, or has produced, documents to the Commission; or

(d) proposes to appear or has appeared as a witness before the Commission.

Penalty: Imprisonment for 12 months.

44ZL Party may request Commission to treat material as confidential

(1) A party to an arbitration hearing may:

(a) inform the Commission that, in the party's opinion, a specified part of a document contains confidential commercial information; and

(b) request the Commission not to give a copy of that part to another party.

(2) On receiving a request, the Commission must:

(a) inform the other party or parties that the request has been made and of the general nature of the matters to which the relevant part of the document relates; and

(b) ask the other party or parties whether there is any objection to the Commission complying with the request.

(3) If there is an objection to the Commission complying with a request, the party objecting may inform the Commission of its objection and of the reasons for it.

(4) After considering:

(a) a request; and
(b) any objection; and
(c) any further submissions that any party has made in relation to the request;

the Commission may decide not to give to the other party or parties a copy of so much of the document as contains confidential commercial information that the Commission thinks should not be so given.

44ZM Sections 18 and 19 do not apply to the Commission in an arbitration

Sections 18 and 19 do not apply to the Commission, as constituted for an arbitration.

44ZN Parties to pay costs of an arbitration

The regulations may provide for the Commission to:
(a) charge the parties to an arbitration for its costs in conducting the arbitration; and
(b) apportion the charge between the parties.

44ZNA Joint arbitration hearings

Joint arbitration hearing

(1) If:
(a) the Commission is arbitrating 2 or more access disputes at a particular time; and
(b) one or more matters are common to those disputes;

the Chairperson may, by notice in writing, decide that the Commission must hold a joint arbitration hearing in respect of such of those disputes (the ***nominated disputes***) as are specified in the notice.

(2) The Chairperson may do so only if he or she considers this would be likely to result in the nominated disputes being resolved in a more efficient and timely manner.

Consulting the parties

(3) Before doing so, the Chairperson must give each party to the arbitration of each nominated dispute a notice in writing:
(a) specifying what the Chairperson is proposing to do; and
(b) inviting the party to make a written submission on the proposal to the Chairperson within 14 days after the notice is given.

(4) The Chairperson must have regard to any submission so made in deciding whether to do so. He or she may have regard to any other matter he or she considers relevant.

Directions to presiding member

(5) The Chairperson may, for the purposes of the conduct of the joint arbitration hearing, give written directions to the member of the Commission presiding at the hearing.

Constitution and procedure of Commission

(6) Sections 44Z to 44ZN apply to the joint arbitration hearing in a corresponding way to the way in which they apply to a particular arbitration.

Note: For example, the Chairperson would be required to nominate in writing 1 or more members of the Commission to constitute the Commission for the purposes of the joint arbitration hearing.

Record of proceedings etc.

(7) The Commission as constituted for the purposes of the joint arbitration hearing may have regard to any record of the proceedings of the arbitration of any nominated dispute.

(8) The Commission as constituted for the purposes of the arbitration of each nominated dispute may, for the purposes of making a determination in relation to that arbitration:
  (a) have regard to any record of the proceedings of the joint arbitration hearing; and
  (b) adopt any findings of fact made by the Commission as constituted for the purposes of the joint arbitration hearing.

Legislative Instruments Act

(9) The following are not legislative instruments for the purposes of the *Legislative Instruments Act 2003*:
  (a) a notice made under subsection (1);
  (b) a direction given under subsection (5).

Subdivision DA—Arbitration reports

44ZNB Arbitration reports

(1) The Commission must prepare a written report about a final determination it makes. It must publish, by electronic or other means, the report.

(2) The report may include the whole or a part of the determination and the reasons for the determination or the part of the determination.

Report must include certain matters

(3) The report must set out the following matters:
  (a) the principles the Commission applied in making the determination;
  (b) the methodologies the Commission applied in making the determination and the reasons for the choice of the asset valuation methodology;
  (c) how the Commission took into account the matters mentioned in subsection 44X(1) in making the determination;
  (d) any matter the Commission took into account under subsection 44X(2) in making the determination and the reasons for doing so;
  (e) any information provided by the parties to the arbitration that was relevant to those principles or methodologies;

    Note: Confidentiality issues are dealt with in subsections (5) to (7).

  (f) any implications the Commission considers the determination has for persons seeking access to the service or to similar services in the future;
  (g) if applicable—the reasons for the determination dealing with matters that were already agreed between the parties to the arbitration at the time the access dispute was notified;
  (h) if applicable—the reasons for the access dispute being the subject of a joint arbitration hearing under section 44ZNA despite the objection of a party to the arbitration.

Report may include other matters

(4) The report may include any other matter that the Commission considers relevant.

Confidentiality

(5) The Commission must not include in the report any information the Commission decided not to give to a party to the arbitration under section 44ZL.

(6) Before publishing the report, the Commission must give each party to the arbitration a notice in writing:

(a) specifying what the Commission is proposing to publish; and

(b) inviting the party to make a written submission to the Commission within 14 days after the notice is given identifying any information the party considers should not be published because of its confidential commercial nature.

(7) The Commission must have regard to any submission so made in deciding what to publish. It may have regard to any other matter it considers relevant.

Legislative Instruments Act

(8) A report prepared under subsection (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Subdivision E—Effect of determinations

44ZO Operation of final determinations

(1) If none of the parties to the arbitration applies to the Tribunal under section 44ZP for a review of the Commission's final determination, the determination has effect 21 days after the determination is made.

(2) If a party to the arbitration applies to the Tribunal under section 44ZP for a review of the Commission's final determination, the determination is of no effect until the Tribunal makes its determination on the review.

Backdating

(3) Any or all of the provisions of a final determination may be expressed to apply from a specified day that is earlier than the day on which it takes effect under subsection (1) or (2).

Example: The Commission makes a final determination on 1 August. It takes effect under subsection (1) on 22 August, but it is expressed to apply from 1 July.

(4) The specified day must not be earlier than the following day:

(a) if the third party and provider commenced negotiations on access to the service after the service became a declared service—the day on which the negotiations commenced;

(b) if the third party and provider commenced negotiations on access to the service before the service became a declared service—the day on which the declaration began to operate.

However, the specified day cannot be a day on which the third party did not have access to the service.

Operation of interim determination

(5) If a provision of a final determination is expressed to apply from a day when an interim determination was in effect, the provision of the final determination prevails over the interim determination to the extent set out in the final determination.

Interest

(6) If:

(a) a provision of a final determination is covered by subsection (3); and

(b) the provision requires a party to the determination (the ***first party***) to pay money to another party;

the determination may require the first party to pay interest to the other party, at the rate specified in the determination, on the whole or a part of the money, for the whole or a part of the period:

(c) beginning on the day specified under subsection (3); and

(d) ending on the day on which the determination takes effect under subsection (1) or (2).

Guidelines

(7) In exercising the power conferred by subsection (3) or (6), the Commission must have regard to any guidelines in force under subsection (8). It may have regard to any other matter it considers relevant.

(8) The Commission must, by legislative instrument, determine guidelines for the purposes of subsection (7).

(9) The Commission must take all reasonable steps to ensure that the first set of guidelines under subsection (8) is made within 6 months after the commencement of this subsection.

44ZOA Effect and duration of interim determinations

(1) An interim determination takes effect on the day specified in the determination.

(2) Unless sooner revoked, an interim determination continues in effect until the earliest of the following:

(a) the notification of the access dispute is withdrawn under section 44T;

(b) a final determination relating to the access dispute takes effect;

Note: A backdated final determination may prevail over an interim determination: see subsection 44ZO(5).

(c) an interim determination made by the Tribunal (while reviewing a final determination relating to the access dispute) takes effect.

Subdivision F—Review of final determinations

44ZP Review by Tribunal

(1) A party to a final determination may apply in writing to the Tribunal for a review of the determination.

(2) The application must be made within 21 days after the Commission made the final determination.

(3) A review by the Tribunal is a re-arbitration of the access dispute.

Note: There are target time limits that apply to the Tribunal's decision on the review: see section 44ZZOA.

(4) For the purposes of the review, the Tribunal has the same powers as the Commission.

(5) The member of the Tribunal presiding at the review may require the Commission to give information and other assistance and to make reports, as specified by the member for the purposes of the review.

(6) The Tribunal may either affirm or vary the Commission's determination.

(7) The determination, as affirmed or varied by the Tribunal, is to be taken to be a determination of the Commission for all purposes of this Part (except this section).

(8) The decision of the Tribunal takes effect from when it is made.

44ZQ Provisions that do not apply in relation to a Tribunal review

Sections 37, 39 to 43 (inclusive) and 103 to 110 (inclusive) do not apply in relation to a review by the Tribunal of a final determination made by the Commission.

44ZR Appeals to Federal Court from determinations of the Tribunal

(1) A party to an arbitration may appeal to the Federal Court, on a question of law, from the decision of the Tribunal under section 44ZP.

(2) An appeal by a person under subsection (1) must be instituted:
   (a) not later than the 28th day after the day on which the decision of the Tribunal is made or within such further period as the Federal Court (whether before or after the end of that day) allows; and
   (b) in accordance with the Rules of Court made under the *Federal Court of Australia Act 1976*.

(3) The Federal Court must hear and determine the appeal and may make any order that it thinks appropriate.

(4) The orders that may be made by the Federal Court on appeal include (but are not limited to):
   (a) an order affirming or setting aside the decision of the Tribunal; and
   (b) an order remitting the matter to be decided again by the Tribunal in accordance with the directions of the Federal Court.

44ZS Operation and implementation of a determination that is subject to appeal

(1) Subject to this section, the fact that an appeal is instituted in the Federal Court from a decision of the Tribunal does not affect the operation of the decision or prevent action being taken to implement the decision.

(2) If an appeal is instituted in the Federal Court from a decision of the Tribunal, the Federal Court or a judge of the Federal Court may make any orders staying or otherwise affecting the operation or implementation of the decision of the Tribunal that the Federal Court or judge thinks appropriate to secure the effectiveness of the hearing and determination of the appeal.

(3) If an order is in force under subsection (2) (including an order previously varied under this subsection), the Federal Court or a judge of the Federal Court may make an order varying or revoking the first-mentioned order.

(4) An order in force under subsection (2) (including an order previously varied under subsection (3)):
   (a) is subject to any conditions that are specified in the order; and
   (b) has effect until:

(i) the end of any period for the operation of the order that is specified in the order; or

(ii) the giving of a decision on the appeal;

whichever is earlier.

44ZT Transmission of documents

If an appeal is instituted in the Federal Court:

(a) the Tribunal must send to the Federal Court all documents that were before the Tribunal in connection with the matter to which the appeal relates; and

(b) at the conclusion of the proceedings before the Federal Court in relation to the appeal, the Federal Court must return the documents to the Tribunal.

Subdivision G—Variation and revocation of determinations

44ZU Variation of final determinations

(1) The Commission may vary a final determination on the application of any party to the determination. However, it cannot vary the final determination if any other party objects.

Note: If the parties cannot agree on a variation, a new access dispute can be notified under section 44S.

(2) Sections 44W and 44X apply to a variation under this section as if:

(a) an access dispute arising out of the final determination had been notified when the application was made to the Commission for the variation of the determination; and

(b) the variation were the making of a final determination in the terms of the varied determination.

44ZUA Variation and revocation of interim determinations

(1) The Commission may, by writing, vary or revoke an interim determination.

(2) The Commission must, by writing, revoke an interim determination if requested to do so by the parties to the determination.

Division 4—Registered contracts for access to declared services

44ZV Constitutional limits on operation of this Division

This Division does not apply to a contract unless:

(a) the contract provides for access to a declared service; and

(b) the contract was made after the service was declared; and

(c) the parties to the contract are the provider of the service and a third party; and

(d) at least one of the following conditions is met:

(i) the provider is a corporation (or a partnership or joint venture consisting wholly of corporations);

(ii) the third party is a corporation;

(iii) the access is (or would be) in the course of, or for the purposes of, constitutional trade or commerce.

44ZW Registration of contract

(1) On application by all the parties to a contract, the Commission must:

(a) register the contract by entering the following details on a public register:

(i) the names of the parties to the contract;

(ii) the service to which the contract relates;

(iii) the date on which the contract was made; or

(b) decide not to register the contract.

(2) In deciding whether to register a contract, the Commission must take into account:

(aa) the objects of this Part; and

(a) the public interest, including the public interest in having competition in markets (whether or not in Australia); and

(b) the interests of all persons who have rights to use the service to which the contract relates.

(2A) The Commission must not register a contract if it deals with a matter or matters relating to access to the service that are dealt with in an access undertaking that is in operation.

(3) The Commission must publish a decision not to register a contract.

(4) If the Commission publishes a decision not to register a contract, it must give the parties to the contract reasons for the decision when it publishes the decision.

44ZX Review of decision not to register contract

(1) If the Commission decides not to register a contract, a party to the contract may apply in writing to the Tribunal for review of the decision.

(2) An application for review must be made within 21 days after publication of the Commission's decision.

(3) The review by the Tribunal is a re-consideration of the matter.

Note: There are target time limits that apply to the Tribunal's decision on the review: see section 44ZZOA.

(4) For the purposes of the review, the Tribunal has the same powers as the Commission.

(5) The member of the Tribunal presiding at the review may require the Commission to give information and other assistance and to make reports, as specified by the member for the purposes of the review.

(6) The Tribunal may either:

(a) affirm the Commission's decision; or

(b) register the contract.

44ZY Effect of registration of contract

The parties to a contract that has been registered:

(a) may enforce the contract under Division 7 as if the contract were a determination of the Commission under section 44V and they were parties to the determination; and

(b) cannot enforce the contract by any other means.

Division 5—Hindering access to declared services

44ZZ Prohibition on hindering access to declared services

(1) The provider or a user of a service to which a third party has access under a determination, or a body corporate related to the provider or a user of the service, must not engage in conduct for the purpose of preventing or hindering the third party's access to the service under the determination.

(2) A person may be taken to have engaged in conduct for the purpose referred to in subsection (1) even though, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from the conduct of the person or from other relevant circumstances. This subsection does not limit the manner in which the purpose of a person may be established for the purposes of subsection (1).

(3) In this section, a ***user*** of a service includes a person who has a right to use the service.

Division 6—Access undertakings and access codes for services

Subdivision A—Giving of access undertakings and access codes

44ZZA Access undertakings by providers

(1) A person who is, or expects to be, the provider of a service may give a written undertaking to the Commission in connection with the provision of access to the service.

Note: The following are examples of the kinds of things that might be dealt with in the undertaking:

(a) terms and conditions of access to the service;

(b) procedures for determining terms and conditions of access to the service;

(c) an obligation on the provider not to hinder access to the service;

(d) an obligation on the provider to implement a particular business structure;

(e) an obligation on the provider to provide information to the Commission or to another person;

(f) an obligation on the provider to comply with decisions of the Commission or another person in relation to matters specified in the undertaking;

(g) an obligation on the provider to seek a variation of the undertaking in specified circumstances.

(2) The undertaking must specify the expiry date of the undertaking.

(3) The Commission may accept the undertaking, if it thinks it appropriate to do so having regard to the following matters:

(aa) the objects of this Part;

(ab) the pricing principles specified in section 44ZZCA;

(a) the legitimate business interests of the provider;

(b) the public interest, including the public interest in having competition in markets (whether or not in Australia);

(c) the interests of persons who might want access to the service;

(da) whether the undertaking is in accordance with an access code that applies to the service;

(e) any other matters that the Commission thinks are relevant.

Note: The Commission may defer consideration of the undertaking if it is also arbitrating an access dispute: see section 44ZZCB.

(3AA) The Commission must not accept the undertaking if a decision of the Commonwealth Minister is in force under section 44N that a regime established by a State or Territory for access to the service is an effective access regime.

(3A) The Commission must not accept the undertaking unless:

(a) the provider, or proposed provider, is a corporation (or a partnership or joint venture consisting wholly of corporations); or

(b) the undertaking provides for access only to third parties that are corporations; or

(c) the undertaking provides for access that is (or would be) in the course of, or for the purposes of, constitutional trade or commerce.

(6) If the undertaking provides for disputes about the undertaking to be resolved by the Commission, then the Commission may resolve the disputes in accordance with the undertaking.

(6A) If the undertaking provides for the Commission to perform functions or exercise powers in relation to the undertaking, the Commission may perform those functions and exercise

those powers. If the Commission decides to do so, it must do so in accordance with the undertaking.

(7) The provider may withdraw or vary the undertaking at any time, but only with the consent of the Commission. The Commission may consent to a variation of the undertaking if it thinks it appropriate to do so having regard to the matters in subsection (3).

Note 1: There are target time limits that apply to a decision of the Commission under this section: see section 44ZZBC.

Note 2: The Commission may invite public submissions in relation to its decision: see section 44ZZBD.

Note 3: The Commission must publish its decision: see section 44ZZBE.

44ZZAA Access codes prepared by industry bodies

(1) An industry body may give a written code to the Commission setting out rules for access to a service.

(2) The code must specify the expiry date of the code.

(3) The Commission may accept the code, if it thinks it appropriate to do so having regard to the following matters:

(aa) the objects of this Part;

(ab) the pricing principles specified in section 44ZZCA;

(a) the legitimate business interests of providers who might give undertakings in accordance with the code;

(b) the public interest, including the public interest in having competition in markets (whether or not in Australia);

(c) the interests of persons who might want access to the service covered by the code;

(e) any matters specified in regulations made for the purposes of this subsection;

(f) any other matters that the Commission thinks are relevant.

(3A) The Commission must not accept the code if a decision of the Commonwealth Minister is in force under section 44N that a regime established by a State or Territory for access to the service is an effective access regime.

(6) The industry body may withdraw or vary the code at any time, but only with the consent of the Commission. The Commission may consent to a variation of the code if it thinks it appropriate to do so having regard to the matters in subsection (3).

Note: The Commission may rely on industry body consultations before giving its consent: see section 44ZZAB.

(7) If the industry body that gave the code to the Commission has ceased to exist, a withdrawal or variation under subsection (6) may be made by a body or association prescribed by the regulations as a replacement for the original industry body.

(8) In this section:

code means a set of rules (which may be in general terms or detailed terms).

industry body means a body or association (including a body or association established by a law of a State or Territory) prescribed by the regulations for the purposes of this section.

Note 1: There are target time limits that apply to a decision of the Commission under this section: see section 44ZZBC.

Note 2: The Commission may invite public submissions in relation to its decision: see section 44ZZBD.

Note 3: The Commission must publish its decision: see section 44ZZBE.

44ZZAB Commission may rely on industry body consultations

(1) Despite subsection 44ZZAA(4), the Commission may accept a code if the industry body has done the following before giving the code to the Commission under subsection 44ZZAA(1):

(a) published the code or a draft of the code and invited people to make submissions to the industry body on the code or draft;

(b) specified the effect of this subsection and subsection (2) when it published the code or draft;

(c) considered any submissions that were received within the time limit specified by the industry body when it published the code or draft.

(2) In deciding whether to accept the code, the Commission may consider any submission referred to in paragraph (1)(c).

(3) Before consenting to a variation or withdrawal of a code under subsection 44ZZAA(6), the Commission may rely on:

(a) publication of the variation or notice of the withdrawal by the industry body, including specification of the effect of this subsection and subsection (4); and

(b) consideration by the industry body of any submissions that were received within the time limit specified by the industry body when it published the variation or notice.

(4) In deciding whether to consent to the variation or withdrawal, the Commission may consider any submission referred to in paragraph (3)(b).

(5) In this section:

code has the same meaning as it has in section 44ZZAA.

industry body has the same meaning as it has in section 44ZZAA.

Subdivision B—Effect of access undertakings and access codes

44ZZBA When access undertakings and access codes come into operation

Acceptance of access undertakings or access codes

(1) If the Commission accepts an access undertaking or an access code, it comes into operation at:

(a) if, within 21 days after the Commission publishes its decision, no person has applied to the Tribunal for review of the decision—the end of that period; or

(b) if a person applies to the Tribunal within that period for review of the decision and the Tribunal affirms the decision—the time of the Tribunal's decision.

(2) If the Tribunal decides under paragraph 44ZZBF(7)(e) to accept an access undertaking or access code, it comes into operation at the time of the Tribunal's decision.

(3) An access undertaking or access code continues in operation until its expiry date, unless it is earlier withdrawn.

Note: The period for which an access undertaking or access code is in operation may be extended: see section 44ZZBB.

Withdrawal or variation of access undertakings or access codes

(4) If the Commission consents to the withdrawal or variation of an access undertaking or an access code, the withdrawal or variation comes into operation at:

(a) if, within 21 days after the Commission publishes its decision, no person has applied to the Tribunal for review of the decision—the end of that period; or

(b) if a person applies to the Tribunal within that period for review of the decision and the Tribunal affirms the decision—the time of the Tribunal's decision.

(5) If the Tribunal decides under paragraph 44ZZBF(7)(e) to consent to the withdrawal or variation of an access undertaking or access code, the withdrawal or variation comes into operation at the time of the Tribunal's decision.

Subdivision C—Extensions of access undertakings and access codes

44ZZBB Extensions of access undertakings and access codes

Access undertakings

(1) If an access undertaking is in operation under section 44ZZBA (including as a result of an extension under this section), the provider of the service may apply in writing to the Commission for an extension of the period for which it is in operation.

Note: The Commission may extend the period for which the undertaking is in operation more than once: see subsection (8). This means there may be multiple applications under this subsection.

(2) The provider of the service must specify in the application a proposed extension period.

(3) The Commission may, by notice in writing, extend the period for which the undertaking is in operation if it thinks it appropriate to do so having regard to the matters mentioned in subsection 44ZZA(3). The notice must specify the extension period.

Access codes

(4) If an access code is in operation under section 44ZZBA (including as a result of an extension under this section), the industry body may apply in writing to the Commission for an extension of the period for which it is in operation.

Note: The Commission may extend the period for which the code is in operation more than once: see subsection (8). This means there may be multiple applications under this subsection.

(5) The industry body must specify in the application a proposed extension period.

(6) The Commission may, by notice in writing, extend the period for which the code is in operation if it thinks it appropriate to do so having regard to the matters mentioned in subsection 44ZZAA(3). The notice must specify the extension period.

(7) If the industry body that gave the code to the Commission has ceased to exist, an application under subsection (4) may be made by a body or association referred to in subsection 44ZZAA(7).

Multiple extensions

(8) The Commission may extend the period for which an access undertaking or an access code is in operation more than once.

Note 1: There are target time limits that apply to a decision of the Commission under this section: see section 44ZZBC.

Note 2: The Commission may invite public submissions in relation to its decision: see section 44ZZBD.

Note 3: The Commission must publish its decision: see section 44ZZBE.

Subdivision D—Procedural provisions

44ZZBC Target time limits for Commission decisions

(1) The Commission must use its best endeavours to make a decision on an access undertaking application or an access code application within:

(a) the period (the ***standard period***) of 6 months beginning on the day it received the application; or

(b) if the standard period is extended—that period as extended.

Extensions

(2) If the Commission is unable to make a decision within the standard period, or that period as extended, it must, by notice in writing, extend the standard period by a specified period.

(3) The Commission must give a copy of the notice to:

(a) for an access undertaking application—the provider of the service; or

(b) for an access code application—the industry body or its replacement.

Multiple extensions

(4) The Commission may extend the standard period more than once.

Publication

(5) If the Commission extends the standard period, it must publish a notice in a national newspaper:

(a) stating that it has done so; and

(b) specifying the day by which it must now use its best endeavours to make a decision on the access undertaking application or access code application.

44ZZBD Commission may invite public submissions

Invitation

(1) The Commission may publish, by electronic or other means, a notice inviting public submissions on an access undertaking application or an access code application if it considers that it is appropriate and practicable to do so.

(2) The notice must specify how submissions may be made and the day by which submissions may be made (which must be at least 14 days after the day the notice is published).

Commission to consider any submission

(3) Subject to subsection (6), the Commission must have regard to any submission so made in deciding what decision to make on the application.

Commission may make submissions publicly available

(4) The Commission may make any written submission, or a written record (which may be a summary) of any oral submission, publicly available.

Confidentiality

(5) A person may, at the time of making a submission, request that the Commission:

(a) not make the whole or a part of the submission available under subsection (4); and
(b) not publish or make available the whole or a part of the submission under section 44ZZBE;

because of the confidential commercial information contained in the submission.

(6) If the Commission refuses such a request:
(a) for a written submission—the Commission must, if the person who made it so requires, return the whole or the part of it to the person; and
(b) for an oral submission—the person who made it may inform the Commission that the person withdraws the whole or the part of it; and
(c) if the Commission returns the whole or the part of the submission, or the person withdraws the whole or the part of the submission, the Commission must not:
(i) make the whole or the part of the submission available under subsection (4); and
(ii) publish or make available the whole or the part of the submission under section 44ZZBE; and
(iii) have regard to the whole or the part of the submission in making its decision on the application.

44ZZBE Commission must publish its decisions

(1) The Commission must publish, by electronic or other means, an access undertaking decision or an access code decision and its reasons for the decision.

(2) The Commission must give a copy of the publication to:
(a) for an access undertaking decision—the provider of the service; or
(b) for an access code decision—the industry body or its replacement.

Consultation

(3) Before publishing under subsection (1), the Commission may give any one or more of the following persons:
(a) for an access undertaking decision—the provider of the service;
(b) for an access code decision—the industry body or its replacement;
(c) in any case—any other person the Commission considers appropriate;

a notice in writing:
(d) specifying what the Commission is proposing to publish; and
(e) inviting the person to make a written submission to the Commission within 14 days after the notice is given identifying any information the person considers should not be published because of its confidential commercial nature.

(4) The Commission must have regard to any submission so made in deciding what to publish. It may have regard to any other matter it considers relevant.

Subdivision E—Review of decisions

44ZZBF Review of decisions

Application

(1) A person whose interests are affected by an access undertaking decision or an access code decision may apply in writing to the Tribunal for review of the decision.

(2) The person must apply for review within 21 days after the Commission publishes its decision.

Review

(3) The review by the Tribunal is a reconsideration of the matter.

Note: There are target time limits that apply to the Tribunal's decision on the review: see section 44ZZOA.

(4) For the purposes of the review, the Tribunal has the same powers as the Commission.

(5) The member of the Tribunal presiding at the review may require the Commission to give information and other assistance, and to make reports, as specified by the member for the purposes of the review.

Tribunal's decision

(6) If the Commission:

(a) accepted an access undertaking or access code; or

(b) consented to the withdrawal or variation of an access undertaking or access code; or

(c) extended the period for which an access undertaking or access code is in operation;

the Tribunal must, by writing, affirm or set aside the Commission's decision.

(7) If the Commission:

(a) rejected an access undertaking or access code; or

(b) refused to consent to the withdrawal or variation of an access undertaking or access code; or

(c) refused to extend the period for which an access undertaking or access code is in operation;

the Tribunal must, by writing:

(d) affirm the Commission's decision; or

(e) set aside the Commission's decision and accept the undertaking or code, consent to the withdrawal or variation of the undertaking or code or extend the period for which the undertaking or code is in operation.

Subdivision F—Register of access undertakings and access codes

44ZZC Register of access undertakings and access codes

(1) The Commission must maintain a public register that includes all access undertakings and access codes that have been accepted by the Commission, including those that are no longer in operation.

(2) The register must include all variations of access undertakings and access codes.

(3) The register must also include details of all extensions of the period for which an access undertaking or an access code is in operation.

Division 6A—Pricing principles for access disputes and access undertakings or codes

44ZZCA Pricing principles for access disputes and access undertakings or codes

The pricing principles relating to the price of access to a service are:

(a) that regulated access prices should:

(i) be set so as to generate expected revenue for a regulated service or services that is at least sufficient to meet the efficient costs of providing access to the regulated service or services; and

(ii) include a return on investment commensurate with the regulatory and commercial risks involved; and

(b) that the access price structures should:

(i) allow multi-part pricing and price discrimination when it aids efficiency; and

(ii) not allow a vertically integrated access provider to set terms and conditions that discriminate in favour of its downstream operations, except to the extent that the cost of providing access to other operators is higher; and

(c) that access pricing regimes should provide incentives to reduce costs or otherwise improve productivity.

Note: The Commission must have regard to the principles in making a final determination under Division 3 and in deciding whether or not to accept an access undertaking or access code under Division 6.

Division 6B—Overlap among determinations, registered contracts and access undertakings

44ZZCB Deferring access disputes or access undertakings

(1) If, at a particular time, the Commission is:

(a) arbitrating an access dispute under Division 3 relating to one or more matters of access to a declared service; and

(b) considering whether to accept an access undertaking relating to the service and to one or more of those matters;

then the Commission may, by notice in writing, decide to:

(c) defer arbitrating the access dispute, in whole or in part, while it considers the access undertaking; or

(d) defer considering whether to accept the access undertaking, in whole or in part, while it arbitrates the access dispute.

Deferral of arbitration of access dispute

(2) If:

(a) the Commission defers arbitrating the access dispute; and

(b) the Commission then accepts the access undertaking and it comes into operation;

then the Commission must terminate the arbitration when the undertaking comes into operation, but only to the extent of the matters relating to access to the service that are dealt with in the undertaking.

Note: The third party's access to the service is determined under the access undertaking to the extent of the matters it deals with. If the access dispute deals with other matters, the third party's access to the service in relation to those other matters is determined under any determination the Commission makes.

Deferral of consideration of access undertaking

(3) If:

(a) the Commission defers considering whether to accept the access undertaking; and

(b) the Commission then makes a final determination in relation to the arbitration of the access dispute;

then the Commission must resume considering whether to accept the access undertaking.

Publication

(4) The Commission must publish, by electronic or other means, any decision it makes under subsection (1) and its reasons for the decision. The Commission must give a copy of the decision (including the reasons for the decision) to each party to the arbitration.

Guidelines

(5) In exercising the power conferred by subsection (1), the Commission must have regard to:

(a) the fact that the access undertaking will, if accepted, apply generally to access seekers and a final determination relating to the access dispute will only apply to the parties to the arbitration; and

(b) any guidelines in force under subsection (6).

It may have regard to any other matter it considers relevant.

(6) The Commission must, by legislative instrument, determine guidelines for the purposes of subsection (5).

(7) The Commission must take all reasonable steps to ensure that the first set of guidelines under subsection (6) is made within 6 months after the commencement of this subsection.

Legislative Instruments Act

(8) A notice made under subsection (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

44ZZCC Overlap between determinations and access undertakings

If, at a particular time:

(a) a final determination is in operation in relation to a declared service; and

(b) an access undertaking is in operation in relation to the service;

the third party's access to the service at that time is to be determined under the undertaking to the extent that it deals with a matter or matters relating to access to the service that are not dealt with in the determination.

44ZZCD Overlap between registered contracts and access undertakings

If, at a particular time:

(a) a contract is registered under Division 4 in relation to a declared service; and

(b) an access undertaking is in operation in relation to the service;

the third party's access to the service at that time is to be determined under the undertaking to the extent that it deals with a matter or matters relating to access to the service that are not dealt with in the contract.

Division 7—Enforcement and remedies

44ZZD Enforcement of determinations

(1) If the Federal Court is satisfied, on the application of a party to a determination, that another party to the determination has engaged, is engaging, or is proposing to engage in conduct that constitutes a contravention of the determination, the Court may make all or any of the following orders:

(a) an order granting an injunction on such terms as the Court thinks appropriate:

(i) restraining the other party from engaging in the conduct; or

(ii) if the conduct involves refusing or failing to do something—requiring the other party to do that thing;

(b) an order directing the other party to compensate the applicant for loss or damage suffered as a result of the contravention;

(c) any other order that the Court thinks appropriate.

(2) If the Federal Court has power under subsection (1) to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do anything, the Court may make any other orders (including granting an injunction) that it thinks appropriate against any other person who was involved in the contravention concerned.

(3) A reference in this section to a person involved in the contravention is a reference to a person who has:

(a) aided, abetted, counselled or procured the contravention; or

(b) induced the contravention, whether through threats or promises or otherwise; or

(c) been in any way (directly or indirectly) knowingly concerned in or a party to the contravention; or

(d) conspired with others to effect the contravention.

44ZZE Enforcement of prohibition on hindering access

(1) If the Federal Court is satisfied, on the application of any person, that another person (the ***obstructor***) has engaged, is engaging, or is proposing to engage in conduct constituting a contravention of section 44ZZ, the Court may make all or any of the following orders:

(a) an order granting an injunction on such terms as the Court thinks appropriate:

(i) restraining the obstructor from engaging in the conduct; or

(ii) if the conduct involves refusing or failing to do something—requiring the obstructor to do that thing;

(b) an order directing the obstructor to compensate a person who has suffered loss or damage as a result of the contravention;

(c) any other order that the Court thinks appropriate.

(2) If the Federal Court has power under subsection (1) to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do anything, the Court may make any other orders (including granting an injunction) that it thinks appropriate against any other person who was involved in the contravention concerned.

(3) The grounds on which the Court may decide not to make an order under this section include the ground that Divisions 2 and 3 provide a more appropriate way of dealing with the issue of the applicant's access to the service concerned.

(4) A reference in this section to a person involved in the contravention is a reference to a person who has:

(a) aided, abetted, counselled or procured the contravention; or

(b) induced the contravention, whether through threats or promises or otherwise; or

(c) been in any way (directly or indirectly) knowingly concerned in or a party to the contravention; or

(d) conspired with others to effect the contravention.

44ZZF Consent injunctions

On an application for an injunction under section 44ZZD or 44ZZE, the Federal Court may grant an injunction by consent of all of the parties to the proceedings, whether or not the Court is satisfied that the section applies.

44ZZG Interim injunctions

(1) The Federal Court may grant an interim injunction pending determination of an application under section 44ZZD or 44ZZE.

(2) If the Commission makes an application under section 44ZZE to the Federal Court for an injunction, the Court must not require the Commission or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

44ZZH Factors relevant to granting a restraining injunction

The power of the Federal Court to grant an injunction under section 44ZZD or 44ZZE restraining a person from engaging in conduct may be exercised whether or not:

(a) it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(b) the person has previously engaged in conduct of that kind; or

(c) there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

44ZZI Factors relevant to granting a mandatory injunction

The power of the Federal Court to grant an injunction under section 44ZZD or 44ZZE requiring a person to do a thing may be exercised whether or not:

(a) it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that thing; or

(b) the person has previously refused or failed to do that thing; or

(c) there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that thing.

44ZZJ Enforcement of access undertakings

(1) If the Commission thinks that the provider of an access undertaking in operation under Division 6 has breached any of its terms, the Commission may apply to the Federal Court for an order under subsection (2).

(2) If the Federal Court is satisfied that the provider has breached a term of the undertaking, the Court may make all or any of the following orders:

(a) an order directing the provider to comply with that term of the undertaking;

(b) an order directing the provider to compensate any other person who has suffered loss or damage as a result of the breach;

(c) any other order that the Court thinks appropriate.

44ZZK Discharge or variation of injunction or other order

The Federal Court may discharge or vary an injunction or order granted under this Division.

Division 8—Miscellaneous

44ZZL Register of determinations

The Commission must maintain a public register that specifies the following information for each determination:

(a) the names of the parties to the determination;

(b) the service to which the determination relates;

(c) the date on which the determination was made.

44ZZM Commonwealth consent to conferral of functions etc. on the Commission or Tribunal by State or Territory laws

(1) A State or Territory access regime law may confer functions or powers, or impose duties, on the Commission or Tribunal.

Note: Section 44ZZMB sets out when such a law imposes a duty on the Commission or Tribunal.

(2) Subsection (1) does not authorise the conferral of a function or power, or the imposition of a duty, by a law of a State or Territory to the extent to which:

(a) the conferral or imposition, or the authorisation, would contravene any constitutional doctrines restricting the duties that may be imposed on the Commission or Tribunal; or

(b) the authorisation would otherwise exceed the legislative power of the Commonwealth.

(3) The Commission or Tribunal cannot perform a duty or function, or exercise a power, under a State or Territory access regime law unless the conferral of the function or power, or the imposition of the duty, is in accordance with an agreement between the Commonwealth and the State or Territory concerned.

44ZZMA How duty is imposed

Application

(1) This section applies if a State or Territory access regime law purports to impose a duty on the Commission or Tribunal.

Note: Section 44ZZMB sets out when such a law imposes a duty on the Commission or Tribunal.

State or Territory legislative power sufficient to support duty

(2) The duty is taken not to be imposed by this Act (or any other law of the Commonwealth) to the extent to which:

(a) imposing the duty is within the legislative powers of the State or Territory concerned; and

(b) imposing the duty by the law of the State or Territory is consistent with the constitutional doctrines restricting the duties that may be imposed on the Commission or Tribunal.

Note: If this subsection applies, the duty will be taken to be imposed by force of the law of the State or Territory (the Commonwealth having consented under section 44ZZM to the imposition of the duty by that law).

Commonwealth legislative power sufficient to support duty but State or Territory legislative powers are not

(3) If, to ensure the validity of the purported imposition of the duty, it is necessary that the duty be imposed by a law of the Commonwealth (rather than by the law of the State or

Territory), the duty is taken to be imposed by this Act to the extent necessary to ensure that validity.

(4) If, because of subsection (3), this Act is taken to impose the duty, it is the intention of the Parliament to rely on all powers available to it under the Constitution to support the imposition of the duty by this Act.

(5) The duty is taken to be imposed by this Act in accordance with subsection (3) only to the extent to which imposing the duty:

(a) is within the legislative powers of the Commonwealth; and

(b) is consistent with the constitutional doctrines restricting the duties that may be imposed on the Commission or Tribunal.

(6) Subsections (1) to (5) do not limit section 44ZZM.

44ZZMB When a law of a State or Territory imposes a duty

For the purposes of sections 44ZZM and 44ZZMA, a State or Territory access regime law ***imposes a duty*** on the Commission or Tribunal if:

(a) the law confers a function or power on the Commission or Tribunal; and

(b) the circumstances in which the function or power is conferred give rise to an obligation on the Commission or Tribunal to perform the function or to exercise the power.

44ZZN Compensation for acquisition of property

(1) If:

(a) a determination would result in an acquisition of property; and

(b) the determination would not be valid, apart from this section, because a particular person has not been sufficiently compensated;

the Commonwealth must pay that person:

(c) a reasonable amount of compensation agreed on between the person and the Commonwealth; or

(d) failing agreement—a reasonable amount of compensation determined by a court of competent jurisdiction.

(2) In assessing compensation payable in a proceeding begun under this section, the following must be taken into account if they arise out of the same event or transaction:

(a) any damages or compensation recovered, or other remedy, in a proceeding begun otherwise than under this section;

(b) compensation awarded under a determination.

(3) In this section, ***acquisition of property*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

44ZZNA Operation of Parts IV and VII not affected by this Part

This Part does not affect the operation of Parts IV and VII.

44ZZO Conduct by directors, servants or agents

(1) If, in a proceeding under this Part in respect of conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate in relation to particular conduct, it is sufficient to show:

(a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and

(b) that the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate:

(a) by a director, servant or agent of the body corporate within the scope of the person's actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;

is taken for the purposes of this Part to have been engaged in also by the body corporate, unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

(3) If, in a proceeding under this Part in respect of conduct engaged in by an individual, it is necessary to establish the state of mind of the individual, it is sufficient to show:

(a) that the conduct was engaged in by a servant or agent of the individual within the scope of his or her actual or apparent authority; and

(b) that the servant or agent had the relevant state of mind.

(4) Conduct engaged in on behalf of an individual:

(a) by a servant or agent of the individual within the scope of the actual or apparent authority of the servant or agent; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the individual, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent;

is taken, for the purposes of this Part, to have been engaged in also by that individual, unless that individual establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

(5) If:

(a) an individual is convicted of an offence; and

(b) the individual would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the individual is not liable to be punished by imprisonment for that offence.

(6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person's reasons for the intention, opinion, belief or purpose.

(7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

44ZZOA Target time limits for Tribunal decisions

(1) The Tribunal must use its best endeavours to make a decision on a review under this Part within:

(a) the period (the ***standard period***) of 4 months beginning on the day it received the application for review; or

(b) if the standard period is extended—that period as extended.

Extensions

(2) If the Tribunal is unable to make a decision on the review within the standard period, or that period as extended, it must, by notice in writing, extend the standard period by a specified period.

Multiple extensions

(3) The Tribunal may extend the standard period more than once.

Publication

(4) If the Tribunal extends the standard period, it must publish a notice in a national newspaper:
  (a) stating that it has done so; and
  (b) specifying the day by which it must now use its best endeavours to make a decision on the review.

44ZZP Regulations about review by the Tribunal

(1) The regulations may make provision about the following matters in relation to the functions of the Tribunal under this Part:
  (a) the constitution of the Tribunal;
  (b) the arrangement of the business of the Tribunal;
  (c) the disclosure of interests by members of the Tribunal;
  (d) determining questions before the Tribunal and questions that arise during a review;
  (e) procedure and evidence, including the appointment of persons to assist the Tribunal by giving evidence (whether personally or by means of a written report).

(2) Regulations made for the purposes of subsection (1) do not apply in relation to the functions of the Tribunal under a State/Territory energy law or a designated Commonwealth energy law.

Note: See section 44ZZR.

44ZZQ Regulations about fees for inspection etc. of registers

The regulations may make provision about the inspection of registers maintained under this Part (including provision about fees).

44ZZR Procedure of the Tribunal when performing functions under a State/Territory energy law or a designated Commonwealth energy law

(1) Sections 103, 105, 106, 107, 108 and 110 of this Act apply to the Tribunal when performing functions under a State/Territory energy law or a designated Commonwealth energy law.

(2) The regulations may make provision about the following matters in relation to the functions of the Tribunal under a State/Territory energy law or a designated Commonwealth energy law:
  (a) the constitution of the Tribunal;
  (b) the arrangement of the business of the Tribunal;
  (c) the disclosure of interests by members of the Tribunal;
  (d) determining questions before the Tribunal and questions that arise during a review;
  (e) procedure and evidence, including the appointment of persons to assist the Tribunal by giving evidence (whether personally or by means of a written report);

(f) the fees and expenses of witnesses in proceedings before the Tribunal.

(3) Subsection (1), and regulations made for the purposes of subsection (2), have no effect to the extent (if any) to which they are inconsistent with the State/Territory energy law, or the designated Commonwealth energy law, concerned.

Part IV—Restrictive trade practices

Division 1—Cartel conduct

Subdivision A—Introduction

44ZZRA Simplified outline

The following is a simplified outline of this Division:

- This Division sets out parallel offences and civil penalty provisions relating to cartel conduct.
- A corporation must not make, or give effect to, a contract, arrangement or understanding that contains a cartel provision.
- A cartel provision is a provision relating to:
    (a) price-fixing; or
    (b) restricting outputs in the production and supply chain; or
    (c) allocating customers, suppliers or territories; or
    (d) bid-rigging;

  by parties that are, or would otherwise be, in competition with each other.

44ZZRB Definitions

In this Division:

annual turnover, of a body corporate during a 12-month period, means the sum of the values of all the supplies that the body corporate, and any body corporate related to the body corporate, have made, or are likely to make, during the 12-month period, other than:

(a) supplies made from any of those bodies corporate to any other of those bodies corporate; or
(b) supplies that are input taxed; or
(c) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the *A New Tax System (Goods and Services Tax) Act 1999*); or
(d) supplies that are not made in connection with an enterprise that the body corporate carries on; or
(e) supplies that are not connected with Australia.

Expressions used in this definition that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as in that Act.

benefit includes any advantage and is not limited to property.

bid includes:

(a) tender; and

(b) the taking, by a potential bidder or tenderer, of a preliminary step in a bidding or tendering process.

evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

likely, in relation to any of the following:

(a) a supply of goods or services;

(b) an acquisition of goods or services;

(c) the production of goods;

(d) the capacity to supply services;

includes a possibility that is not remote.

obtaining includes:

(a) obtaining for another person; and

(b) inducing a third person to do something that results in another person obtaining.

party has a meaning affected by section 44ZZRC.

production includes manufacture, processing, treatment, assembly, disassembly, renovation, restoration, growing, raising, mining, extraction, harvesting, fishing, capturing and gathering.

44ZZRC Extended meaning of *party*

For the purposes of this Division, if a body corporate is a party to a contract, arrangement or understanding (otherwise than because of this section), each body corporate related to that body corporate is taken to be a ***party*** to that contract, arrangement or understanding.

44ZZRD Cartel provisions

(1) For the purposes of this Act, a provision of a contract, arrangement or understanding is a ***cartel provision*** if:

(a) either of the following conditions is satisfied in relation to the provision:

(i) the purpose/effect condition set out in subsection (2);

(ii) the purpose condition set out in subsection (3); and

(b) the competition condition set out in subsection (4) is satisfied in relation to the provision.

Purpose/effect condition

(2) The purpose/effect condition is satisfied if the provision has the purpose, or has or is likely to have the effect, of directly or indirectly:

(a) fixing, controlling or maintaining; or

(b) providing for the fixing, controlling or maintaining of;

the price for, or a discount, allowance, rebate or credit in relation to:

(c) goods or services supplied, or likely to be supplied, by any or all of the parties to the contract, arrangement or understanding; or

(d) goods or services acquired, or likely to be acquired, by any or all of the parties to the contract, arrangement or understanding; or

(e) goods or services re-supplied, or likely to be re-supplied, by persons or classes of persons to whom those goods or services were supplied by any or all of the parties to the contract, arrangement or understanding; or

(f) goods or services likely to be re-supplied by persons or classes of persons to whom those goods or services are likely to be supplied by any or all of the parties to the contract, arrangement or understanding.

Note 1: The purpose/effect condition can be satisfied when a provision is considered with related provisions—see subsection (8).

Note 2: ***Party*** has an extended meaning—see section 44ZZRC.

Purpose condition

(3) The purpose condition is satisfied if the provision has the purpose of directly or indirectly:

(a) preventing, restricting or limiting:

(i) the production, or likely production, of goods by any or all of the parties to the contract, arrangement or understanding; or

(ii) the capacity, or likely capacity, of any or all of the parties to the contract, arrangement or understanding to supply services; or

(iii) the supply, or likely supply, of goods or services to persons or classes of persons by any or all of the parties to the contract, arrangement or understanding; or

(b) allocating between any or all of the parties to the contract, arrangement or understanding:

(i) the persons or classes of persons who have acquired, or who are likely to acquire, goods or services from any or all of the parties to the contract, arrangement or understanding; or

(ii) the persons or classes of persons who have supplied, or who are likely to supply, goods or services to any or all of the parties to the contract, arrangement or understanding; or

(iii) the geographical areas in which goods or services are supplied, or likely to be supplied, by any or all of the parties to the contract, arrangement or understanding; or

(iv) the geographical areas in which goods or services are acquired, or likely to be acquired, by any or all of the parties to the contract, arrangement or understanding; or

(c) ensuring that in the event of a request for bids in relation to the supply or acquisition of goods or services:

(i) one or more parties to the contract, arrangement or understanding bid, but one or more other parties do not; or

(ii) 2 or more parties to the contract, arrangement or understanding bid, but at least 2 of them do so on the basis that one of those bids is more likely to be successful than the others; or

(iii) 2 or more parties to the contract, arrangement or understanding bid, but not all of those parties proceed with their bids until the suspension or finalisation of the request for bids process; or

(iv) 2 or more parties to the contract, arrangement or understanding bid and proceed with their bids, but at least 2 of them proceed with their bids on the basis that one of those bids is more likely to be successful than the others; or

(v) 2 or more parties to the contract, arrangement or understanding bid, but a material component of at least one of those bids is worked out in accordance with the contract, arrangement or understanding.

Note 1: For example, subparagraph (3)(a)(iii) will not apply in relation to a roster for the supply of after-hours medical services if the roster does not prevent, restrict or limit the supply of services.

Note 2: The purpose condition can be satisfied when a provision is considered with related provisions—see subsection (9).

Note 3: ***Party*** has an extended meaning—see section 44ZZRC.

Competition condition

(4) The competition condition is satisfied if at least 2 of the parties to the contract, arrangement or understanding:

(a) are or are likely to be; or

(b) but for any contract, arrangement or understanding, would be or would be likely to be;

in competition with each other in relation to:

(c) if paragraph (2)(c) or (3)(b) applies in relation to a supply, or likely supply, of goods or services—the supply of those goods or services; or

(d) if paragraph (2)(d) or (3)(b) applies in relation to an acquisition, or likely acquisition, of goods or services—the acquisition of those goods or services; or

(e) if paragraph (2)(e) or (f) applies in relation to a re-supply, or likely re-supply, of goods or services—the supply of those goods or services to that re-supplier; or

(f) if subparagraph (3)(a)(i) applies in relation to preventing, restricting or limiting the production, or likely production, of goods—the production of those goods; or

(g) if subparagraph (3)(a)(ii) applies in relation to preventing, restricting or limiting the capacity, or likely capacity, to supply services—the supply of those services; or

(h) if subparagraph (3)(a)(iii) applies in relation to preventing, restricting or limiting the supply, or likely supply, of goods or services—the supply of those goods or services; or

(i) if paragraph (3)(c) applies in relation to a supply of goods or services—the supply of those goods or services; or

(j) if paragraph (3)(c) applies in relation to an acquisition of goods or services—the acquisition of those goods or services.

Note: ***Party*** has an extended meaning—see section 44ZZRC.

Immaterial whether identities of persons can be ascertained

(5) It is immaterial whether the identities of the persons referred to in paragraph (2)(e) or (f) or subparagraph (3)(a)(iii), (b)(i) or (ii) can be ascertained.

Recommending prices etc.

(6) For the purposes of this Division, a provision of a contract, arrangement or understanding is not taken:

(a) to have the purpose mentioned in subsection (2); or

(b) to have, or be likely to have, the effect mentioned in subsection (2);

by reason only that it recommends, or provides for the recommending of, a price, discount, allowance, rebate or credit.

Immaterial whether particular circumstances or particular conditions

(7) It is immaterial whether:

(a) for the purposes of subsection (2), subparagraph (3)(a)(iii) and paragraphs (3)(b) and (c)—a supply or acquisition happens, or a likely supply or likely acquisition is to happen, in particular circumstances or on particular conditions; and

(b) for the purposes of subparagraph (3)(a)(i)—the production happens, or the likely production is to happen, in particular circumstances or on particular conditions; and

(c) for the purposes of subparagraph (3)(a)(ii)—the capacity exists, or the likely capacity is to exist, in particular circumstances or on particular conditions.

Considering related provisions—purpose/effect condition

(8) For the purposes of this Division, a provision of a contract, arrangement or understanding is taken to have the purpose, or to have or be likely to have the effect, mentioned in subsection (2) if the provision, when considered together with any or all of the following provisions:

(a) the other provisions of the contract, arrangement or understanding;

(b) the provisions of another contract, arrangement or understanding, if the parties to that other contract, arrangement or understanding consist of or include at least one of the parties to the first-mentioned contract, arrangement or understanding;

has that purpose, or has or is likely to have that effect.

Considering related provisions—purpose condition

(9) For the purposes of this Division, a provision of a contract, arrangement or understanding is taken to have the purpose mentioned in a paragraph of subsection (3) if the provision, when considered together with any or all of the following provisions:

(a) the other provisions of the contract, arrangement or understanding;

(b) the provisions of another contract, arrangement or understanding, if the parties to that other contract, arrangement or understanding consist of or include at least one of the parties to the first-mentioned contract, arrangement or understanding;

has that purpose.

Purpose/effect of a provision

(10) For the purposes of this Division, a provision of a contract, arrangement or understanding is not to be taken not to have the purpose, or not to have or to be likely to have the effect, mentioned in subsection (2) by reason only of:

(a) the form of the provision; or

(b) the form of the contract, arrangement or understanding; or

(c) any description given to the provision, or to the contract, arrangement or understanding, by the parties.

Purpose of a provision

(11) For the purposes of this Division, a provision of a contract, arrangement or understanding is not to be taken not to have the purpose mentioned in a paragraph of subsection (3) by reason only of:

(a) the form of the provision; or

(b) the form of the contract, arrangement or understanding; or

(c) any description given to the provision, or to the contract, arrangement or understanding, by the parties.

44ZZRE Meaning of expressions in other provisions of this Act

In determining the meaning of an expression used in a provision of this Act (other than this Division, subsection 6(2C), paragraph 76(1A)(aa) or subsection 93AB(1A)), this Division is to be disregarded.

Subdivision B—Offences etc.

44ZZRF Making a contract etc. containing a cartel provision

Offence

(1) A corporation commits an offence if:

(a) the corporation makes a contract or arrangement, or arrives at an understanding; and

(b) the contract, arrangement or understanding contains a cartel provision.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2) The fault element for paragraph (1)(b) is knowledge or belief.

Penalty

(3) An offence against subsection (1) is punishable on conviction by a fine not exceeding the greater of the following:

(a) $10,000,000;

(b) if the court can determine the total value of the benefits that:

(i) have been obtained by one or more persons; and

(ii) are reasonably attributable to the commission of the offence;

3 times that total value;

(c) if the court cannot determine the total value of those benefits—10% of the corporation's annual turnover during the 12-month period ending at the end of the month in which the corporation committed, or began committing, the offence.

Indictable offence

(4) An offence against subsection (1) is an indictable offence.

44ZZRG Giving effect to a cartel provision

Offence

(1) A corporation commits an offence if:

(a) a contract, arrangement or understanding contains a cartel provision; and

(b) the corporation gives effect to the cartel provision.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2) The fault element for paragraph (1)(a) is knowledge or belief.

Penalty

(3) An offence against subsection (1) is punishable on conviction by a fine not exceeding the greater of the following:

(a) $10,000,000;

(b) if the court can determine the total value of the benefits that:

(i) have been obtained by one or more persons; and

(ii) are reasonably attributable to the commission of the offence;

3 times that total value;

(c) if the court cannot determine the total value of those benefits—10% of the corporation's annual turnover during the 12-month period ending at the end of the month in which the corporation committed, or began committing, the offence.

Pre-commencement contracts etc.

(4) Paragraph (1)(a) applies to contracts or arrangements made, or understandings arrived at, before, at or after the commencement of this section.

Indictable offence

(5) An offence against subsection (1) is an indictable offence.

44ZZRH Determining guilt

(1) A corporation may be found guilty of an offence against section 44ZZRF or 44ZZRG even if:

(a) each other party to the contract, arrangement or understanding is a person who is not criminally responsible; or

(b) subject to subsection (2), all other parties to the contract, arrangement or understanding have been acquitted of the offence.

Note: ***Party*** has an extended meaning—see section 44ZZRC.

(2) A corporation cannot be found guilty of an offence against section 44ZZRF or 44ZZRG if:

(a) all other parties to the contract, arrangement or understanding have been acquitted of such an offence; and

(b) a finding of guilt would be inconsistent with their acquittal.

44ZZRI Court may make related civil orders

If a prosecution against a person for an offence against section 44ZZRF or 44ZZRG is being, or has been, heard by a court, the court may:

(a) grant an injunction under section 80 against the person in relation to:

(i) the conduct that constitutes, or is alleged to constitute, the offence; or

(ii) other conduct of that kind; or

(b) make an order under section 86C, 86D, 86E or 87 in relation to the offence.

Subdivision C—Civil penalty provisions

44ZZRJ Making a contract etc. containing a cartel provision

A corporation contravenes this section if:

(a) the corporation makes a contract or arrangement, or arrives at an understanding; and

(b) the contract, arrangement or understanding contains a cartel provision.

Note: For enforcement, see Part VI.

44ZZRK Giving effect to a cartel provision

(1) A corporation contravenes this section if:

(a) a contract, arrangement or understanding contains a cartel provision; and

(b) the corporation gives effect to the cartel provision.

Note: For enforcement, see Part VI.

(2) Paragraph (1)(a) applies to contracts or arrangements made, or understandings arrived at, before, at or after the commencement of this section.

Subdivision D—Exceptions

44ZZRL Conduct notified

(1) Sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK do not apply to a corporation in relation to a contract, arrangement or understanding containing a cartel provision, in so far as:

(a) the cartel provision:

(i) has the purpose, or has or is likely to have the effect, mentioned in subsection 44ZZRD(2); or

(ii) has the purpose mentioned in a paragraph of subsection 44ZZRD(3) other than paragraph (c); and

(b) the corporation has given the Commission a collective bargaining notice under subsection 93AB(1A) setting out particulars of the contract, arrangement or understanding; and

(c) the notice is in force under section 93AD.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1) (see subsection 13.3(3) of the *Criminal Code* and subsection (2) of this section).

(2) A person who wishes to rely on subsection (1) in relation to a contravention of section 44ZZRJ or 44ZZRK bears an evidential burden in relation to that matter.

44ZZRM Cartel provision subject to grant of authorisation

(1) Sections 44ZZRF and 44ZZRJ do not apply in relation to the making of a contract that contains a cartel provision if:

(a) the contract is subject to a condition that the provision will not come into force unless and until the corporation is granted an authorisation to give effect to the provision; and

(b) the corporation applies for the grant of such an authorisation within 14 days after the contract is made.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1) (see subsection 13.3(3) of the *Criminal Code* and subsection (2) of this section).

(2) A person who wishes to rely on subsection (1) in relation to a contravention of section 44ZZRJ bears an evidential burden in relation to that matter.

44ZZRN Contracts, arrangements or understandings between related bodies corporate

(1) Sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK do not apply in relation to a contract, arrangement or understanding if the only parties to the contract, arrangement or understanding are bodies corporate that are related to each other.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1) (see subsection 13.3(3) of the *Criminal Code* and subsection (2) of this section).

(2) A person who wishes to rely on subsection (1) in relation to a contravention of section 44ZZRJ or 44ZZRK bears an evidential burden in relation to that matter.

44ZZRO Joint ventures—prosecution

(1) Sections 44ZZRF and 44ZZRG do not apply in relation to a contract containing a cartel provision if:

(a) the cartel provision is for the purposes of a joint venture; and

(b) the joint venture is for the production and/or supply of goods or services; and

(c) in a case where subparagraph 4J(a)(i) applies to the joint venture—the joint venture is carried on jointly by the parties to the contract; and

(d) in a case where subparagraph 4J(a)(ii) applies to the joint venture—the joint venture is carried on by a body corporate formed by the parties to the contract for the purpose of enabling those parties to carry on the activity mentioned in paragraph (b) jointly by means of:

(i) their joint control; or

(ii) their ownership of shares in the capital;

of that body corporate.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (1) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: For example, if a joint venture formed for the purpose of research and development provides the results of its research and development to participants in the joint venture, it may be a joint venture for the supply of services.

(1A) Section 44ZZRF does not apply in relation to an arrangement or understanding containing a cartel provision if:

(a) the arrangement or understanding is not a contract; and

(b) when the arrangement was made, or the understanding was arrived at, each party to the arrangement or understanding:

(i) intended the arrangement or understanding to be a contract; and

(ii) reasonably believed that the arrangement or understanding was a contract; and

(c) the cartel provision is for the purposes of a joint venture; and

(d) the joint venture is for the production and/or supply of goods or services; and

(e) in a case where subparagraph 4J(a)(i) applies to the joint venture—the joint venture is carried on jointly by the parties to the arrangement or understanding; and

(f) in a case where subparagraph 4J(a)(ii) applies to the joint venture—the joint venture is carried on by a body corporate formed by the parties to the arrangement or understanding for the purpose of enabling those parties to carry on the activity mentioned in paragraph (d) jointly by means of:

(i) their joint control; or

(ii) their ownership of shares in the capital;

of that body corporate.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: For example, if a joint venture formed for the purpose of research and development provides the results of its research and development to participants in the joint venture, it may be a joint venture for the supply of services.

(1B) Section 44ZZRG does not apply in relation to giving effect to a cartel provision contained in an arrangement or understanding if:

(a) the arrangement or understanding is not a contract; and

(b) when the arrangement was made, or the understanding was arrived at, each party to the arrangement or understanding:

(i) intended the arrangement or understanding to be a contract; and

(ii) reasonably believed that the arrangement or understanding was a contract; and

(c) when the cartel provision was given effect to, each party to the arrangement or understanding reasonably believed that the arrangement or understanding was a contract; and

(d) the cartel provision is for the purposes of a joint venture; and

(e) the joint venture is for the production and/or supply of goods or services; and

(f) in a case where subparagraph 4J(a)(i) applies to the joint venture—the joint venture is carried on jointly by the parties to the arrangement or understanding; and

(g) in a case where subparagraph 4J(a)(ii) applies to the joint venture—the joint venture is carried on by a body corporate formed by the parties to the arrangement or understanding for the purpose of enabling those parties to carry on the activity mentioned in paragraph (e) jointly by means of:

(i) their joint control; or

(ii) their ownership of shares in the capital;

of that body corporate.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (1B) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: For example, if a joint venture formed for the purpose of research and development provides the results of its research and development to participants in the joint venture, it may be a joint venture for the supply of services.

Notice to prosecutor

(2) A person is not entitled to rely on subsection (1), (1A) or (1B) in a trial for an offence unless, within 28 days after the day on which the person is committed for trial, the person gives the prosecutor:

(a) a written notice setting out:

(i) the facts on which the person proposes to rely for the purpose of discharging the evidential burden borne by the person in relation to the matter in subsection (1), (1A) or (1B), as the case may be; and

(ii) the names and address of any witnesses whom the person proposes to call for the purpose of discharging the evidential burden borne by the person in relation to the matter in subsection (1), (1A) or (1B), as the case may be; and

(b) certified copies of any documents which the person proposes to adduce or point to for the purpose of discharging the evidential burden borne by the person in relation to the matter in subsection (1), (1A) or (1B), as the case may be.

(3) If the trial of a person for an offence is being, or is to be, held in a court, the court may, by order:

(a) exempt the person from compliance with subsection (2); or

(b) extend the time within which the person is required to comply with subsection (2).

(4) For the purposes of paragraph (2)(b), a ***certified copy*** of a document is a copy of the document certified to be a true copy by:

(a) a Justice of the Peace; or

(b) a commissioner for taking affidavits.

44ZZRP Joint ventures—civil penalty proceedings

(1) Sections 44ZZRJ and 44ZZRK do not apply in relation to a contract containing a cartel provision if:

(a) the cartel provision is for the purposes of a joint venture; and

(b) the joint venture is for the production and/or supply of goods or services; and

(c) in a case where subparagraph 4J(a)(i) applies to the joint venture—the joint venture is carried on jointly by the parties to the contract; and

(d) in a case where subparagraph 4J(a)(ii) applies to the joint venture—the joint venture is carried on by a body corporate formed by the parties to the contract for the purpose of enabling those parties to carry on the activity mentioned in paragraph (b) jointly by means of:

(i) their joint control; or

(ii) their ownership of shares in the capital;

of that body corporate.

Note: For example, if a joint venture formed for the purpose of research and development provides the results of its research and development to participants in the joint venture, it may be a joint venture for the supply of services.

(1A) Section 44ZZRJ does not apply in relation to an arrangement or understanding containing a cartel provision if:

(a) the arrangement or understanding is not a contract; and

(b) when the arrangement was made, or the understanding was arrived at, each party to the arrangement or understanding:

(i) intended the arrangement or understanding to be a contract; and

(ii) reasonably believed that the arrangement or understanding was a contract; and

(c) the cartel provision is for the purposes of a joint venture; and

(d) the joint venture is for the production and/or supply of goods or services; and

(e) in a case where subparagraph 4J(a)(i) applies to the joint venture—the joint venture is carried on jointly by the parties to the arrangement or understanding; and

(f) in a case where subparagraph 4J(a)(ii) applies to the joint venture—the joint venture is carried on by a body corporate formed by the parties to the arrangement or understanding for the purpose of enabling those parties to carry on the activity mentioned in paragraph (d) jointly by means of:

(i) their joint control; or

(ii) their ownership of shares in the capital;

of that body corporate.

Note: For example, if a joint venture formed for the purpose of research and development provides the results of its research and development to participants in the joint venture, it may be a joint venture for the supply of services.

(1B) Section 44ZZRK does not apply in relation to giving effect to a cartel provision contained in an arrangement or understanding if:

(a) the arrangement or understanding is not a contract; and

(b) when the arrangement was made, or the understanding was arrived at, each party to the arrangement or understanding:

(i) intended the arrangement or understanding to be a contract; and

(ii) reasonably believed that the arrangement or understanding was a contract; and

(c) when the cartel provision was given effect to, each party to the arrangement or understanding reasonably believed that the arrangement or understanding was a contract; and

(d) the cartel provision is for the purposes of a joint venture; and

(e) the joint venture is for the production and/or supply of goods or services; and

(f) in a case where subparagraph 4J(a)(i) applies to the joint venture—the joint venture is carried on jointly by the parties to the arrangement or understanding; and

(g) in a case where subparagraph 4J(a)(ii) applies to the joint venture—the joint venture is carried on by a body corporate formed by the parties to the arrangement or understanding for the purpose of enabling those parties to carry on the activity mentioned in paragraph (e) jointly by means of:

(i) their joint control; or

(ii) their ownership of shares in the capital;

of that body corporate.

Note: For example, if a joint venture formed for the purpose of research and development provides the results of its research and development to participants in the joint venture, it may be a joint venture for the supply of services.

(2) A person who wishes to rely on subsection (1), (1A) or (1B) bears an evidential burden in relation to that matter.

44ZZRQ Covenants affecting competition

(1) Sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK do not apply in relation to a contract containing a cartel provision, in so far as the cartel provision constitutes a covenant to which section 45B applies or, but for subsection 45B(9), would apply.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1) (see subsection 13.3(3) of the *Criminal Code* and subsection (2) of this section).

(2) A person who wishes to rely on subsection (1) in relation to a contravention of section 44ZZRJ or 44ZZRK bears an evidential burden in relation to that matter.

44ZZRR Resale price maintenance

(1) Sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK do not apply in relation to a contract, arrangement or understanding containing a cartel provision, in so far as the cartel provision relates to:

(a) conduct that contravenes section 48; or

(b) conduct that would contravene section 48 but for the operation of subsection 88(8A); or

(c) conduct that would contravene section 48 if this Act defined the acts constituting the practice of resale price maintenance by reference to the maximum price at which goods or services are to be sold or supplied or are to be advertised, displayed or offered for sale or supply.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1) (see subsection 13.3(3) of the *Criminal Code* and subsection (2) of this section).

(2) A person who wishes to rely on subsection (1) in relation to a contravention of section 44ZZRJ or 44ZZRK bears an evidential burden in relation to that matter.

44ZZRS Exclusive dealing

(1) Sections 44ZZRF and 44ZZRJ do not apply in relation to the making of a contract, arrangement or understanding that contains a cartel provision, in so far as giving effect to the cartel provision would, or would but for the operation of subsection 47(10) or 88(8) or section 93, constitute a contravention of section 47.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1) (see subsection 13.3(3) of the *Criminal Code* and subsection (3) of this section).

(2) Sections 44ZZRG and 44ZZRK do not apply in relation to the giving effect to a cartel provision by way of:

(a) engaging in conduct that contravenes, or would but for the operation of subsection 47(10) or 88(8) or section 93 contravene, section 47; or

(b) doing an act by reason of a breach or threatened breach of a condition referred to in subsection 47(2), (4), (6) or (8), being an act done by a person at a time when:

(i) an authorisation under subsection 88(8) is in force in relation to conduct engaged in by that person on that condition; or

(ii) by reason of subsection 93(7), conduct engaged in by that person on that condition is not to be taken to have the effect of substantially lessening competition within the meaning of section 47; or

(iii) a notice under subsection 93(1) is in force in relation to conduct engaged in by that person on that condition.

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

(3) A person who wishes to rely on subsection (1) or (2) in relation to a contravention of section 44ZZRJ or 44ZZRK bears an evidential burden in relation to that matter.

44ZZRT Dual listed company arrangement

(1) Sections 44ZZRF and 44ZZRJ do not apply in relation to the making of a contract, arrangement or understanding that contains a cartel provision, in so far as:

(a) the contract, arrangement or understanding is a dual listed company arrangement; and

(b) the making of the contract, arrangement or understanding would, or would apart from subsection 88(8B), contravene section 49.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1) (see subsection 13.3(3) of the *Criminal Code* and subsection (3) of this section).

(2) Sections 44ZZRG and 44ZZRK do not apply in relation to the giving effect to a cartel provision, in so far as:

(a) the cartel provision is a provision of a dual listed company arrangement; and

(b) the giving effect to the cartel provision would, or would apart from subsection 88(8B), contravene section 49.

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

(3) A person who wishes to rely on subsection (1) or (2) in relation to a contravention of section 44ZZRJ or 44ZZRK bears an evidential burden in relation to that matter.

44ZZRU Acquisition of shares or assets

(1) Sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK do not apply in relation to a contract, arrangement or understanding containing a cartel provision, in so far as the cartel provision provides directly or indirectly for the acquisition of:

(a) any shares in the capital of a body corporate; or

(b) any assets of a person.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1) (see subsection 13.3(3) of the *Criminal Code* and subsection (2) of this section).

(2) A person who wishes to rely on subsection (1) in relation to a contravention of section 44ZZRJ or 44ZZRK bears an evidential burden in relation to that matter.

44ZZRV Collective acquisition of goods or services by the parties to a contract, arrangement or understanding

(1) Sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK do not apply in relation to a contract, arrangement or understanding containing a cartel provision, in so far as:

(a) the cartel provision has the purpose, or has or is likely to have the effect, mentioned in subsection 44ZZRD(2); and

(b) either:

(i) the cartel provision relates to the price for goods or services to be collectively acquired, whether directly or indirectly, by the parties to the contract, arrangement or understanding; or

(ii) the cartel provision is for the joint advertising of the price for the re-supply of goods or services so acquired.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1) (see subsection 13.3(3) of the *Criminal Code* and subsection (2) of this section).

(2) A person who wishes to rely on subsection (1) in relation to a contravention of section 44ZZRJ or 44ZZRK bears an evidential burden in relation to that matter.

Division 2—Other provisions

45 Contracts, arrangements or understandings that restrict dealings or affect competition

(1) If a provision of a contract made before the commencement of the *Trade Practices Amendment Act 1977*:

(a) is an exclusionary provision; or

(b) has the purpose, or has or is likely to have the effect, of substantially lessening competition;

that provision is unenforceable in so far as it confers rights or benefits or imposes duties or obligations on a corporation.

(2) A corporation shall not:

(a) make a contract or arrangement, or arrive at an understanding, if:

(i) the proposed contract, arrangement or understanding contains an exclusionary provision; or

(ii) a provision of the proposed contract, arrangement or understanding has the purpose, or would have or be likely to have the effect, of substantially lessening competition; or

(b) give effect to a provision of a contract, arrangement or understanding, whether the contract or arrangement was made, or the understanding was arrived at, before or after the commencement of this section, if that provision:

(i) is an exclusionary provision; or

(ii) has the purpose, or has or is likely to have the effect, of substantially lessening competition.

(3) For the purposes of this section, ***competition***, in relation to a provision of a contract, arrangement or understanding or of a proposed contract, arrangement or understanding, means competition in any market in which a corporation that is a party to the contract, arrangement or understanding or would be a party to the proposed contract, arrangement or understanding, or any body corporate related to such a corporation, supplies or acquires, or is likely to supply or acquire, goods or services or would, but for the provision, supply or acquire, or be likely to supply or acquire, goods or services.

(4) For the purposes of the application of this section in relation to a particular corporation, a provision of a contract, arrangement or understanding or of a proposed contract, arrangement or understanding shall be deemed to have or to be likely to have the effect of substantially lessening competition if that provision and any one or more of the following provisions, namely:

(a) the other provisions of that contract, arrangement or understanding or proposed contract, arrangement or understanding; and

(b) the provisions of any other contract, arrangement or understanding or proposed contract, arrangement or understanding to which the corporation or a body corporate related to the corporation is or would be a party;

together have or are likely to have that effect.

(5) This section does not apply to or in relation to:

(a) a provision of a contract where the provision constitutes a covenant to which section 45B applies or, but for subsection 45B(9), would apply;

(b) a provision of a proposed contract where the provision would constitute a covenant to which section 45B would apply or, but for subsection 45B(9), would apply; or

(c) a provision of a contract, arrangement or understanding or of a proposed contract, arrangement or understanding in so far as the provision relates to:

(i) conduct that contravenes section 48; or

(ii) conduct that would contravene section 48 but for the operation of subsection 88(8A); or

(iii) conduct that would contravene section 48 if this Act defined the acts constituting the practice of resale price maintenance by reference to the maximum price at which goods or services are to be sold or supplied or are to be advertised, displayed or offered for sale or supply.

(6) The making of a contract, arrangement or understanding does not constitute a contravention of this section by reason that the contract, arrangement or understanding contains a provision the giving effect to which would, or would but for the operation of subsection 47(10) or 88(8) or section 93, constitute a contravention of section 47 and this section does not apply to or in relation to the giving effect to a provision of a contract, arrangement or understanding by way of:

(a) engaging in conduct that contravenes, or would but for the operation of subsection 47(10) or 88(8) or section 93 contravene, section 47; or

(b) doing an act by reason of a breach or threatened breach of a condition referred to in subsection 47(2), (4), (6) or (8), being an act done by a person at a time when:

(i) an authorization under subsection 88(8) is in force in relation to conduct engaged in by that person on that condition; or

(ii) by reason of subsection 93(7) conduct engaged in by that person on that condition is not to be taken to have the effect of substantially lessening competition within the meaning of section 47; or

(iii) a notice under subsection 93(1) is in force in relation to conduct engaged in by that person on that condition.

(6A) The following conduct:

(a) the making of a dual listed company arrangement;

(b) the giving effect to a provision of a dual listed company arrangement;

does not contravene this section if the conduct would, or would apart from subsection 88(8B), contravene section 49.

(7) This section does not apply to or in relation to a contract, arrangement or understanding in so far as the contract, arrangement or understanding provides, or to or in relation to a proposed contract, arrangement or understanding in so far as the proposed contract, arrangement or understanding would provide, directly or indirectly for the acquisition of any shares in the capital of a body corporate or any assets of a person.

(8) This section does not apply to or in relation to a contract, arrangement or understanding, or a proposed contract, arrangement or understanding, the only parties to which are or would be bodies corporate that are related to each other.

(8A) Subsection (2) does not apply to a corporation engaging in conduct described in that subsection if:

(a) the corporation has given the Commission a collective bargaining notice under subsection 93AB(1) describing the conduct; and

(b) the notice is in force under section 93AD.

(9) The making by a corporation of a contract that contains a provision in relation to which subsection 88(1) applies is not a contravention of subsection (2) of this section if:

(a) the contract is subject to a condition that the provision will not come into force unless and until the corporation is granted an authorization to give effect to the provision; and

(b) the corporation applies for the grant of such an authorization within 14 days after the contract is made;

but nothing in this subsection prevents the giving effect by a corporation to such a provision from constituting a contravention of subsection (2).

45B Covenants affecting competition

(1) A covenant, whether the covenant was given before or after the commencement of this section, is unenforceable in so far as it confers rights or benefits or imposes duties or obligations on a corporation or on a person associated with a corporation if the covenant has, or is likely to have, the effect of substantially lessening competition in any market in which the corporation or any person associated with the corporation supplies or acquires, or is likely to supply or acquire, goods or services or would, but for the covenant, supply or acquire, or be likely to supply or acquire, goods or services.

(2) A corporation or a person associated with a corporation shall not:

(a) require the giving of a covenant, or give a covenant, if the proposed covenant has the purpose, or would have or be likely to have the effect, of substantially lessening competition in any market in which:

(i) the corporation, or any person associated with the corporation by virtue of paragraph (7)(b), supplies or acquires, is likely to supply or acquire, or would, but for the covenant, supply or acquire, or be likely to supply or acquire, goods or services; or

(ii) any person associated with the corporation by virtue of the operation of paragraph (7)(a) supplies or acquires, is likely to supply or acquire, or would, but for the covenant, supply or acquire, or be likely to supply or acquire, goods or services, being a supply or acquisition in relation to which that person is, or would be, under an obligation to act in accordance with directions, instructions or wishes of the corporation;

(b) threaten to engage in particular conduct if a person who, but for subsection (1), would be bound by a covenant does not comply with the terms of the covenant; or

(c) engage in particular conduct by reason that a person who, but for subsection (1), would be bound by a covenant has failed to comply, or proposes or threatens to fail to comply, with the terms of the covenant.

(3) Where a person:

(a) issues an invitation to another person to enter into a contract containing a covenant;

(b) makes an offer to another person to enter into a contract containing a covenant; or

(c) makes it known that the person will not enter into a contract of a particular kind unless the contract contains a covenant of a particular kind or in particular terms;

the first-mentioned person shall, by issuing that invitation, making that offer or making that fact known, be deemed to require the giving of the covenant.

(4) For the purposes of this section, a covenant or proposed covenant shall be deemed to have, or to be likely to have, the effect of substantially lessening competition in a market if the covenant or proposed covenant, as the case may be, would have, or be likely to have, that effect when taken together with the effect or likely effect on competition in that market of any other covenant or proposed covenant to the benefit of which:

(a) a corporation that, or person who, is or would be, or but for subsection (1) would be, entitled to the benefit of the first-mentioned covenant or proposed covenant; or

(b) a person associated with the corporation referred to in paragraph (a) or a corporation associated with the person referred to in that paragraph;

is or would be, or but for subsection (1) would be, entitled.

(5) The requiring of the giving of, or the giving of, a covenant does not constitute a contravention of this section by reason that giving effect to the covenant would, or would but for the operation of subsection 88(8) or section 93, constitute a contravention of section 47 and this section does not apply to or in relation to engaging in conduct in relation to a covenant by way of:

(a) conduct that contravenes, or would but for the operation of subsection 88(8) or section 93 contravene, section 47; or

(b) doing an act by reason of a breach or threatened breach of a condition referred to in subsection 47(2), (4), (6) or (8), being an act done by a person at a time when:

(i) an authorization under subsection 88(8) is in force in relation to conduct engaged in by that person on that condition; or

(ii) by reason of subsection 93(7) conduct engaged in by that person on that condition is not to be taken to have the effect of substantially lessening competition within the meaning of section 47; or

(iii) a notice under subsection 93(1) is in force in relation to conduct engaged in by that person on that condition.

(6) This section does not apply to or in relation to a covenant or proposed covenant where the only persons who are or would be respectively bound by, or entitled to the benefit of, the covenant or proposed covenant are persons who are associated with each other or are bodies corporate that are related to each other.

(7) For the purposes of this section, section 45C and subparagraph 87(3)(a)(ii), a person and a corporation shall be taken to be associated with each other in relation to a covenant or proposed covenant if, and only if:

(a) the person is under an obligation (otherwise than in pursuance of the covenant or proposed covenant), whether formal or informal, to act in accordance with directions, instructions or wishes of the corporation in relation to the covenant or proposed covenant; or

(b) the person is a body corporate in relation to which the corporation is in the position mentioned in subparagraph 4A(1)(a)(ii).

(8) The requiring by a person of the giving of, or the giving by a person of, a covenant in relation to which subsection 88(5) applies is not a contravention of subsection (2) of this section if:

(a) the covenant is subject to a condition that the covenant will not come into force unless and until the person is granted an authorization to require the giving of, or to give, the covenant; and

(b) the person applies for the grant of such an authorization within 14 days after the covenant is given;

but nothing in this subsection affects the application of paragraph (2)(b) or (c) in relation to the covenant.

(9) This section does not apply to or in relation to a covenant or proposed covenant if:

(a) the sole or principal purpose for which the covenant was or is required to be given was or is to prevent the relevant land from being used otherwise than for residential purposes;

(b) the person who required or requires the covenant to be given was or is a religious, charitable or public benevolent institution or a trustee for such an institution and the covenant was or is required to be given for or in accordance with the purposes or objects of that institution; or

(c) the covenant was or is required to be given in pursuance of a legally enforceable requirement made by, or by a trustee for, a religious, charitable or public benevolent institution, being a requirement made for or in accordance with the purposes or objects of that institution.

45C Covenants in relation to prices

(1) In the application of subsection 45B(1) in relation to a covenant that has, or is likely to have, the effect of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods or services supplied or acquired by the persons who are, or but for that subsection would be, bound by or entitled to the benefit of the covenant, or by any of them, or by any persons associated with any of them, in competition with each other, that subsection has effect as if the words "if the covenant has, or is likely to have, the effect of substantially lessening competition in any market in which the corporation or any person associated with the corporation supplies or acquires, or is likely to supply or acquire, goods or services or would, but for the covenant, supply or acquire, or be likely to supply or acquire, goods or services" were omitted.

(2) In the application of subsection 45B(2) in relation to a proposed covenant that has the purpose, or would have or be likely to have the effect, of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods or services supplied or acquired by the persons who would, or would but for subsection 45B(1), be bound by or entitled to the benefit of the proposed covenant, or by any of them, or by any persons associated with any of them, in competition with each other, paragraph 45B(2)(a) has effect as if all the words after the words "require the giving of a covenant, or give a covenant" were omitted.

(3) For the purposes of this Act, a covenant shall not be taken not to have, or not to be likely to have, the effect, or a proposed covenant shall not be taken not to have the purpose, or not to have, or not to be likely to have, the effect, of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods or services by reason only of:

(a) the form of the covenant or proposed covenant; or

(b) any description given to the covenant by any of the persons who are, or but for subsection 45B(1) would be, bound by or entitled to the benefit of the covenant or any description given to the proposed covenant by any of the persons who would, or would but for subsection 45B(1), be bound by or entitled to the benefit of the proposed covenant.

(4) For the purposes of the preceding provisions of this section, but without limiting the generality of those provisions:

(a) a covenant shall be deemed to have, or to be likely to have, the effect of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods or services supplied as mentioned in subsection (1) if the covenant has, or is likely to have, the effect of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, such a price, discount, allowance, rebate or credit in relation to a re-supply of the goods or services by persons to whom the goods or services are supplied by the persons who are, or but for subsection 45B(1) would be, bound by or entitled to the benefit of the covenant, or by any of them, or by any persons associated with any of them; and

(b) a proposed covenant shall be deemed to have the purpose, or to have, or to be likely to have, the effect, of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods or services supplied as mentioned in subsection (2) if the proposed covenant has the purpose, or would have or be likely to have the effect, as the case may be, of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, such a price, discount, allowance, rebate or credit in relation to a re-supply of the goods or services by persons to whom the goods or

services are supplied by the persons who would, or would but for subsection 45B(1), be bound by or entitled to the benefit of the proposed covenant, or by any of them, or by any persons associated with any of them.

(5) The reference in subsection (1) to the supply or acquisition of goods or services by persons in competition with each other includes a reference to the supply or acquisition of goods or services by persons who, but for a provision of any contract, arrangement or understanding or of any proposed contract, arrangement or understanding, would be, or would be likely to be, in competition with each other in relation to the supply or acquisition of the goods or services.

45D Secondary boycotts for the purpose of causing substantial loss or damage

(1) In the circumstances specified in subsection (3) or (4), a person must not, in concert with a second person, engage in conduct:

(a) that hinders or prevents:

(i) a third person supplying goods or services to a fourth person (who is not an employer of the first person or the second person); or

(ii) a third person acquiring goods or services from a fourth person (who is not an employer of the first person or the second person); and

(b) that is engaged in for the purpose, and would have or be likely to have the effect, of causing substantial loss or damage to the business of the fourth person.

Note 1: Conduct that would otherwise contravene this section can be authorised under subsection 88(7).

Note 2: This section also has effect subject to section 45DD, which deals with permitted boycotts.

(2) A person is taken to engage in conduct for a purpose mentioned in subsection (1) if the person engages in the conduct for purposes that include that purpose.

(3) Subsection (1) applies if the fourth person is a corporation.

(4) Subsection (1) also applies if:

(a) the third person is a corporation and the fourth person is not a corporation; and

(b) the conduct would have or be likely to have the effect of causing substantial loss or damage to the business of the third person.

45DA Secondary boycotts for the purpose of causing substantial lessening of competition

(1) In the circumstances specified in subsection (3), a person must not, in concert with a second person, engage in conduct:

(a) that hinders or prevents:

(i) a third person supplying goods or services to a fourth person (who is not an employer of the first person or the second person); or

(ii) a third person acquiring goods or services from a fourth person (who is not an employer of the first person or the second person); and

(b) that is engaged in for the purpose, and would have or be likely to have the effect, of causing a substantial lessening of competition in any market in which the fourth person supplies or acquires goods or services.

Note 1: Conduct that would otherwise contravene this section can be authorised under subsection 88(7).

Note 2: This section also has effect subject to section 45DD, which deals with permitted boycotts.

(2) A person is taken to engage in conduct for a purpose mentioned in subsection (1) if the person engages in the conduct for purposes that include that purpose.

(3) Subsection (1) applies if:

(a) the third person or the fourth person is a corporation, or both of them are corporations; and

(b) the conduct would have or be likely to have the effect of causing substantial loss or damage to the business of one of those persons who is a corporation.

45DB Boycotts affecting trade or commerce

(1) A person must not, in concert with another person, engage in conduct for the purpose, and having or likely to have the effect, of preventing or substantially hindering a third person (who is not an employer of the first person) from engaging in trade or commerce involving the movement of goods between Australia and places outside Australia.

Note 1: Conduct that would otherwise contravene this section can be authorised under subsection 88(7).

Note 2: This section also has effect subject to section 45DD, which deals with permitted boycotts.

(2) A person is taken to engage in conduct for a purpose mentioned in subsection (1) if the person engages in the conduct for purposes that include that purpose.

45DC Involvement and liability of employee organisations

Certain organisations taken to be acting in concert

(1) If 2 or more persons (the ***participants***), each of whom is a member or officer of the same organisation of employees, engage in conduct in concert with one another, whether or not the conduct is also engaged in in concert with another person, then, unless the organisation proves otherwise, the organisation is taken for the purposes of sections 45D, 45DA and 45DB:

(a) to engage in that conduct in concert with the participants; and

(b) to have engaged in that conduct for the purposes for which the participants engaged in it.

Consequences of organisation contravening subsection 45D(1), 45DA(1) or 45DB(1)

(2) The consequences of an organisation of employees engaging, or being taken by subsection (1) to engage, in conduct in concert with any of its members or officers in contravention of subsection 45D(1), 45DA(1) or 45DB(1) are as set out in subsections (3), (4) and (5).

Loss or damage taken to have been caused by organisation's conduct

(3) Any loss or damage suffered by a person as a result of the conduct is taken, for the purposes of this Act, to have been caused by the conduct of the organisation.

Taking proceedings if organisation is a body corporate

(4) If the organisation is a body corporate, no action under section 82 to recover the amount of the loss or damage may be brought against any of the members or officers of the organisation in respect of the conduct.

Taking proceedings if organisation is not a body corporate

(5) If the organisation is not a body corporate:

(a) a proceeding in respect of the conduct may be brought under section 77, 80 or 82 against an officer of the organisation as a representative of the organisation's members and the proceeding is taken to be a proceeding against all the persons who were members of the organisation at the time when the conduct was engaged in; and

(b) subsection 76(2) does not prevent an order being made in a proceeding mentioned in paragraph (a) that was brought under section 77; and

(c) the maximum pecuniary penalty that may be imposed in a proceeding mentioned in paragraph (a) that was brought under section 77 is the penalty applicable under section 76 in relation to a body corporate; and

(d) except as provided by paragraph (a), a proceeding in respect of the conduct must not be brought under section 77 or 82 against any of the members or officers of the organisation; and

(e) for the purpose of enforcing any judgment or order given or made in a proceeding mentioned in paragraph (a) that was brought under section 77 or 82, process may be issued and executed against the following property or interests as if the organisation were a body corporate and the absolute owner of the property or interests:

(i) any property of the organisation or of any branch or part of the organisation, whether vested in trustees or however otherwise held;

(ii) any property in which the organisation or any branch or part of the organisation has a beneficial interest, whether vested in trustees or however otherwise held;

(iii) any property in which any members of the organisation or of a branch or part of the organisation have a beneficial interest in their capacity as members, whether vested in trustees or however otherwise held; and

(f) if paragraph (e) applies, no process is to be issued or executed against any property of members or officers of the organisation or of a branch or part of the organisation except as provided in that paragraph.

45DD Situations in which boycotts permitted

Dominant purpose of conduct relates to employment matters—conduct by a person

(1) A person does not contravene, and is not involved in a contravention of, subsection 45D(1), 45DA(1) or 45DB(1) by engaging in conduct if the dominant purpose for which the conduct is engaged in is substantially related to the remuneration, conditions of employment, hours of work or working conditions of that person or of another person employed by an employer of that person.

Dominant purpose of conduct relates to employment matters—conduct by employee organisation and employees

(2) If:

(a) an employee, or 2 or more employees who are employed by the same employer, engage in conduct in concert with another person who is, or with other persons each of whom is:

(i) an organisation of employees; or

(ii) an officer of an organisation of employees; and

(b) the conduct is only engaged in by the persons covered by paragraph (a); and

(c) the dominant purpose for which the conduct is engaged in is substantially related to the remuneration, conditions of employment, hours of work or working conditions of the employee, or any of the employees, covered by paragraph (a);

the persons covered by paragraph (a) do not contravene, and are not involved in a contravention of, subsection 45D(1), 45DA(1) or 45DB(1) by engaging in the conduct.

Dominant purpose of conduct relates to environmental protection or consumer protection

(3) A person does not contravene, and is not involved in a contravention of, subsection 45D(1), 45DA(1) or 45DB(1) by engaging in conduct if:

(a) the dominant purpose for which the conduct is engaged in is substantially related to environmental protection or consumer protection; and

(b) engaging in the conduct is not industrial action.

Note 1: If an environmental organisation or a consumer organisation is a body corporate:

(a) it is a "person" who may be subject to the prohibitions in subsections 45D(1), 45DA(1) and 45DB(1) and who may also be covered by this exemption; and

(b) each of its members is a "person" who may be subject to the prohibitions in subsections 45D(1), 45DA(1) and 45DB(1) and who may also be covered by this exemption.

Note 2: If an environmental organisation or a consumer organisation is not a body corporate:

(a) it is not a "person" and is therefore not subject to the prohibitions in subsections 45D(1), 45DA(1) and 45DB(1) (consequently, this exemption does not cover the organisation as such); but

(b) each of its members is a "person" who may be subject to the prohibitions in subsections 45D(1), 45DA(1) and 45DB(1) and who may also be covered by this exemption.

*Meaning of **industrial action**—basic definition*

(4) In subsection (3), ***industrial action*** means:

(a) the performance of work in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, the result of which is a restriction or limitation on, or a delay in, the performance of the work, where:

(i) the terms and conditions of the work are prescribed, wholly or partly, by a workplace instrument or an order of an industrial body; or

(ii) the work is performed, or the practice is adopted, in connection with an industrial dispute; or

(b) a ban, limitation or restriction on the performance of work, or on acceptance of or offering for work, in accordance with the terms and conditions prescribed by a workplace instrument or by an order of an industrial body; or

(c) a ban, limitation or restriction on the performance of work, or on acceptance of or offering for work, that is adopted in connection with an industrial dispute; or

(d) a failure or refusal by persons to attend for work or a failure or refusal to perform any work at all by persons who attend for work.

For this purpose, ***industrial body*** and ***workplace instrument*** have the same meanings as in the *Fair Work Act 2009*.

*Meaning of **industrial action**—further clarification*

(5) For the purposes of subsection (3):

(a) conduct is capable of constituting industrial action even if the conduct relates to part only of the duties that persons are required to perform in the course of their employment; and

(b) a reference to industrial action includes a reference to a course of conduct consisting of a series of industrial actions.

Subsections (1), (2) and (3) do not protect people not covered by them

(6) In applying subsection 45D(1), 45DA(1) or 45DB(1) to a person who is not covered by subsection (1), (2) or (3) in respect of certain conduct, disregard the fact that other persons may be covered by one of those subsections in respect of the same conduct.

Defences to contravention of subsection 45DB(1)

(7) In a proceeding under this Act in relation to a contravention of subsection 45DB(1), it is a defence if the defendant proves:

(a) that a notice in respect of the conduct concerned has been duly given to the Commission under subsection 93(1) and the Commission has not given a notice in respect of the conduct under subsection 93(3) or (3A); or

(b) that the dominant purpose for which the defendant engaged in the conduct concerned was to preserve or further a business carried on by him or her.

Each person to prove defence

(8) If:

(a) a person engages in conduct in concert with another person; and

(b) the other person proves a matter specified in paragraph (7)(a) or (b) in respect of that conduct;

in applying subsection 45DB(1) to the first person, ignore the fact that the other person has proved that matter.

Note: Section 415 of the *Fair Work Act 2009* limits the right to bring actions under this Act in respect of industrial action that is protected action for the purposes of that section.

45E Prohibition of contracts, arrangements or understandings affecting the supply or acquisition of goods or services

Situations to which section applies

(1) This section applies in the following situations:

(a) a ***supply situation***—in this situation, a person (the ***first person***) has been accustomed, or is under an obligation, to supply goods or services to another person (the ***second person***); or

(b) an ***acquisition situation***—in this situation, a person (the ***first person***) has been accustomed, or is under an obligation, to acquire goods or services from another person (the ***second person***).

Despite paragraphs (a) and (b), this section does not apply unless the first or second person is a corporation or both of them are corporations.

Note : For the meanings of ***accustomed to supply*** and ***accustomed to acquire***, see subsections (5) and (7).

Prohibition in a supply situation

(2) In a supply situation, the first person must not make a contract or arrangement, or arrive at an understanding, with an organisation of employees, an officer of such an organisation or a person acting for and on behalf of such an officer or organisation, if the proposed contract, arrangement or understanding contains a provision included for the purpose, or for purposes including the purpose, of:

(a) preventing or hindering the first person from supplying or continuing to supply such goods or services to the second person; or

(b) preventing or hindering the first person from supplying or continuing to supply such goods or services to the second person, except subject to a condition:

(i) that is not a condition to which the supply of such goods or services by the first person to the second person has previously been subject because of a provision in a contract between those persons; and

(ii) that is about the persons to whom, the manner in which or the terms on which the second person may supply any goods or services.

Prohibition in an acquisition situation

(3) In an acquisition situation, the first person must not make a contract or arrangement, or arrive at an understanding, with an organisation of employees, an officer of such an organisation or a person acting for and on behalf of such an officer or organisation, if the proposed contract, arrangement or understanding contains a provision included for the purpose, or for purposes including the purpose, of:

(a) preventing or hindering the first person from acquiring or continuing to acquire such goods or services from the second person; or

(b) preventing or hindering the first person from acquiring or continuing to acquire such goods or services from the second person, except subject to a condition:

(i) that is not a condition to which the acquisition of such goods or services by the first person from the second person has previously been subject because of a provision in a contract between those persons; and

(ii) that is about the persons to whom, the manner in which or the terms on which the second person may supply any goods or services.

No contravention if second person gives written consent to written contract etc.

(4) Subsections (2) and (3) do not apply to a contract, arrangement or understanding if it is in writing and was made or arrived at with the written consent of the second person.

*Meaning of **accustomed to supply***

(5) In this section, a reference to a person who has been ***accustomed to supply*** goods or services to a second person includes (subject to subsection (6)):

(a) a regular supplier of such goods or services to the second person; or

(b) the latest supplier of such goods or services to the second person; or

(c) a person who, at any time during the immediately preceding 3 months, supplied such goods or services to the second person.

Exception to subsection (5)

(6) If:

(a) goods or services have been supplied by a person to a second person under a contract between them that required the first person to supply such goods or services over a period; and

(b) the period has ended; and

(c) after the end of the period, the second person has been supplied with such goods or services by another person and has not also been supplied with such goods or services by the first person;

then, for the purposes of the application of this section in relation to anything done after the second person has been supplied with goods or services as mentioned in paragraph (c), the first person is not to be taken to be a person who has been accustomed to supply such goods or services to the second person.

*Meaning of **accustomed to acquire***

(7) In this section, a reference to a person who has been ***accustomed to acquire*** goods or services from a second person includes (subject to subsection (8)):

(a) a regular acquirer of such goods or services from the second person; or

(b) a person who, when last acquiring such goods or services, acquired them from the second person; or

(c) a person who, at any time during the immediately preceding 3 months, acquired such goods or services from the second person.

Exception to subsection (7)

(8) If:

(a) goods or services have been acquired by a person from a second person under a contract between them that required the first person to acquire such goods or services over a period; and

(b) the period has ended; and

(c) after the end of the period, the second person has refused to supply such goods or services to the first person;

then, for the purposes of the application of this section in relation to anything done after the second person has refused to supply goods or services as mentioned in paragraph (c), the first person is not to be taken to be a person who has been accustomed to acquire such goods or services from the second person.

Note: Conduct that would otherwise contravene this section can be authorised under subsection 88(7A).

45EA Provisions contravening section 45E not to be given effect

A person must not give effect to a provision of a contract, arrangement or understanding if, because of the provision, the making of the contract or arrangement, or the arriving at the understanding, by the person:

(a) contravened subsection 45E(2) or (3); or

(b) would have contravened subsection 45E(2) or (3) if:

(i) section 45E had been in force when the contract or arrangement was made, or the understanding was arrived at; and

(ii) the words "is in writing and" and "written" were not included in subsection 45E(4).

Note: Conduct that would otherwise contravene this section can be authorised under subsection 88(7A).

45EB Sections 45D to 45EA do not affect operation of other provisions of Part

Nothing in section 45D, 45DA, 45DB, 45DC, 45DD, 45E or 45EA affects the operation of any other provision of this Part.

46 Misuse of market power

(1) A corporation that has a substantial degree of power in a market shall not take advantage of that power in that or any other market for the purpose of:

(a) eliminating or substantially damaging a competitor of the corporation or of a body corporate that is related to the corporation in that or any other market;

(b) preventing the entry of a person into that or any other market; or

(c) deterring or preventing a person from engaging in competitive conduct in that or any other market.

(1AAA) If a corporation supplies goods or services for a sustained period at a price that is less than the relevant cost to the corporation of supplying the goods or services, the corporation may contravene subsection (1) even if the corporation cannot, and might not ever be able to, recoup losses incurred by supplying the goods or services.

(1AA) A corporation that has a substantial share of a market must not supply, or offer to supply, goods or services for a sustained period at a price that is less than the relevant cost to the corporation of supplying such goods or services, for the purpose of:

(a) eliminating or substantially damaging a competitor of the corporation or of a body corporate that is related to the corporation in that or any other market; or

(b) preventing the entry of a person into that or any other market; or

(c) deterring or preventing a person from engaging in competitive conduct in that or any other market.

(1AB) For the purposes of subsection (1AA), without limiting the matters to which the Court may have regard for the purpose of determining whether a corporation has a substantial share of a market, the Court may have regard to the number and size of the competitors of the corporation in the market.

(1A) For the purposes of subsections (1) and (1AA):

(a) the reference in paragraphs (1)(a) and (1AA)(a) to a competitor includes a reference to competitors generally, or to a particular class or classes of competitors; and

(b) the reference in paragraphs (1)(b) and (c) and (1AA)(b) and (c) to a person includes a reference to persons generally, or to a particular class or classes of persons.

(2) If:

(a) a body corporate that is related to a corporation has, or 2 or more bodies corporate each of which is related to the one corporation together have, a substantial degree of power in a market; or

(b) a corporation and a body corporate that is, or a corporation and 2 or more bodies corporate each of which is, related to that corporation, together have a substantial degree of power in a market;

the corporation shall be taken for the purposes of this section to have a substantial degree of power in that market.

(3) In determining for the purposes of this section the degree of power that a body corporate or bodies corporate has or have in a market, the court shall have regard to the extent to which the conduct of the body corporate or of any of those bodies corporate in that market is constrained by the conduct of:

(a) competitors, or potential competitors, of the body corporate or of any of those bodies corporate in that market; or

(b) persons to whom or from whom the body corporate or any of those bodies corporate supplies or acquires goods or services in that market.

(3A) In determining for the purposes of this section the degree of power that a body corporate or bodies corporate has or have in a market, the court may have regard to the power the body corporate or bodies corporate has or have in that market that results from:

(a) any contracts, arrangements or understandings, or proposed contracts, arrangements or understandings, that the body corporate or bodies corporate has or have, or may have, with another party or other parties; and

(b) any covenants, or proposed covenants, that the body corporate or bodies corporate is or are, or would be, bound by or entitled to the benefit of.

(3B) Subsections (3) and (3A) do not, by implication, limit the matters to which regard may be had in determining, for the purposes of this section, the degree of power that a body corporate or bodies corporate has or have in a market.

(3C) For the purposes of this section, without limiting the matters to which the court may have regard for the purpose of determining whether a body corporate has a substantial degree of power in a market, a body corporate may have a substantial degree of power in a market even though:

(a) the body corporate does not substantially control the market; or

(b) the body corporate does not have absolute freedom from constraint by the conduct of:

(i) competitors, or potential competitors, of the body corporate in that market; or

(ii) persons to whom or from whom the body corporate supplies or acquires goods or services in that market.

(3D) To avoid doubt, for the purposes of this section, more than 1 corporation may have a substantial degree of power in a market.

(4) In this section:

(a) a reference to power is a reference to market power;

(b) a reference to a market is a reference to a market for goods or services; and

(c) a reference to power in relation to, or to conduct in, a market is a reference to power, or to conduct, in that market either as a supplier or as an acquirer of goods or services in that market.

(4A) Without limiting the matters to which the court may have regard for the purpose of determining whether a corporation has contravened subsection (1), the court may have regard to:

(a) any conduct of the corporation that consisted of supplying goods or services for a sustained period at a price that was less than the relevant cost to the corporation of supplying such goods or services; and

(b) the reasons for that conduct.

(5) Without extending by implication the meaning of subsection (1), a corporation shall not be taken to contravene that subsection by reason only that it acquires plant or equipment.

(6) This section does not prevent a corporation from engaging in conduct that does not constitute a contravention of any of the following sections, namely, sections 45, 45B, 47, 49 and 50, by reason that an authorization or clearance is in force or by reason of the operation of subsection 45(8A) or section 93.

(6A) In determining for the purposes of this section whether, by engaging in conduct, a corporation has taken advantage of its substantial degree of power in a market, the court may have regard to any or all of the following:

(a) whether the conduct was materially facilitated by the corporation's substantial degree of power in the market;

(b) whether the corporation engaged in the conduct in reliance on its substantial degree of power in the market;

(c) whether it is likely that the corporation would have engaged in the conduct if it did not have a substantial degree of power in the market;

(d) whether the conduct is otherwise related to the corporation's substantial degree of power in the market.

This subsection does not limit the matters to which the court may have regard.

(7) Without in any way limiting the manner in which the purpose of a person may be established for the purposes of any other provision of this Act, a corporation may be taken to have taken advantage of its power for a purpose referred to in subsection (1) notwithstanding that, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from the conduct of the corporation or of any other person or from other relevant circumstances.

46A Misuse of market power—corporation with substantial degree of power in trans-Tasman market

(1) In this section:

conduct, in relation to a market, means conduct in the market either as a supplier or acquirer of goods or services in the market.

impact market means a market in Australia that is not a market exclusively for services.

market power, in relation to a market, means market power in the market either as a supplier or acquirer of goods or services in the market.

trans-Tasman market means a market in Australia, New Zealand or Australia and New Zealand for goods or services.

(2) A corporation that has a substantial degree of market power in a trans-Tasman market must not take advantage of that power for the purpose of:

(a) eliminating or substantially damaging a competitor of the corporation, or of a body corporate that is related to the corporation, in an impact market; or

(b) preventing the entry of a person into an impact market; or

(c) deterring or preventing a person from engaging in competitive conduct in an impact market.

(2A) For the purposes of subsection (2):

(a) the reference in paragraph (2)(a) to a competitor includes a reference to competitors generally, or to a particular class or classes of competitors; and

(b) the reference in paragraphs (2)(b) and (c) to a person includes a reference to persons generally, or to a particular class or classes of persons.

(3) If:

(a) a body corporate that is related to a corporation has, or 2 or more bodies corporate each of which is related to the one corporation together have, a substantial degree of market power in a trans-Tasman market; or

(b) a corporation and a body corporate that is, or a corporation and 2 or more bodies corporate each of which is, related to the corporation, together have a substantial degree of market power in a trans-Tasman market;

the corporation is taken, for the purposes of this section, to have a substantial degree of market power in the trans-Tasman market.

(4) In determining for the purposes of this section the degree of market power that a body corporate or bodies corporate has or have in a trans-Tasman market, the Federal Court is to have regard to the extent to which the conduct of the body corporate or of any of those bodies corporate, in the trans-Tasman market is constrained by the conduct of:

(a) competitors, or potential competitors, of the body corporate, or of any of those bodies corporate, in the trans-Tasman market; or

(b) persons to whom or from whom the body corporate, or any of those bodies corporate, supplies or acquires goods or services in the trans-Tasman market.

(5) Without extending by implication the meaning of subsection (2), a corporation is not taken to contravene that subsection merely because it acquires plant or equipment.

(6) This section does not prevent a corporation from engaging in conduct that does not constitute a contravention of any of the following sections, namely, sections 45, 45B, 47, 49 and 50, because an authorisation or clearance is in force or because of the operation of subsection 45(8A) or section 93.

(7) Without limiting the manner in which the purpose of a person may be established for the purposes of any other provision of this Act, a corporation may be taken to have taken advantage of its market power for a purpose referred to in subsection (2) even though, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from the conduct of the corporation or of any other person or from other relevant circumstances.

(8) It is the intention of the Parliament that this section, and the provisions of Parts VI and XII so far as they relate to a contravention of this section, should apply to New Zealand and New Zealand Crown corporations to the same extent, and in the same way, as they respectively apply under section 2A to the Commonwealth and authorities of the Commonwealth.

(9) Subsection (8) has effect despite section 9 of the *Foreign States Immunities Act 1985*.

46B No immunity from jurisdiction in relation to certain New Zealand laws

(1) It is hereby declared, for the avoidance of doubt, that the Commonwealth, the States, the Australian Capital Territory and the Northern Territory, and their authorities, are not immune, and may not claim immunity, from the jurisdiction of the courts of Australia and New Zealand in relation to matters arising under sections 36A, 98H and 99A of the Commerce Act 1986 of New Zealand.

(2) This section applies in and outside Australia.

47 Exclusive dealing

(1) Subject to this section, a corporation shall not, in trade or commerce, engage in the practice of exclusive dealing.

(2) A corporation engages in the practice of exclusive dealing if the corporation:

(a) supplies, or offers to supply, goods or services;

(b) supplies, or offers to supply, goods or services at a particular price; or

(c) gives or allows, or offers to give or allow, a discount, allowance, rebate or credit in relation to the supply or proposed supply of goods or services by the corporation;

on the condition that the person to whom the corporation supplies, or offers or proposes to supply, the goods or services or, if that person is a body corporate, a body corporate related to that body corporate:

(d) will not, or will not except to a limited extent, acquire goods or services, or goods or services of a particular kind or description, directly or indirectly from a competitor of the corporation or from a competitor of a body corporate related to the corporation;

(e) will not, or will not except to a limited extent, re-supply goods or services, or goods or services of a particular kind or description, acquired directly or indirectly from a competitor of the corporation or from a competitor of a body corporate related to the corporation; or

(f) in the case where the corporation supplies or would supply goods or services, will not re-supply the goods or services to any person, or will not, or will not except to a limited extent, re-supply the goods or services:

(i) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or

(ii) in particular places or classes of places or in places other than particular places or classes of places.

(3) A corporation also engages in the practice of exclusive dealing if the corporation refuses:

(a) to supply goods or services to a person;

(b) to supply goods or services to a person at a particular price; or

(c) to give or allow a discount, allowance, rebate or credit in relation to the supply or proposed supply of goods or services to a person;

for the reason that the person or, if the person is a body corporate, a body corporate related to that body corporate:

(d) has acquired, or has not agreed not to acquire, goods or services, or goods or services of a particular kind or description, directly or indirectly from a competitor of the corporation or from a competitor of a body corporate related to the corporation;

(e) has re-supplied, or has not agreed not to re-supply, goods or services, or goods or services of a particular kind or description, acquired directly or indirectly from a competitor of the corporation or from a competitor of a body corporate related to the corporation; or

(f) has re-supplied, or has not agreed not to re-supply, goods or services, or goods or services of a particular kind or description, acquired from the corporation to any person, or has re-supplied, or has not agreed not to re-supply, goods or services, or goods or services of a particular kind or description, acquired from the corporation:

(i) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or

(ii) in particular places or classes of places or in places other than particular places or classes of places.

(4) A corporation also engages in the practice of exclusive dealing if the corporation:

(a) acquires, or offers to acquire, goods or services; or

(b) acquires, or offers to acquire, goods or services at a particular price;

on the condition that the person from whom the corporation acquires or offers to acquire the goods or services or, if that person is a body corporate, a body corporate related to that body corporate will not supply goods or services, or goods or services of a particular kind or description, to any person, or will not, or will not except to a limited extent, supply goods or services, or goods or services of a particular kind or description:

(c) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or

(d) in particular places or classes of places or in places other than particular places or classes of places.

(5) A corporation also engages in the practice of exclusive dealing if the corporation refuses:

(a) to acquire goods or services from a person; or

(b) to acquire goods or services at a particular price from a person;

for the reason that the person or, if the person is a body corporate, a body corporate related to that body corporate has supplied, or has not agreed not to supply, goods or services, or goods or services of a particular kind or description:

(c) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or

(d) in particular places or classes of places or in places other than particular places or classes of places.

(6) A corporation also engages in the practice of exclusive dealing if the corporation:

(a) supplies, or offers to supply, goods or services;

(b) supplies, or offers to supply, goods or services at a particular price; or

(c) gives or allows, or offers to give or allow, a discount, allowance, rebate or credit in relation to the supply or proposed supply of goods or services by the corporation;

on the condition that the person to whom the corporation supplies or offers or proposes to supply the goods or services or, if that person is a body corporate, a body corporate related to that body corporate will acquire goods or services of a particular kind or description directly or indirectly from another person not being a body corporate related to the corporation.

(7) A corporation also engages in the practice of exclusive dealing if the corporation refuses:

(a) to supply goods or services to a person;

(b) to supply goods or services at a particular price to a person; or

(c) to give or allow a discount, allowance, rebate or credit in relation to the supply of goods or services to a person;

for the reason that the person or, if the person is a body corporate, a body corporate related to that body corporate has not acquired, or has not agreed to acquire, goods or services of a particular kind or description directly or indirectly from another person not being a body corporate related to the corporation.

(8) A corporation also engages in the practice of exclusive dealing if the corporation grants or renews, or makes it known that it will not exercise a power or right to terminate, a lease of, or a licence in respect of, land or a building or part of a building on the condition that another party to the lease or licence or, if that other party is a body corporate, a body corporate related to that body corporate:

(a) will not, or will not except to a limited extent:

(i) acquire goods or services, or goods or services of a particular kind or description, directly or indirectly from a competitor of the corporation or from a competitor of a body corporate related to the corporation; or

(ii) re-supply goods or services, or goods or services of a particular kind or description, acquired directly or indirectly from a competitor of the corporation or from a competitor of a body corporate related to the corporation;

(b) will not supply goods or services, or goods or services of a particular kind or description, to any person, or will not, or will not except to a limited extent, supply goods or services, or goods or services of a particular kind or description:

(i) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or

(ii) in particular places or classes of places or in places other than particular places or classes of places; or

(c) will acquire goods or services of a particular kind or description directly or indirectly from another person not being a body corporate related to the corporation.

(9) A corporation also engages in the practice of exclusive dealing if the corporation refuses to grant or renew, or exercises a power or right to terminate, a lease of, or a licence in respect of, land or a building or part of a building for the reason that another party to the lease or licence or, if that other party is a body corporate, a body corporate related to that body corporate:

(a) has acquired, or has not agreed not to acquire, goods or services, or goods or services of a particular kind or description, directly or indirectly from a competitor of the corporation or from a competitor of a body corporate related to the corporation;

(b) has re-supplied, or has not agreed not to re-supply, goods or services, or goods or services of a particular kind or description, acquired directly or indirectly from a competitor of the corporation or from a competitor of a body corporate related to the corporation;

(c) has supplied goods or services, or goods or services of a particular kind or description:

(i) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or

(ii) in particular places or classes of places or in places other than particular places or classes of places; or

(d) has not acquired, or has not agreed to acquire, goods or services of a particular kind or description directly or indirectly from another person not being a body corporate related to the corporation.

(10) Subsection (1) does not apply to the practice of exclusive dealing constituted by a corporation engaging in conduct of a kind referred to in subsection (2), (3), (4) or (5) or paragraph (8)(a) or (b) or (9)(a), (b) or (c) unless:

(a) the engaging by the corporation in that conduct has the purpose, or has or is likely to have the effect, of substantially lessening competition; or

(b) the engaging by the corporation in that conduct, and the engaging by the corporation, or by a body corporate related to the corporation, in other conduct of the same or a similar kind, together have or are likely to have the effect of substantially lessening competition.

(10A) Subsection (1) does not apply to a corporation engaging in conduct described in subsection (6) or (7) or paragraph (8)(c) or (9)(d) if:

(a) the corporation has given the Commission a notice under subsection 93(1) describing the conduct; and

(b) the notice is in force under section 93.

(11) Subsections (8) and (9) do not apply with respect to:

(a) conduct engaged in by, or by a trustee for, a religious, charitable or public benevolent institution, being conduct engaged in for or in accordance with the purposes or objects of that institution; or

(b) conduct engaged in in pursuance of a legally enforceable requirement made by, or by a trustee for, a religious, charitable or public benevolent institution, being a requirement made for or in accordance with the purposes or objects of that institution.

(12) Subsection (1) does not apply with respect to any conduct engaged in by a body corporate by way of restricting dealings by another body corporate if those bodies corporate are related to each other.

(13) In this section:

(a) a reference to a condition shall be read as a reference to any condition, whether direct or indirect and whether having legal or equitable force or not, and includes a reference to a condition the existence or nature of which is ascertainable only by inference from the conduct of persons or from other relevant circumstances;

(b) a reference to competition, in relation to conduct to which a provision of this section other than subsection (8) or (9) applies, shall be read as a reference to competition in any market in which:

(i) the corporation engaging in the conduct or any body corporate related to that corporation; or

(ii) any person whose business dealings are restricted, limited or otherwise circumscribed by the conduct or, if that person is a body corporate, any body corporate related to that body corporate;

supplies or acquires, or is likely to supply or acquire, goods or services or would, but for the conduct, supply or acquire, or be likely to supply or acquire, goods or services; and

(c) a reference to competition, in relation to conduct to which subsection (8) or (9) applies, shall be read as a reference to competition in any market in which the corporation engaging in the conduct or any other corporation the business dealings of which are restricted, limited or otherwise circumscribed by the conduct, or any body corporate related to either of those corporations, supplies or acquires, or is likely to supply or acquire, goods or services or would, but for the conduct, supply or acquire, or be likely to supply or acquire, goods or services.

48 Resale price maintenance

A corporation or other person shall not engage in the practice of resale price maintenance.

49 Dual listed company arrangements that affect competition

(1) A corporation must not:

(a) make a dual listed company arrangement if a provision of the proposed arrangement has the purpose, or would have or be likely to have the effect, of substantially lessening competition; or

(b) give effect to a provision of a dual listed company arrangement if that provision has the purpose, or has or is likely to have the effect, of substantially lessening competition.

Note: Conduct that would otherwise contravene this section can be authorised under subsection 88(8B).

Exception

(2) The making by a corporation of a dual listed company arrangement that contains a provision that has the purpose, or would have or be likely to have the effect, of substantially lessening competition does not contravene this section if:

(a) the arrangement is subject to a condition that the provision will not come into force unless and until the corporation is granted an authorisation to give effect to the provision; and

(b) the corporation applies for the grant of such an authorisation within 14 days after the arrangement is made.

However, this subsection does not permit the corporation to give effect to such a provision.

*Meaning of **competition***

(3) For the purposes of this section, ***competition***, in relation to a provision of a dual listed company arrangement or of a proposed dual listed company arrangement, means competition in any market in which:

(a) a corporation that is a party to the arrangement or would be a party to the proposed arrangement; or

(b) any body corporate related to such a corporation;

supplies or acquires, or is likely to supply or acquire, goods or services or would, apart from the provision, supply or acquire, or be likely to supply or acquire, goods or services.

(4) For the purposes of the application of this section in relation to a particular corporation, a provision of a dual listed company arrangement or of a proposed dual listed company arrangement is taken to have, or to be likely to have, the effect of substantially lessening competition if that provision and any one or more of the following provisions:

(a) the other provisions of that arrangement or proposed arrangement;

(b) the provisions of any other contract, arrangement or understanding or proposed contract, arrangement or understanding to which the corporation or a body corporate related to the corporation is or would be a party;

together have or are likely to have that effect.

50 Prohibition of acquisitions that would result in a substantial lessening of competition

(1) A corporation must not directly or indirectly:

(a) acquire shares in the capital of a body corporate; or

(b) acquire any assets of a person;

if the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in a market.

Note: The corporation will not be prevented from making the acquisition if the corporation is granted a clearance or an authorisation for the acquisition under Division 3 of Part VII: see subsections 95AC(2) and 95AT(2).

(2) A person must not directly or indirectly:

(a) acquire shares in the capital of a corporation; or

(b) acquire any assets of a corporation;

if the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in a market.

Note: The person will not be prevented from making the acquisition if the person is granted a clearance or an authorisation for the acquisition under Division 3 of Part VII: see subsections 95AC(2) and 95AT(2).

(3) Without limiting the matters that may be taken into account for the purposes of subsections (1) and (2) in determining whether the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in a market, the following matters must be taken into account:

(a) the actual and potential level of import competition in the market;

(b) the height of barriers to entry to the market;

(c) the level of concentration in the market;

(d) the degree of countervailing power in the market;

(e) the likelihood that the acquisition would result in the acquirer being able to significantly and sustainably increase prices or profit margins;

(f) the extent to which substitutes are available in the market or are likely to be available in the market;

(g) the dynamic characteristics of the market, including growth, innovation and product differentiation;

(h) the likelihood that the acquisition would result in the removal from the market of a vigorous and effective competitor;

(i) the nature and extent of vertical integration in the market.

(4) Where:

(a) a person has entered into a contract to acquire shares in the capital of a body corporate or assets of a person;

(b) the contract is subject to a condition that the provisions of the contract relating to the acquisition will not come into force unless and until the person has been granted a clearance or an authorization to acquire the shares or assets; and

(c) the person applied for the grant of such a clearance or an authorization before the expiration of 14 days after the contract was entered into;

the acquisition of the shares or assets shall not be regarded for the purposes of this Act as having taken place in pursuance of the contract before:

(d) the application for the clearance or authorization is disposed of; or

(e) the contract ceases to be subject to the condition;

whichever first happens.

(5) For the purposes of subsection (4), an application for a clearance shall be taken to be disposed of:

(a) in a case to which paragraph (b) of this subsection does not apply—at the expiration of 14 days after the period in which an application may be made to the Tribunal for a review of the determination by the Commission of the application for the clearance; or

(b) if an application is made to the Tribunal for a review of the determination by the Commission of the application for the clearance—at the expiration of 14 days after the date of the making by the Tribunal of a determination on the review.

(5A) For the purposes of subsection (4), an application for an authorisation is taken to be disposed of 14 days after the day the Tribunal makes a determination on the application.

(6) In this section:

market means a substantial market for goods or services in:

(a) Australia; or

(b) a State; or

(c) a Territory; or

(d) a region of Australia.

50A Acquisitions that occur outside Australia

(1) Where a person acquires, outside Australia, otherwise than by reason of the application of paragraph (8)(b), a controlling interest (the ***first controlling interest***) in any body corporate and, by reason, but not necessarily by reason only, of the application of paragraph (8)(b) in relation to the first controlling interest, obtains a controlling interest (the ***second controlling interest***) in a corporation or each of 2 or more corporations, the Tribunal may, on the application of the Minister, the Commission or any other person, if the Tribunal is satisfied that:

(a) the person's obtaining the second controlling interest would have the effect, or be likely to have the effect, of substantially lessening competition in a market; and

(b) the person's obtaining the second controlling interest would not, in all the circumstances, result, or be likely to result, in such a benefit to the public that the obtaining should be disregarded for the purposes of this section;

make a declaration accordingly.

(1A) Without limiting the matters that may be taken into account in determining whether the obtaining of the second controlling interest would have the effect, or be likely to have the effect, of substantially lessening competition in a market, the matters mentioned in subsection 50(3) must be taken into account for that purpose.

(1B) In determining whether the obtaining of the second controlling interest would result, or be likely to result, in such a benefit to the public that it should be disregarded for the purposes of this section:

(a) the Tribunal must regard the following as benefits to the public (in addition to any other benefits to the public that may exist apart from this paragraph):

(i) a significant increase in the real value of exports;

(ii) a significant substitution of domestic products for imported goods; and

(b) without limiting the matters that may be taken into account, the Tribunal must take into account all other relevant matters that relate to the international competitiveness of any Australian industry.

(2) Where an application under subsection (1) is made:

(a) the Tribunal shall give to:

(i) each corporation in relation to which the application relates; and

(ii) the Minister and the Commission;

a notice in writing stating that the application has been made; and

(b) the persons referred to in paragraph (a) and, if the application was made by another person, that other person are entitled to appear, or be represented, at the proceedings following the application.

(3) An application under subsection (1) may be made at any time within 12 months after the date of the acquisition referred to in that subsection in relation to which the application is made.

(4) The Tribunal may, on the application of the Minister, the Commission or any other person, or of its own motion, revoke a declaration made under subsection (1).

(5) The Tribunal shall state in writing its reasons for making, refusing to make or revoking a declaration under subsection (1).

(6) After the end of 6 months after a declaration is made under subsection (1) in relation to the obtaining of a controlling interest in a corporation or 2 or more corporations by a person or, if the person, before the end of that period of 6 months, makes an application to a presidential member for an extension of that period, after the end of such further period (not exceeding 6 months) as the presidential member allows, the corporation or each of the corporations, as the case may be, shall not, while the declaration remains in force, carry on business in the market to which the declaration relates.

(7) Subsection (1) does not apply in relation to an acquisition referred to in that subsection if section 50 applies in relation to that acquisition.

(8) For the purposes of this section:

(a) a person shall be taken to hold a controlling interest in a body corporate if the body corporate is, or, if the person were a body corporate, would be, a subsidiary of the person (otherwise than by reason of the application of paragraph 4A(1)(b)); and

(b) where a person holds a controlling interest (including a controlling interest held by virtue of another application or other applications of this paragraph) in a body corporate and that body corporate:

(i) controls the composition of the board of directors of another body corporate;

(ii) is in a position to cast, or control the casting of, any votes that might be cast at a general meeting of another body corporate; or

(iii) holds shares in the capital of another body corporate;

the person shall be deemed (but not to the exclusion of any other person) to control the composition of that board, to be in a position to cast, or control the casting of, those votes or to hold those shares, as the case may be.

(9) In this section:

market means a substantial market for goods or services in Australia, in a State or in a Territory.

51 Exceptions

(1) In deciding whether a person has contravened this Part, the following must be disregarded:

(a) anything specified in, and specifically authorised by:

(i) an Act (not including an Act relating to patents, trade marks, designs or copyrights); or

(ii) regulations made under such an Act;

(b) anything done in a State, if the thing is specified in, and specifically authorised by:

(i) an Act passed by the Parliament of that State; or

(ii) regulations made under such an Act;

(c) anything done in the Australian Capital Territory, if the thing is specified in, and specifically authorised by:

(i) an enactment as defined in section 3 of the *Australian Capital Territory (Self-Government) Act 1988*; or

(ii) regulations made under such an enactment;

(d) anything done in the Northern Territory, if the thing is specified in, and specifically authorised by:

(i) an enactment as defined in section 4 of the *Northern Territory (Self-Government) Act 1978*; or

(ii) regulations made under such an enactment;

(e) anything done in another Territory, if the thing is specified in, and specifically authorised by:

(i) an Ordinance of that Territory; or

(ii) regulations made under such an Ordinance.

(1A) Without limiting subsection (1), conduct is taken to be specified in, and authorised by, a law for the purposes of that subsection if:

(a) a licence or other instrument issued or made under the law specifies one or both of the following:

(i) the person authorised to engage in the conduct;

(ii) the place where the conduct is to occur; and

(b) the law specifies the attributes of the conduct except those mentioned in paragraph (a).

For this purpose, ***law*** means an Act, State Act, enactment or Ordinance.

(1B) Subsections (1) and (1A) apply regardless of when the Acts, State Acts, enactments, Ordinances, regulations or instruments referred to in those subsections were passed, made or issued.

(1C) The operation of subsection (1) is subject to the following limitations:

(a) in order for something to be regarded as specifically authorised for the purposes of subsection (1), the authorising provision must expressly refer to this Act;

(b) subparagraph (1)(a)(ii) and paragraphs (1)(b), (c), (d) and (e) do not apply in deciding whether a person has contravened section 50 or 50A;

(c) regulations referred to in subparagraph (1)(a)(ii), (b)(ii), (c)(ii), (d)(ii) or (e)(ii) do not have the effect of requiring a particular thing to be disregarded if the thing happens more than 2 years after those regulations came into operation;

(d) regulations referred to in subparagraph (1)(a)(ii), (b)(ii), (c)(ii), (d)(ii) or (e)(ii) do not have the effect of requiring a particular thing to be disregarded to the extent that the regulations are the same in substance as other regulations:

(i) referred to in the subparagraph concerned; and

(ii) that came into operation more than 2 years before the particular thing happened;

(e) paragraphs (1)(b) to (d) have no effect in relation to things authorised by a law of a State or Territory unless:

(i) at the time of the alleged contravention referred to in subsection (1) the State or Territory was a fully-participating jurisdiction and a party to the Competition Principles Agreement; or

(ii) all of the following conditions are met:

(A) the Minister published a notice in the *Gazette* under subsection 150K(1) in relation to the State or Territory, or the State or Territory ceased to be a party to the Competition Principles Agreement, within 12 months before the alleged contravention referred to in subsection (1);

(B) the thing authorised was the making of a contract, or an action under a contract, that existed immediately before the Minister published the notice or the State or Territory ceased to be a party;

(C) the law authorising the thing was in force immediately before the Minister published the notice or the State or Territory ceased to be a party;

(f) subsection (1) does not apply to things that are covered by paragraph (1)(b), (c), (d) or (e) to the extent that those things are prescribed by regulations made under this Act for the purposes of this paragraph.

(2) In determining whether a contravention of a provision of this Part other than section 45D, 45DA, 45DB, 45E, 45EA or 48 has been committed, regard shall not be had:

(a) to any act done in relation to, or to the making of a contract or arrangement or the entering into of an understanding, or to any provision of a contract, arrangement or understanding, to the extent that the contract, arrangement or understanding, or the provision, relates to, the remuneration, conditions of employment, hours of work or working conditions of employees;

(b) to any provision of a contract of service or of a contract for the provision of services, being a provision under which a person, not being a body corporate, agrees to accept restrictions as to the work, whether as an employee or otherwise, in which he or she may engage during, or after the termination of, the contract;

(c) to any provision of a contract, arrangement or understanding, being a provision obliging a person to comply with or apply standards of dimension, design, quality or performance prepared or approved by Standards Australia International Limited or by a prescribed association or body;

(d) to any provision of a contract, arrangement or understanding between partners none of whom is a body corporate, being a provision in relation to the terms of the partnership or the conduct of the partnership business or in relation to competition between the partnership and a party to the contract, arrangement or understanding while he or she is, or after he or she ceases to be, a partner;

(e) in the case of a contract for the sale of a business or of shares in the capital of a body corporate carrying on a business—to any provision of the contract that is solely for the protection of the purchaser in respect of the goodwill of the business; or

(g) to any provision of a contract, arrangement or understanding, being a provision that relates exclusively to the export of goods from Australia or to the supply of services outside Australia, if full and accurate particulars of the provision (not including particulars of prices for goods or services but including particulars of any method of fixing, controlling or maintaining such prices) were furnished to the Commission before the expiration of 14 days after the date on which the contract or arrangement was made or the understanding was arrived at, or before 8 September 1976, whichever was the later.

(2A) In determining whether a contravention of a provision of this Part other than section 48 has been committed, regard shall not be had to any acts done, otherwise than in the course of trade or commerce, in concert by ultimate users or consumers of goods or services against the suppliers of those goods or services.

(3) A contravention of a provision of this Part other than section 46, 46A or 48 shall not be taken to have been committed by reason of:

(a) the imposing of, or giving effect to, a condition of:

(i) a licence granted by the proprietor, licensee or owner of a patent, of a registered design, of a copyright or of EL rights within the meaning of the *Circuit Layouts Act 1989*, or by a person who has applied for a patent or for the registration of a design; or

(ii) an assignment of a patent, of a registered design, of a copyright or of such EL rights, or of the right to apply for a patent or for the registration of a design;

to the extent that the condition relates to:

(iii) the invention to which the patent or application for a patent relates or articles made by the use of that invention;

(iv) goods in respect of which the design is, or is proposed to be, registered and to which it is applied;

(v) the work or other subject matter in which the copyright subsists; or

(vi) the eligible layout in which the EL rights subsist;

(b) the inclusion in a contract, arrangement or understanding authorizing the use of a certification trade mark of a provision in accordance with rules applicable under Part XI of the *Trade Marks Act 1955*, or the giving effect to such a provision; or

(c) the inclusion in a contract, arrangement or understanding between:

(i) the registered proprietor of a trade mark other than a certification trade mark; and

(ii) a person registered as a registered user of that trade mark under Part IX of the *Trade Marks Act 1955* or a person authorized by the contract to use the trade mark subject to his or her becoming registered as such a registered user;

of a provision to the extent that it relates to the kinds, qualities or standards of goods bearing the mark that may be produced or supplied, or the giving effect to the provision to that extent.

(4) This section applies in determining whether a provision of a contract is unenforceable by reason of subsection 45(1), or whether a covenant is unenforceable by reason of subsection 45B(1), in like manner as it applies in determining whether a contravention of a provision of this Part has been committed.

(5) In the application of subsection (2A) to section 46A, the reference in that subsection to trade or commerce includes trade or commerce within New Zealand.

51AAA Concurrent operation of State and Territory laws

It is the Parliament's intention that a law of a State or Territory should be able to operate concurrently with this Part unless the law is directly inconsistent with this Part.

Part IVA—Unconscionable conduct

51AAB Part does not apply to financial services

(1) Section 51AA does not apply to conduct engaged in in relation to financial services.

(2) Section 51AB does not apply to the supply, or possible supply, of services that are financial services.

51AA Unconscionable conduct within the meaning of the unwritten law of the States and Territories

(1) A corporation must not, in trade or commerce, engage in conduct that is unconscionable within the meaning of the unwritten law, from time to time, of the States and Territories.

(2) This section does not apply to conduct that is prohibited by section 51AB or 51AC.

51AB Unconscionable conduct

(1) A corporation shall not, in trade or commerce, in connection with the supply or possible supply of goods or services to a person, engage in conduct that is, in all the circumstances, unconscionable.

(2) Without in any way limiting the matters to which the court may have regard for the purpose of determining whether a corporation has contravened subsection (1) in connection with the supply or possible supply of goods or services to a person (in this subsection referred to as the ***consumer***), the court may have regard to:

(a) the relative strengths of the bargaining positions of the corporation and the consumer;

(b) whether, as a result of conduct engaged in by the corporation, the consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the corporation;

(c) whether the consumer was able to understand any documents relating to the supply or possible supply of the goods or services;

(d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the consumer or a person acting on behalf of the consumer by the corporation or a person acting on behalf of the corporation in relation to the supply or possible supply of the goods or services; and

(e) the amount for which, and the circumstances under which, the consumer could have acquired identical or equivalent goods or services from a person other than the corporation.

(3) A corporation shall not be taken for the purposes of this section to engage in unconscionable conduct in connection with the supply or possible supply of goods or services to a person by reason only that the corporation institutes legal proceedings in relation to that supply or possible supply or refers a dispute or claim in relation to that supply or possible supply to arbitration.

(4) For the purpose of determining whether a corporation has contravened subsection (1) in connection with the supply or possible supply of goods or services to a person:

(a) the court shall not have regard to any circumstances that were not reasonably forseeable at the time of the alleged contravention; and

(b) the court may have regard to conduct engaged in, or circumstances existing, before the commencement of this section.

(5) A reference in this section to goods or services is a reference to goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption.

(6) A reference in this section to the supply or possible supply of goods does not include a reference to the supply or possible supply of goods for the purpose of re-supply or for the purpose of using them up or transforming them in trade or commerce.

(7) Section 51A applies for the purposes of this section in the same way as it applies for the purposes of Division 1 of Part V.

51AC Unconscionable conduct in business transactions

(1) A corporation must not, in trade or commerce, in connection with:

(a) the supply or possible supply of goods or services to a person (other than a listed public company); or

(b) the acquisition or possible acquisition of goods or services from a person (other than a listed public company);

engage in conduct that is, in all the circumstances, unconscionable.

(2) A person must not, in trade or commerce, in connection with:

(a) the supply or possible supply of goods or services to a corporation (other than a listed public company); or

(b) the acquisition or possible acquisition of goods or services from a corporation (other than a listed public company);

engage in conduct that is, in all the circumstances, unconscionable.

(3) Without in any way limiting the matters to which the court may have regard for the purpose of determining whether a corporation or a person (the ***supplier***) has contravened subsection (1) or (2) in connection with the supply or possible supply of goods or services to a person or a corporation (the ***business consumer***), the court may have regard to:

(a) the relative strengths of the bargaining positions of the supplier and the business consumer; and

(b) whether, as a result of conduct engaged in by the supplier, the business consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier; and

(c) whether the business consumer was able to understand any documents relating to the supply or possible supply of the goods or services; and

(d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the business consumer or a person acting on behalf of the business consumer by the supplier or a person acting on behalf of the supplier in relation to the supply or possible supply of the goods or services; and

(e) the amount for which, and the circumstances under which, the business consumer could have acquired identical or equivalent goods or services from a person other than the supplier; and

(f) the extent to which the supplier's conduct towards the business consumer was consistent with the supplier's conduct in similar transactions between the supplier and other like business consumers; and

(g) the requirements of any applicable industry code; and

(h) the requirements of any other industry code, if the business consumer acted on the reasonable belief that the supplier would comply with that code; and

(i) the extent to which the supplier unreasonably failed to disclose to the business consumer:

(i) any intended conduct of the supplier that might affect the interests of the business consumer; and

(ii) any risks to the business consumer arising from the supplier's intended conduct (being risks that the supplier should have foreseen would not be apparent to the business consumer); and

(j) the extent to which the supplier was willing to negotiate the terms and conditions of any contract for supply of the goods or services with the business consumer; and

(ja) whether the supplier has a contractual right to vary unilaterally a term or condition of a contract between the supplier and the business consumer for the supply of the goods or services; and

(k) the extent to which the supplier and the business consumer acted in good faith.

(4) Without in any way limiting the matters to which the court may have regard for the purpose of determining whether a corporation or a person (the ***acquirer***) has contravened subsection (1) or (2) in connection with the acquisition or possible acquisition of goods or services from a person or corporation (the ***small business supplier***), the court may have regard to:

(a) the relative strengths of the bargaining positions of the acquirer and the small business supplier; and

(b) whether, as a result of conduct engaged in by the acquirer, the small business supplier was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the acquirer; and

(c) whether the small business supplier was able to understand any documents relating to the acquisition or possible acquisition of the goods or services; and

(d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the small business supplier or a person acting on behalf of the small business supplier by the acquirer or a person acting on behalf of the acquirer in relation to the acquisition or possible acquisition of the goods or services; and

(e) the amount for which, and the circumstances in which, the small business supplier could have supplied identical or equivalent goods or services to a person other than the acquirer; and

(f) the extent to which the acquirer's conduct towards the small business supplier was consistent with the acquirer's conduct in similar transactions between the acquirer and other like small business suppliers; and

(g) the requirements of any applicable industry code; and

(h) the requirements of any other industry code, if the small business supplier acted on the reasonable belief that the acquirer would comply with that code; and

(i) the extent to which the acquirer unreasonably failed to disclose to the small business supplier:

(i) any intended conduct of the acquirer that might affect the interests of the small business supplier; and

(ii) any risks to the small business supplier arising from the acquirer's intended conduct (being risks that the acquirer should have foreseen would not be apparent to the small business supplier); and

(j) the extent to which the acquirer was willing to negotiate the terms and conditions of any contract for the acquisition of the goods and services with the small business supplier; and

(ja) whether the acquirer has a contractual right to vary unilaterally a term or condition of a contract between the acquirer and the small business supplier for the acquisition of the goods or services; and

(k) the extent to which the acquirer and the small business supplier acted in good faith.

(5) A person is not to be taken for the purposes of this section to engage in unconscionable conduct in connection with:

(a) the supply or possible supply of goods or services to another person; or

(b) the acquisition or possible acquisition of goods or services from another person;

by reason only that the first-mentioned person institutes legal proceedings in relation to that supply, possible supply, acquisition or possible acquisition or refers to arbitration a dispute or claim in relation to that supply, possible supply, acquisition or possible acquisition.

(6) For the purpose of determining whether a corporation has contravened subsection (1) or whether a person has contravened subsection (2):

(a) the court must not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and

(b) the court may have regard to circumstances existing before the commencement of this section but not to conduct engaged in before that commencement.

(7) A reference in this section to the supply or possible supply of goods or services is a reference to the supply or possible supply of goods or services to a person whose acquisition or possible acquisition of the goods or services is or would be for the purpose of trade or commerce.

(8) A reference in this section to the acquisition or possible acquisition of goods or services is a reference to the acquisition or possible acquisition of goods or services by a person whose acquisition or possible acquisition of the goods or services is or would be for the purpose of trade or commerce.

(12) Section 51A applies for the purposes of this section in the same way as it applies for the purposes of Division 1 of Part V.

(13) Expressions used in this section that are defined for the purpose of Part IVB have the same meaning in this section as they do in Part IVB.

(14) In this section, ***listed public company*** has the same meaning as it has in the *Income Tax Assessment Act 1997*.

51ACAA Concurrent operation of State and Territory laws

It is the Parliament's intention that a law of a State or Territory should be able to operate concurrently with this Part unless the law is directly inconsistent with this Part.

Part IVB—Industry codes

51ACA Definitions

(1) In this Part:

applicable industry code, in relation to a corporation that is a participant in an industry, means:

(a) the prescribed provisions of any mandatory industry code relating to the industry; and

(b) the prescribed provisions of any voluntary industry code that binds the corporation.

consumer, in relation to an industry, means a person to whom goods or services are or may be supplied by participants in the industry.

industry code means a code regulating the conduct of participants in an industry towards other participants in the industry or towards consumers in the industry.

mandatory industry code means an industry code that is declared by regulations under section 51AE to be mandatory.

voluntary industry code means an industry code that is declared by regulations under section 51AE to be voluntary.

(2) For the purposes of this Part, a voluntary industry code binds a person who has agreed, as prescribed, to be bound by the code and who has not subsequently ceased, as prescribed, to be bound by it.

(3) To avoid doubt, it is declared that:

(a) franchising is an industry for the purposes of this Part; and

(b) franchisors and franchisees are participants in the industry of franchising, whether or not they are also participants in another industry.

51AD Contravention of industry codes

A corporation must not, in trade or commerce, contravene an applicable industry code.

51AE Regulations relating to industry codes

The regulations may:

(a) prescribe an industry code, or specified provisions of an industry code, for the purposes of this Part; and

(b) declare the industry code to be a mandatory industry code or a voluntary industry code; and

(c) for a voluntary industry code, specify the method by which a corporation agrees to be bound by the code and the method by which it ceases to be so bound (by reference to provisions of the code or otherwise).

51AEA Concurrent operation of State and Territory laws

It is the Parliament's intention that a law of a State or Territory should be able to operate concurrently with this Part unless the law is directly inconsistent with this Part.

Part V—Consumer protection

Division 1—Unfair practices

51AF Part does not apply to financial services

(1) This Part does not apply to the supply, or possible supply, of services that are financial services.

(2) Without limiting subsection (1):

(a) sections 52 and 55A do not apply to conduct engaged in in relation to financial services; and

(b) if a financial product consists of or includes an interest in land, section 53A does not apply to that interest; and

(c) section 63A does not apply to:

(i) a credit card that is part of, or that provides access to, a credit facility that is a financial product; or

(ii) a debit card that allows access to an account that is a financial product.

(3) In subsection (2):

credit card has the same meaning as in section 63A.

debit card has the same meaning as in section 63A.

51A Interpretation

(1) For the purposes of this Division, where a corporation makes a representation with respect to any future matter (including the doing of, or the refusing to do, any act) and the corporation does not have reasonable grounds for making the representation, the representation shall be taken to be misleading.

(2) For the purposes of the application of subsection (1) in relation to a proceeding concerning a representation made by a corporation with respect to any future matter, the corporation shall, unless it adduces evidence to the contrary, be deemed not to have had reasonable grounds for making the representation.

(3) Subsection (1) shall be deemed not to limit by implication the meaning of a reference in this Division to a misleading representation, a representation that is misleading in a material particular or conduct that is misleading or is likely or liable to mislead.

52 Misleading or deceptive conduct

(1) A corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

(2) Nothing in the succeeding provisions of this Division shall be taken as limiting by implication the generality of subsection (1).

Note: For rules relating to representations as to the country of origin of goods, see Division 1AA (sections 65AA to 65AN).

53 False or misleading representations

A corporation shall not, in trade or commerce, in connexion with the supply or possible supply of goods or services or in connexion with the promotion by any means of the supply or use of goods or services:

(a) falsely represent that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use;

(aa) falsely represent that services are of a particular standard, quality, value or grade;

(b) falsely represent that goods are new;

(bb) falsely represent that a particular person has agreed to acquire goods or services;

(c) represent that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have;

(d) represent that the corporation has a sponsorship, approval or affiliation it does not have;

(e) make a false or misleading representation with respect to the price of goods or services;

(ea) make a false or misleading representation concerning the availability of facilities for the repair of goods or of spare parts for goods;

(eb) make a false or misleading representation concerning the place of origin of goods;

(f) make a false or misleading representation concerning the need for any goods or services; or

(g) make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.

Note: For rules relating to representations as to the country of origin of goods, see Division 1AA (sections 65AA to 65AN).

53A False representations and other misleading or offensive conduct in relation to land

(1) A corporation shall not, in trade or commerce, in connexion with the sale or grant, or the possible sale or grant, of an interest in land or in connexion with the promotion by any means of the sale or grant of an interest in land:

(a) represent that the corporation has a sponsorship, approval or affiliation it does not have;

(b) make a false or misleading representation concerning the nature of the interest in the land, the price payable for the land, the location of the land, the characteristics of the land, the use to which the land is capable of being put or may lawfully be put or the existence or availability of facilities associated with the land; or

(c) offer gifts, prizes or other free items with the intention of not providing them or of not providing them as offered.

(2) A corporation shall not use physical force or undue harassment or coercion in connection with the sale or grant, or the possible sale or grant, of an interest in land or the payment for an interest in land.

(2A) Nothing in this section shall be taken as implying that other provisions of this Division do not apply in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.

(3) In this section, ***interest***, in relation to land, means:

(a) a legal or equitable estate or interest in the land;

(b) a right of occupancy of the land, or of a building or part of a building erected on the land, arising by virtue of the holding of shares, or by virtue of a contract to purchase shares, in an incorporated company that owns the land or building; or

(c) a right, power or privilege over, or in connexion with, the land.

53B Misleading conduct in relation to employment

A corporation shall not, in relation to employment that is to be, or may be, offered by the corporation or by another person, engage in conduct that is liable to mislead persons seeking the employment as to the availability, nature, terms or conditions of, or any other matter relating to, the employment.

53C Single price to be stated in certain circumstances

(1) A corporation must not, in trade or commerce, in connection with:

(a) the supply or possible supply of goods or services to a person (the ***relevant person***); or

(b) the promotion by any means of the supply of goods or services to a person (the ***relevant person***) or of the use of goods or services by a person (the ***relevant person***);

make a representation with respect to an amount that, if paid, would constitute a part of the consideration for the supply of the goods or services unless the corporation also:

(c) specifies, in a prominent way and as a single figure, the single price for the goods or services; and

(d) if, in relation to goods:

(i) the corporation does not include in the single price a charge that is payable in relation to sending the goods from the supplier to the relevant person; and

(ii) the corporation knows, at the time of the representation, the minimum amount of a charge in relation to sending the goods from the supplier to the relevant person that must be paid by the relevant person;

specifies that minimum amount.

(2) A corporation is not required to include, in the single price for goods, a charge that is payable in relation to sending the goods from the supplier to the relevant person.

(3) Subsection (1) does not apply if the representation is made exclusively to a body corporate.

(4) For the purposes of paragraph (1)(c), the corporation is taken not to have specified a single price for the goods or services in a prominent way unless the single price is at least as prominent as the most prominent of the parts of the consideration for the supply.

(5) Subsection (4) does not apply in relation to services to be supplied under a contract if the following apply:

(a) the contract provides for the supply of the services for the term of the contract;

(b) the contract provides for periodic payments for the services to be made during the term of the contract;

(c) if the contract also provides for the supply of goods—the goods are directly related to the supply of the services.

(6) A reference in this section to goods or services is a reference to goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption.

(7) In this section:

single price means the minimum quantifiable consideration for the supply concerned at the time of the representation concerned, including each of the following amounts (if any) that is quantifiable at that time:

(a) a charge of any description payable by the relevant person to the corporation making the representation (other than a charge that is payable at the option of the relevant person);

(b) the amount which reflects any tax, duty, fee, levy or charge imposed, on the corporation making the representation, in relation to the supply concerned;

(c) any amount paid or payable, by the corporation making the representation, in relation to the supply concerned with respect to any tax, duty, fee, levy or charge if:

(i) the amount is paid or payable under an agreement or arrangement made under a law of the Commonwealth, a State or a Territory; and

(ii) the tax, duty, fee, levy or charge would have otherwise been payable by the relevant person in relation to the supply concerned.

Example 1: A corporation advertises lounge suites for sale. Persons have the option of paying for fabric protection. The fabric protection charge does not form part of the single price because of the exception in paragraph (a).

Example 2: The GST may be an example of an amount covered by paragraph (b).

Example 3: The passenger movement charge imposed under the *Passenger Movement Charge Act 1978* may be an example of an amount covered by paragraph (c). Under an arrangement under section 10 of the *Passenger Movement Charge Collection Act 1978* airlines may pay an amount equal to the charge that would otherwise be payable by passengers departing Australia.

54 Offering gifts and prizes

A corporation shall not, in trade or commerce, in connexion with the supply or possible supply of goods or services or in connexion with the promotion by any means of the supply or use of goods or services, offer gifts, prizes or other free items with the intention of not providing them, or of not providing them as offered.

55 Misleading conduct to which Industrial Property Convention applies

A person shall not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of any goods.

55A Certain misleading conduct in relation to services

A corporation shall not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose or the quantity of any services.

56 Bait advertising

(1) A corporation shall not, in trade or commerce, advertise for supply at a specified price, goods or services if there are reasonable grounds, of which the corporation is aware or ought reasonably to be aware, for believing that the corporation will not be able to offer for supply those goods or services at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the corporation carries on business and the nature of the advertisement.

(2) A corporation that has, in trade or commerce, advertised goods or services for supply at a specified price shall offer such goods or services for supply at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the corporation carries on business and the nature of the advertisement.

57 Referral selling

A corporation shall not, in trade or commerce, induce a consumer to acquire goods or services by representing that the consumer will, after the contract for the acquisition of the goods or services is made, receive a rebate, commission or other benefit in return for giving the corporation the names of prospective customers or otherwise assisting the

corporation to supply goods or services to other consumers, if receipt of the rebate, commission or other benefit is contingent on an event occurring after that contract is made.

58 Accepting payment without intending or being able to supply as ordered

A corporation shall not, in trade or commerce, accept payment or other consideration for goods or services where, at the time of the acceptance:

(a) the corporation intends:

(i) not to supply the goods or services; or

(ii) to supply goods or services materially different from the goods or services in respect of which the payment or other consideration is accepted; or

(b) there are reasonable grounds, of which the corporation is aware or ought reasonably to be aware, for believing that the corporation will not be able to supply the goods or services within the period specified by the corporation or, if no period is specified, within a reasonable time.

59 Misleading representations about certain business activities

(1) A corporation shall not, in trade or commerce, make a representation that is false or misleading in a material particular concerning the profitability or risk or any other material aspect of any business activity that the corporation has represented as one that can be, or can be to a considerable extent, carried on at or from a person's place of residence.

(2) Where a corporation, in trade or commerce, invites, whether by advertisement or otherwise, persons to engage or participate, or to offer or apply to engage or participate, in a business activity requiring the performance by the persons concerned of work, or the investment of moneys by the persons concerned and the performance by them of work associated with the investment, the corporation shall not make, with respect to the profitability or risk or any other material aspect of the business activity, a representation that is false or misleading in a material particular.

60 Harassment and coercion

A corporation shall not use physical force or undue harassment or coercion in connection with the supply or possible supply of goods or services to a consumer or the payment for goods or services by a consumer.

63A Unsolicited credit and debit cards

(1) A corporation shall not send a prescribed card to a person except:

(a) in pursuance of a request in writing by the person who will be under a liability to the person who issued the card in respect of the use of the card; or

(b) in renewal or replacement of, or in substitution for:

(i) a prescribed card of the same kind previously sent to the first-mentioned person in pursuance of a request in writing by the person who was under a liability to the person who issued the card previously so sent in respect of the use of that card; or

(ii) a prescribed card of the same kind previously sent to the first-mentioned person and used for a purpose for which it was intended to be used.

(2) Subsection (1) applies only in relation to the sending of a prescribed card by or on behalf of the person who issued the card.

(2A) A corporation shall not take any action that enables a person who has a credit card or a debit card to use the card as a debit card or a credit card, as the case may be, except in accordance with a request in writing by the person.

(3) In this section:

article includes a token, card or document.

credit card means an article that is of a kind described in one or more of the following paragraphs:

(a) an article of a kind commonly known as a credit card;

(b) a similar article intended for use in obtaining cash, goods or services on credit;

(c) an article of a kind that persons carrying on business commonly issue to their customers or prospective customers for use in obtaining goods or services from those persons on credit;

or an article that may be used as an article referred to in paragraph (a), (b) or (c).

debit card means:

(a) an article intended for use by a person in obtaining access to an account that is held by the person for the purpose of withdrawing or depositing cash or obtaining goods or services; or

(b) an article that may be used as an article referred to in paragraph (a).

prescribed card means a credit card, a debit card or an article that may be used as a credit card and a debit card.

64 Assertion of right to payment for unsolicited goods or services or for making entry in directory

(1) A corporation shall not, in trade or commerce, assert a right to payment from a person for unsolicited goods unless the corporation has reasonable cause to believe that there is a right to payment.

(2A) A corporation shall not, in trade or commerce, assert a right to payment from a person for unsolicited services unless the corporation has reasonable cause to believe that there is a right to payment.

(3) A corporation shall not assert a right to payment from any person of a charge for the making in a directory of an entry relating to the person or to his or her profession, business, trade or occupation unless the corporation knows or has reasonable cause to believe that the person has authorized the making of the entry.

(4) A person is not liable to make any payment to a corporation, and is entitled to recover by action in a court of competent jurisdiction against a corporation any payment made by the person to the corporation, in full or part satisfaction of a charge for the making of an entry in a directory unless the person has authorized the making of the entry.

(5) For the purposes of this section, a corporation shall be taken to assert a right to a payment from a person for unsolicited goods or services, or of a charge for the making of an entry in a directory, if the corporation:

(a) makes a demand for the payment or asserts a present or prospective right to the payment;

(b) threatens to bring any legal proceedings with a view to obtaining the payment;

(c) places or causes to be placed the name of the person on a list of defaulters or debtors, or threatens to do so, with a view to obtaining the payment;

(d) invokes or causes to be invoked any other collection procedure, or threatens to do so, with a view to obtaining the payment; or

(e) sends any invoice or other document stating the amount of the payment or setting out the price of the goods or services or the charge for the making of the entry and not stating as prominently (or more prominently) that no claim is made to the payment, or to payment of the price or charge, as the case may be.

(6) A person shall not be taken for the purposes of this section to have authorized the making of an entry in a directory unless:

(a) a document authorizing the making of the entry has been signed by the person or by another person authorized by him or her;

(b) a copy of the document has been given to the person before the right to payment of a charge for the making of the entry is asserted; and

(c) the document specifies:

(i) the name of the directory;

(ii) the name and address of the person publishing the directory;

(iii) particulars of the entry; and

(iv) the amount of the charge for the making of the entry or the basis on which the charge is, or is to be, calculated.

(7) For the purposes of this section, an invoice or other document purporting to have been sent by or on behalf of a corporation shall be deemed to have been sent by that corporation unless the contrary is established.

(9) In a proceeding against a corporation in respect of a contravention of this section:

(a) in the case of a contravention constituted by asserting a right to payment from a person for unsolicited goods or unsolicited services—the burden lies on the corporation of proving that the corporation had reasonable cause to believe that there was a right to payment; or

(b) in the case of a contravention constituted by asserting a right to payment from a person of a charge for the making of an entry in a directory—the burden lies on the corporation of proving that the corporation knew or had reasonable cause to believe that the person had authorised the making of the entry.

(10) In this section:

directory includes any publication of a similar nature to a directory but does not include a newspaper published in good faith as a newspaper at regular intervals or a publication published, or to be published, by or under the authority of the Australian Telecommunications Commission.

making, in relation to an entry in a directory, means including, or arranging for the inclusion of, the entry.

65 Liability of recipient of unsolicited goods

(1) A person to whom unsolicited goods are supplied by a corporation, in trade or commerce, is not liable to make any payment for the goods and is not liable for the loss of or damage to the goods other than loss or damage resulting from the doing by him or her of a wilful and unlawful act in relation to the goods during the period specified in subsection (4).

(2) Subject to subsection (3), where, on or after the commencing date, a corporation sends, in trade or commerce, unsolicited goods to a person:

(a) neither the corporation nor any person claiming under the corporation is entitled after the expiration of the period specified in subsection (4) to take action for the recovery of the goods from the person to whom the goods were sent; and

(b) upon the expiration of that period the goods become, by force of this section, the property of the person to whom the goods were sent freed and discharged from all liens and charges of any description.

(3) Subsection (2) does not apply to or in relation to unsolicited goods sent to a person if:

(a) the person has at any time during the period specified in subsection (4) unreasonably refused to permit the sender or the owner of the goods to take possession of the goods;

(b) the sender or the owner of the goods has within that period taken possession of the goods; or

(c) the goods were received by the person in circumstances in which the person knew, or might reasonably be expected to have known, that the goods were not intended for him or her.

(4) The period referred to in the foregoing subsections is:

(a) if the person who receives the unsolicited goods gives notice with respect to the goods to the sender in accordance with subsection (5):

(i) the period of 1 month next following the day on which the notice is given; or

(ii) the period of 3 months next following the day on which the person received the goods;

whichever first expires; and

(b) in any other case—the period of 3 months next following the day on which the person received the goods.

(5) A notice under subsection (4) shall be in writing and shall:

(a) state the name and address of the person who received the goods;

(b) state the address at which possession may be taken of the goods if it is an address other than that of the person; and

(c) contain a statement to the effect that the goods are unsolicited goods.

65A Application of provisions of Division to prescribed information providers

(1) Nothing in section 52, 53, 53A, 55, 55A or 59 applies to a prescribed publication of matter by a prescribed information provider, other than:

(a) a publication of matter in connection with:

(i) the supply or possible supply of goods or services;

(ii) the sale or grant, or possible sale or grant, of interests in land;

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

(iv) the promotion by any means of the sale or grant of interests in land;

where:

(v) the goods or services were relevant goods or services, or the interests in land were relevant interests in land, as the case may be, in relation to the prescribed information provider; or

(vi) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with:

(A) a person who supplies goods or services of that kind, or who sells or grants interests in land, being interests of that kind; or

(B) a body corporate that is related to a body corporate that supplies goods or services of that kind, or that sells or grants interests in land, being interests of that kind; or

(b) a publication of an advertisement.

(2) For the purposes of this section, a publication by a prescribed information provider is a prescribed publication if:

(a) in any case—the publication was made by the prescribed information provider in the course of carrying on a business of providing information; or

(b) in the case of a person who is a prescribed information provider by virtue of paragraph (a), (b) or (c) of the definition of ***prescribed information provider*** in subsection (3) (whether or not the person is also a prescribed information provider by virtue of another operation of that definition)—the publication was by way of a radio or television broadcast by the prescribed information provider.

(3) In this section:

prescribed information provider means a person who carries on a business of providing information and, without limiting the generality of the foregoing, includes:

(a) the holder of a licence granted under the *Broadcasting Services Act 1992*; and

(aa) a person who is the provider of a broadcasting service under a class licence under that Act; and

(ab) the holder of a licence continued in force by subsection 5(1) of the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*; and

(b) the Australian Broadcasting Corporation; and

(c) the Special Broadcasting Service Corporation.

relevant goods or services, in relation to a prescribed information provider, means goods or services of a kind supplied by the prescribed information provider or, where the prescribed information provider is a body corporate, by a body corporate that is related to the prescribed information provider.

relevant interests in land, in relation to a prescribed information provider, means interests in land, being interests of a kind sold or granted by the prescribed information provider or, where the prescribed information provider is a body corporate, by a body corporate that is related to the prescribed information provider.

Division 1AAA—Pyramid selling

65AAA Overview

This Division sets out the meanings of a ***pyramid selling scheme*** and other related concepts. A corporation is prohibited from engaging in certain conduct in relation to a pyramid selling scheme (see sections 65AAC and 75AZO).

65AAB Definitions

In this Division:

new participant, in a pyramid selling scheme, includes a person who has applied, or been invited, to participate in the scheme.

participant, in a pyramid selling scheme, means a person who participates in the scheme.

participate, in a pyramid selling scheme, means:

(a) establish or promote the scheme (whether alone or together with another person); or

(b) take part in the scheme in any capacity (whether or not as an employee or agent of a person who establishes or promotes the scheme, or otherwise takes part in the scheme).

participation payment has the meaning given by paragraph (a) of the definition of ***pyramid selling scheme*** in subsection 65AAD(1).

payment, to a person or received by a person, means:

(a) the provision of a financial or non-financial benefit to or for the benefit of the person; or

(b) the provision of a financial or non-financial benefit partly to or for the benefit of the person, and partly to or for the benefit of someone else.

pyramid selling scheme has the meaning given by section 65AAD.

recruitment payment has the meaning given by paragraph (b) of the definition of ***pyramid selling scheme*** in subsection 65AAD(1).

65AAC Pyramid selling schemes—participation

(1) A corporation must not participate in a pyramid selling scheme.

(2) A corporation must not induce, or attempt to induce, a person to participate in a pyramid selling scheme.

65AAD What is a pyramid selling scheme?

(1) In this Act:

pyramid selling scheme means a scheme with both the following characteristics:

(a) to take part in the scheme, some or all new participants must make a payment (a ***participation payment***) to another participant or participants in the scheme;

(b) the participation payments are entirely or substantially induced by the prospect held out to new participants that they will be entitled to a payment (a ***recruitment payment***) in relation to the introduction to the scheme of further new participants.

(2) A scheme may be a pyramid selling scheme:

(a) no matter who holds out to new participants the prospect of entitlement to recruitment payments; and

(b) no matter who is to make recruitment payments to new participants; and

(c) no matter who is to make introductions to the scheme of further new participants.

(3) A scheme may be a pyramid selling scheme even if it has any or all of the following characteristics:

(a) the participation payments may (or must) be made after the new participants begin to take part in the scheme;

(b) making a participation payment is not the only requirement for taking part in the scheme;

(c) the holding out of the prospect of entitlement to recruitment payments does not give any new participant a legally enforceable right;

(d) arrangements for the scheme are not recorded in writing (whether entirely or partly);

(e) the scheme involves the marketing of goods or services (or both).

65AAE Marketing schemes—are they pyramid selling schemes?

(1) To decide whether a scheme that involves the marketing of goods or services (or both) is a pyramid selling scheme, a court may have regard to the following matters in working out whether participation payments under the scheme are entirely or substantially induced by the prospect held out to new participants of entitlement to recruitment payments:

(a) the extent to which the participation payments bear a reasonable relationship to the value of the goods or services that participants are entitled to be supplied under the scheme (as assessed, if appropriate, by reference to the price of comparable goods or services available elsewhere);

(b) the emphasis given in the promotion of the scheme to the entitlement of participants to the supply of goods and services by comparison with the emphasis given to their entitlement to recruitment payments.

(2) Subsection (1) does not limit the matters to which the court may have regard in working out whether participation payments are entirely or substantially induced by the prospect held out to new participants of entitlement to recruitment payments.

Division 1AA—Country of origin representations

Subdivision A—General

65AA Overview

This Division provides that certain country of origin representations made about goods do not contravene section 52 (which deals with misleading or deceptive conduct), paragraph 53(a) or (eb) or paragraph 75AZC(1)(a) or (i) (which all deal with false or misleading representations).

65AB General test for country of origin representations

If:

(a) a corporation makes a representation as to the country of origin of goods; and

(b) the goods have been substantially transformed in that country; and

(c) 50% or more of the cost of producing or manufacturing the goods (as the case may be) is attributable to production or manufacturing processes that occurred in that country; and

(d) the representation is not a representation to which section 65AC (product of/produce of representations) or section 65AD (prescribed logo representations) applies;

the corporation does not contravene section 52, paragraph 53(a) or (eb) or paragraph 75AZC(1)(a) or (i) by reason only of making the representation.

65AC Test for representations that goods are product of/produce of a country

If:

(a) a corporation makes a representation that goods are the produce of a particular country (whether the representation uses the words “product of”, “produce of” or any other grammatical variation of the word “produce”); and

(b) the country was the country of origin of each significant ingredient or significant component of the goods; and

(c) all, or virtually all, processes involved in the production or manufacture happened in that country;

the corporation does not contravene section 52, paragraph 53(a) or (eb) or paragraph 75AZC(1)(a) or (i) by reason only of making the representation.

65AD Test for representations made by means of prescribed logo

(1) If:

(a) a corporation makes a representation as to the country of origin of goods by means of a logo specified in regulations made under subsection (2); and

(b) the goods have been substantially transformed in the country represented by the logo as the country of origin of the goods; and

(c) the prescribed percentage of the cost of producing or manufacturing the goods (as the case may be) is attributable to production or manufacturing processes that occurred in that country;

the corporation does not contravene section 52, paragraph 53(a) or (eb) or paragraph 75AZC(1)(a) or (i) by reason only of making the representation.

(2) The regulations may, in relation to a specified logo, prescribe a percentage in the range of 51% to 100% as the percentage applicable to goods for the purposes of paragraph (1)(c).

65AE Substantial transformation of goods

(1) For the purposes of this Division, goods are ***substantially transformed*** in a country if they undergo a fundamental change in that country in form, appearance or nature such that the goods existing after the change are new and different goods from those existing before the change.

(2) Without limiting subsection (1), the regulations may prescribe changes (whether in relation to particular classes of goods or otherwise) that are not fundamental changes for the purposes of subsection (1), and may include examples (in relation to particular classes of goods or otherwise) of changes which are fundamental changes for the purposes of subsection (1).

65AF Method of working out costs of production or manufacture

For the purposes of this Division, the cost of producing or manufacturing goods is to be worked out under Subdivision B.

Subdivision B—Cost of production or manufacture of goods

65AG Definitions

In this Subdivision:

inner container includes any container into which goods are packed, other than a shipping or airline container, pallet or other similar article.

materials, in relation to goods, means:

(a) if the goods are unmanufactured raw products—those products; and

(b) if the goods are manufactured goods—all matter or substances used or consumed in the manufacture of the goods (other than matter or substances that are treated as overheads); and

(c) in either case—the inner containers in which the goods are packed.

65AH Cost of producing or manufacturing goods

The cost of producing or manufacturing goods means the sum of:

(a) the expenditure on materials in respect of the goods, worked out under section 65AJ; and

(b) the expenditure on labour in respect of the goods, worked out under section 65AK; and

(c) the expenditure on overheads in respect of the goods, worked out under section 65AL.

65AJ Expenditure on materials

Calculation of expenditure on materials

(1) Expenditure on materials in respect of goods means the cost of materials:

(a) incurred by the producer or manufacturer of the goods (as the case may be); and

(b) that are used in the production or manufacture of the goods; and

(c) that has not been prescribed under paragraph (2)(a).

Regulations may prescribe materials that are not allowable

(2) The regulations may prescribe, for the purposes of subsection (1):
  (a) the cost of a particular material, or a part of such a cost, that is not allowable in respect of goods, or classes of goods; and
  (b) the manner of working out the cost of a material, or part of the cost.

65AK Expenditure on labour

Calculation of expenditure on labour

(1) Expenditure on labour in respect of goods means the sum of each labour cost:
  (a) that is incurred by the producer or manufacturer of the goods (as the case may be); and
  (b) that relates to the production or manufacture of the goods; and
  (c) that can reasonably be allocated to the production or manufacture of the goods; and
  (d) that has not been prescribed under paragraph (2)(a).

Regulations may prescribe labour costs that are not allowable

(2) The regulations may prescribe, for the purposes of subsection (1):
  (a) a particular labour cost, or a part of a labour cost, that is not allowable in respect of goods, or classes of goods; and
  (b) the manner of working out a labour cost, or part of the cost.

65AL Expenditure on overheads

Calculation of expenditure on overheads

(1) Expenditure on overheads in respect of goods means the sum of each overhead cost:
  (a) that is incurred by the producer or manufacturer of the goods (as the case may be); and
  (b) that relates to the production or manufacture of the goods; and
  (c) that can reasonably be allocated to the production or manufacture of the goods; and
  (d) that has not been prescribed under paragraph (2)(a).

Regulations may prescribe overhead costs that are not allowable

(2) The regulations may prescribe, for the purposes of subsection (1):
  (a) a particular overhead cost, or a part of an overhead cost, that is not allowable in respect of goods, or classes of goods; and
  (b) the manner of working out an overhead cost, or part of the cost.

65AM Regulations may prescribe rules for determining the local percentage costs of production or manufacture

(1) Subject to subsection (2), the regulations may prescribe rules for determining the percentage of the total cost of production or manufacture of goods attributable to production or manufacturing processes that occurred in a particular country.

Note: Section 65AH deals with the cost of production or manufacture of goods.

(2) Rules prescribed under subsection (1) must not discriminate (whether favourably or unfavourably) between countries or classes of countries.

Subdivision C—Evidentiary matters

65AN Proceedings relating to false, misleading or deceptive conduct or representations

(1) If:

(a) proceedings are brought against a person in respect of section 52, paragraph 53(a) or (eb) or paragraph 75AZC(1)(a) or (i); and

(b) the person seeks to rely on a provision of this Division, or of a regulation made under this Division, in the proceedings;

the person bears an evidential burden in relation to the matters set out in the provision on which the person seeks to rely.

(2) In this section:

evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

Division 1A—Product safety and product information

65B Warning notice to public

(1) The Minister may publish a notice in writing in the *Gazette* containing one or both of the following:

(a) a statement that goods of a kind specified in the notice are under investigation to determine whether the goods will or may cause injury to any person;

(b) a warning of possible risks involved in the use of goods of a kind specified in the notice.

(2) Where:

(a) an investigation referred to in subsection (1) has been completed; and

(b) neither a notice under section 65J inviting a supplier to notify the Commission whether the supplier wishes the Commission to hold a conference nor a notice under section 65L has been published in relation to the goods since the commencement of the investigation;

the Minister shall, as soon as practicable after the investigation has been completed, by notice in writing published in the *Gazette*, announce the results of the investigation, and may announce in the notice whether, and if so, what action is proposed to be taken in relation to the goods under this Division.

65C Product safety standards and unsafe goods

(1) A corporation shall not, in trade or commerce, supply goods that are intended to be used, or are of a kind likely to be used, by a consumer if the goods are of a kind:

(a) in respect of which there is a prescribed consumer product safety standard and which do not comply with that standard;

(b) in respect of which there is in force a notice under this section declaring the goods to be unsafe goods; or

(c) in respect of which there is in force a notice under this section imposing a permanent ban on the goods.

(2) The regulations may, in respect of goods of a particular kind, prescribe a consumer product safety standard consisting of such requirements as to:

(a) performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods;

(b) testing of the goods during, or after the completion of, manufacture or processing; and

(c) the form and content of markings, warnings or instructions to accompany the goods;

as are reasonably necessary to prevent or reduce risk of injury to any person.

(3) A corporation shall not export goods the supply in Australia of which is prohibited by subsection (1) unless the Minister has, by notice in writing given to the corporation, approved the export of those goods.

(4) Where the Minister approves the export of goods under subsection (3), the Minister shall cause a statement setting out particulars of the approval to be laid before each House of the Parliament within 7 sitting days of that House after the approval is given.

(5) Subject to section 65J, where it appears to the Minister that goods of a particular kind will or may cause injury to any person, the Minister may, by notice in writing published in the *Gazette*, declare the goods to be unsafe goods.

(6) A notice under subsection (5) remains in force until the end of 18 months after the date of publication of the notice in the *Gazette* unless it is revoked before the end of that period.

(7) Subject to section 65J, where:

(a) a period of 18 months has elapsed after the date of publication of a notice in the *Gazette* declaring goods to be unsafe goods; and

(b) there is not a prescribed consumer product safety standard in respect of the goods;

the Minister may, by notice in writing published in the *Gazette*, impose a permanent ban on the goods.

(8) Where:

(a) the supplying of goods by a corporation constitutes a contravention of this section by reason that the goods do not comply with a prescribed consumer product safety standard;

(b) a person suffers loss or damage by reason of a defect in, or a dangerous characteristic of, the goods or by reason of not having particular information in relation to the goods; and

(c) the person would not have suffered the loss or damage if the goods had complied with that standard;

the person shall be deemed for the purposes of this Act to have suffered the loss or damage by the supplying of the goods.

(9) Where:

(a) the supplying of goods by a corporation constitutes a contravention of this section by reason that there is in force a notice under this section declaring the goods to be unsafe goods or imposing a permanent ban on the goods; and

(b) a person suffers loss or damage by reason of a defect in, or a dangerous characteristic of, the goods or by reason of not having particular information as to a characteristic of the goods;

the person shall be deemed for the purposes of this Act to have suffered the loss or damage by the supplying of the goods.

65D Product information standards

(1) A corporation shall not, in trade or commerce, supply goods that are intended to be used, or are of a kind likely to be used, by a consumer, being goods of a kind in respect of which a consumer product information standard has been prescribed, unless the corporation has complied with that standard in relation to those goods.

(2) The regulations may, in respect of goods of a particular kind, prescribe a consumer product information standard consisting of such requirements as to:

(a) the disclosure of information relating to the performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods; and

(b) the form and manner in which that information is to be disclosed on or with the goods;

as are reasonably necessary to give persons using the goods information as to the quantity, quality, nature or value of the goods.

(3) Subsection (1) does not apply to goods that are intended to be used outside Australia.

(4) If there is applied to goods:

(a) a statement that the goods are for export only; or

(b) a statement indicating by the use of words authorised by the regulations to be used for the purposes of this subsection that the goods are intended to be used outside Australia;

it shall be presumed for the purposes of this section, unless the contrary is established, that the goods are intended to be so used.

(5) For the purposes of subsection (4), a statement shall be deemed to be applied to goods if:

(a) the statement is woven in, impressed on, worked into or annexed or affixed to the goods; or

(b) the statement is applied to a covering, label, reel or thing in or with which the goods are supplied.

(6) A reference in subsection (5) to a covering includes a reference to a stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper and a reference in that subsection to a label includes a reference to a band or ticket.

(7) Where:

(a) the supplying of goods by a corporation constitutes a contravention of this section by reason that the corporation has not complied with a prescribed consumer product information standard in relation to the goods;

(b) a person suffers loss or damage by reason of not having particular information in relation to the goods; and

(c) the person would not have suffered the loss or damage if the corporation had complied with that standard in relation to the goods;

the person shall be deemed, for the purposes of this Act, to have suffered the loss or damage by the supplying of the goods.

65E Power of Minister to declare product safety or information standards

(1) The Minister may, by notice in writing published in the *Gazette*, declare that, in respect of goods of a kind specified in the notice, a particular standard, or a particular part of a standard, prepared or approved by Standards Australia International Limited or by a prescribed association or body, or such a standard or part of a standard with additions or variations specified in the notice, is a consumer product safety standard for the purposes of section 65C or a consumer product information standard for the purposes of section 65D.

(2) Where a notice is so published, the standard, or the part of the standard, referred to in the notice, or the standard or part of a standard so referred to with additions or variations specified in the notice, is taken to be (as the case requires):

(a) for the purposes of section 65C—a prescribed consumer product safety standard; or

(b) for the purposes of section 65D—a prescribed consumer product information standard; or

(c) for the purposes of section 75AZS—a consumer product safety standard prescribed by regulations made for the purposes of section 65C; or

(d) for the purposes of section 75AZT—a consumer product information standard prescribed by regulations made for the purpose of subsection 65D(2).

(3) Subsection (1) does not authorise the publication of a notice in relation to goods of a particular kind if the standard or the part of the standard referred to in the notice, or the standard or the part of the standard so referred to with additions and variations specified in the notice, is inconsistent with a standard prescribed in relation to goods of that kind by regulations made for the purposes of section 65C or 65D.

65F Compulsory product recall

(1) Subject to section 65J, where:

(a) a corporation (in this section referred to as the ***supplier***), in trade or commerce, supplies on or after 1 July 1986 goods that are intended to be used, or are of a kind likely to be used, by a consumer;

(b) one of the following subparagraphs applies:

(i) it appears to the Minister that the goods are goods of a kind which will or may cause injury to any person;

(ii) the goods are goods of a kind in respect of which there is a prescribed consumer product safety standard and the goods do not comply with that standard;

(iii) the goods are goods of a kind in relation to which there is in force a notice under subsection 65C(5) or (7); and

(c) it appears to the Minister that the supplier has not taken satisfactory action to prevent the goods causing injury to any person;

the Minister may, by notice in writing published in the *Gazette*, require the supplier to do one or more of the following:

(d) take action within the period specified in the notice to recall the goods;

(e) disclose to the public, or to a class of persons specified in the notice, in the manner and within the period specified in the notice, one or more of the following:

(i) the nature of a defect in, or a dangerous characteristic of, the goods identified in the notice;

(ii) the circumstances, being circumstances identified in the notice, in which the use of the goods is dangerous; or

(iii) procedures for disposing of the goods specified in the notice;

(f) inform the public, or a class of persons specified in the notice, in the manner and within the period specified in the notice, that the supplier undertakes to do whichever of the following the supplier thinks is appropriate:

(i) except where the notice identifies a dangerous characteristic of the goods—repair the goods;

(ii) replace the goods;

(iii) refund to a person to whom the goods were supplied (whether by the supplier or by another person) the price of the goods;

within the period specified in the notice.

(2) Notwithstanding subparagraph (1)(f)(iii), where the Minister, in a notice under subsection (1), requires the supplier to take action under paragraph (1)(f), the Minister may specify in the notice that, where:

(a) the supplier chooses to refund the price of the goods; and

(b) a period of more than 12 months has elapsed since a person (whether or not the person to whom the refund is to be made) acquired the goods from the supplier;

the amount of a refund may be reduced by the supplier by an amount attributable to the use which a person has had of the goods, being an amount calculated in a manner specified in the notice.

(3) The Minister may, by notice in writing published in the *Gazette*, give directions as to the manner in which the supplier is to carry out a recall of goods required under subsection (1).

(4) Where the supplier, under subsection (1), undertakes to repair goods, the supplier shall cause the goods to be repaired so that:

(a) any defect in the goods identified in the notice under subsection (1) is remedied; and

(b) if there is a prescribed consumer product safety standard in respect of the goods—the goods comply with that standard.

(5) Where the supplier, under subsection (1), undertakes to replace goods, the supplier shall replace the goods with like goods which:

(a) if a defect in, or a dangerous characteristic of, the first-mentioned goods was identified in the notice under subsection (1)—do not contain that defect or have that characteristic; and

(b) if there is a prescribed consumer product safety standard in respect of goods of that kind—comply with that standard.

(6) Where the supplier, under subsection (1), undertakes to repair goods or replace goods, the cost of the repair or replacement, including any necessary transportation costs, shall be borne by the supplier.

(7) Where goods are recalled, whether voluntarily or in accordance with a requirement made by the Minister under paragraph (1)(d), a person who has supplied or supplies any of the recalled goods to another person outside Australia shall, as soon as practicable after the supply of those goods, give a notice in writing to that other person:

(a) stating that the goods are subject to recall;

(b) if the goods contain a defect or have a dangerous characteristic—setting out the nature of that defect or characteristic; and

(c) if the goods do not comply with a prescribed consumer product safety standard in respect of the goods—setting out the nature of the non-compliance.

(8) Where a person is required under subsection (7) to give a notice in writing to another person, the first-mentioned person shall, within 10 days after giving that notice, provide the Minister with a copy of that notice.

(9) A person who contravenes subsection (8) is guilty of an offence punishable on conviction by a fine not exceeding 30 penalty units.

Note: Penalty units are defined in section 4AA of the *Crimes Act 1914*. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount not greater than 5 times the maximum fine that the court could impose on an individual convicted of the same offence.

(11) For the purposes of this section, things that are goods at the time they are supplied are taken to be goods at all times after the supply, even if they become fixtures.

(10) Subsection (9) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For ***strict liability***, see section 6.1 of the *Criminal Code*.

65G Compliance with product recall order

Where a notice under subsection 65F(1) is in force in relation to a corporation, the corporation:

(a) shall comply with the requirements and directions in the notice; and

(b) shall not, in trade or commerce:

(i) where the notice identifies a defect in, or a dangerous characteristic of, the goods—supply goods of the kind to which the notice relates which contain that defect or have that characteristic; or

(ii) in any other case—supply goods of the kind to which the notice relates.

65H Loss or damage caused by contravention of product recall order

Where:

(a) a corporation contravenes section 65G by:

(i) supplying goods of a kind in relation to which a notice under subsection 65F(1) is in force; or

(ii) failing to comply with the requirements of such a notice; and

(b) a person suffers loss or damage by reason of a defect in, or a dangerous characteristic of, the goods or by reason of not having particular information as to a characteristic of the goods;

the person shall be deemed for the purposes of this Act to have suffered the loss or damage by the supplying of the goods, or by the failure of the corporation to comply with the notice, as the case may be.

65J Opportunity for conference to be afforded before certain powers exercised

(1) Subject to section 65L, where the Minister proposes to publish a notice under subsection 65C(5) or (7) or 65F(1) in relation to goods of a particular kind, the Minister shall prepare:

(a) a draft of the notice proposed to be published; and

(b) a summary of the reasons for the proposed publication of the notice;

and shall, by notice in writing published in the *Gazette*, invite any person (in this section referred to as a ***supplier***) who supplied or proposes to supply goods of that kind to notify the Commission, within the period (in this section referred to as the ***relevant period***) of 10 days commencing on the day specified in the last-mentioned notice, being not earlier than the day on which that notice is published in the *Gazette*, whether the supplier wishes the Commission to hold a conference in relation to the proposed publication of the first-mentioned notice.

(2) A notice published under subsection (1) shall set out a copy of the draft notice under subsection 65C(5) or (7) or 65F(1) and a copy of the summary of the reasons for the proposed publication of the notice.

(3) If no supplier notifies the Commission in writing within the relevant period or within such longer period as the Commission allows that the supplier wishes the Commission to hold a conference in relation to the proposed publication of the notice under subsection 65C(5) or (7) or 65(1), the Commission shall notify the Minister accordingly.

(4) If a supplier notifies the Commission in writing within the relevant period or within such longer period as the Commission allows that the supplier wishes the Commission to hold a conference in relation to the proposed publication of a notice under subsection 65C(5) or (7) or 65F(1), the Commission shall appoint a day (being not later than 14 days after the end of that period), time and place for the holding of the conference, and give notice of the day, time and place so appointed to the Minister and to each supplier who so notified the Commission.

(5) At a conference under this section:

(a) the Commission shall be represented by a member or members nominated by the Chairperson;

(b) each supplier who notified the Commission in accordance with subsection (4) is entitled to be present or to be represented;

(c) any other person whose presence at the conference is considered by the Commission to be appropriate is entitled to be present or to be represented;

(d) the Minister or a person or persons nominated in writing by the Minister is or are entitled to be present; and

(e) the procedure to be followed shall be as determined by the Commission.

(6) The Commission shall cause a record of proceedings at a conference under this section to be kept.

(7) The Commission shall, as far as is practicable, ensure that each person who, in accordance with subsection (5), is entitled to be present or who is representing such a person at a conference is given a reasonable opportunity at the conference to present his or her case and, in particular, to inspect any documents which the Commission proposes to consider for the purpose of making a recommendation after the conclusion of the conference, other than any document that contains particulars of a secret formula or process, and to make submissions in relation to those documents.

65K Recommendation after conclusion of conference

As soon as is practicable after the conclusion of a conference in relation to the proposed publication of a notice under subsection 65C(5) or (7) or 65F(1), the Commission shall:

(a) by notice in writing given to the Minister, recommend that:

(i) the Minister publish the first-mentioned notice in the same terms as the draft notice referred to in subsection 65J(1);

(ii) the Minister publish the first-mentioned notice with such modifications as are specified by the Commission; or

(iii) the Minister not publish the first-mentioned notice; and

(b) cause a copy of the notice in writing given to the Minister to be given to each supplier who was present or represented at the conference.

65L Exception in case of danger to public

(1) Where it appears to the Minister that goods of a particular kind create an imminent risk of death, serious illness or serious injury, the Minister may, by notice in writing published in the *Gazette*, certify that a notice in relation to the goods under subsection 65C(5) or 65F(1) should be published without delay.

(2) Where the Minister publishes a notice in the *Gazette* under subsection (1):

(a) in a case where the notice is published before the Minister takes any action under subsection 65J(1) in relation to goods of a particular kind—section 65J does not apply in relation to the action that the Minister may take under subsection 65C(5) or 65F(1) in relation to goods of that kind; or

(b) in any other case—any action taken by the Minister under subsection 65J(1) in relation to goods of a particular kind ceases to have effect and, if a conference had, under section 65J, been arranged or such a conference had commenced or been completed without the Commission making a recommendation under section 65K, the Minister may publish the notice under subsection 65C(5) or 65F(1) without regard to the action taken under subsection 65J(1).

65M Conference after goods banned

(1) Where:

(a) a notice has been published under subsection 65C(5) in relation to goods of a particular kind; and

(b) the Minister publishes a notice under section 65L in relation to goods of that kind;

the Minister shall, by notice in writing published in the *Gazette*, invite any person (in this section referred to as a ***supplier***) who supplied or proposes to supply goods of that kind to notify the Commission within the period (in this section referred to as the ***relevant period***) of 10 days commencing on the day specified in the last-mentioned notice, being

not earlier than the day on which that notice is published in the *Gazette*, to notify the Commission whether the supplier wishes the Commission to hold a conference in relation to the notice referred to in paragraph (a).

(2) If a supplier notifies the Commission in writing within the relevant period, or within such longer period as the Commission allows, that the supplier wishes the Commission to hold a conference in relation to the notice published under subsection 65C(5), the Commission shall appoint a day (being not later than 14 days after the end of that period), time and place for the holding of the conference and give notice of the day, time and place so appointed to the Minister and to each supplier who so notified the Commission.

(3) Subsections 65J(5), (6) and (7) apply in relation to a conference held under this section.

65N Recommendation after conclusion of conference

As soon as is practicable after the conclusion of a conference in relation to a notice that has been published under subsection 65C(5), the Commission shall:

(a) by notice in writing given to the Minister, recommend that the notice under subsection 65C(5):

(i) remain in force;

(ii) be varied; or

(iii) be revoked; and

(b) cause a copy of the notice in writing given to the Minister to be given to each supplier who was present or represented at the conference.

65P Minister to have regard to recommendation of Commission

Where the Commission, under section 65K or 65N, makes a recommendation to the Minister in relation to the proposed publication of a notice under subsection 65C(5) or (7) or 65F(1) or in relation to a notice that has been published under subsection 65C(5):

(a) the Minister shall have regard to the recommendation; and

(b) where the Minister decides to act otherwise than in accordance with the recommendation, the Minister shall, by notice in writing published in the *Gazette*, set out the reasons for the Minister's decision.

65Q Power to obtain information, documents and evidence

(1) Where the Minister or an officer authorised by the Minister for the purposes of this section (in this section referred to as an ***authorised officer***) has reason to believe that a corporation which, in trade or commerce, supplies goods of a particular kind which are intended to be used or are of a kind likely to be used by a consumer and which will or may cause injury to any person is capable of furnishing information, producing documents or giving evidence relating to goods of that kind, the Minister or the authorised officer may, by notice in writing served on the corporation, require the corporation:

(a) to furnish to the Minister, by writing signed by a competent officer of the corporation, in the manner, and within such reasonable time, as are specified in the notice, any such information;

(b) to produce to the Minister, or to the authorised officer, in accordance with such reasonable requirements as are specified in the notice, any such documents; or

(c) to cause a competent officer of the corporation to appear before the Minister or the authorised officer at such reasonable time and place as are specified in the notice to give any such evidence, either orally or in writing, and produce any such documents.

(2) Where an authorised officer has reason to believe that goods of a particular kind which are intended to be used or are of a kind likely to be used by a consumer will or may cause injury to a person, an authorised officer may, for the purposes of ascertaining whether goods of that kind will or may cause injury to any person, enter any premises in or from which the authorised officer has reason to believe a corporation supplies goods of that kind in trade or commerce and:

(a) inspect goods of that kind;

(b) take samples of goods of that kind;

(c) inspect any documents relating to goods of that kind and make copies of, or take extracts from, those documents; or

(d) inspect equipment used in the manufacturing, processing or storage of goods of that kind.

(3) The powers of an authorised officer under subsection (2) shall not be exercised except:

(a) pursuant to a warrant issued under subsection (5); or

(b) in circumstances where the exercise of those powers is required without delay in order to protect life or public safety.

(4) An authorised officer may apply to a person who is a judge of the Court or of the Supreme Court of a State or Territory for the issue under subsection (5) of a warrant to exercise the powers of an authorised officer under subsection (2) in relation to premises.

(5) Where an application under subsection (4) is made to a person who is a judge of such a court, the person may issue a warrant authorising an authorised officer named in the warrant, with such assistance as the officer thinks necessary and if necessary by force, to enter the premises specified in the warrant and to exercise the powers of an authorised officer under subsection (2) in relation to those premises.

(6) A person who is a judge of such a court shall not issue a warrant under subsection (5) unless:

(a) an affidavit has been furnished to the person setting out the grounds on which the issue of the warrant is being sought;

(b) the applicant or some other person has given to the first-mentioned person such further information (if any) as the first-mentioned person requires concerning the grounds on which the issue of the warrant is being sought; and

(c) the first-mentioned person is satisfied that there are reasonable grounds for issuing the warrant.

(7) A warrant issued under subsection (5) shall:

(a) specify the purpose for which the warrant is issued;

(b) state whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night;

(c) include a description of the kind of goods authorised to be inspected or sampled; and

(d) specify a day, not being later than 7 days after the day on which the warrant is issued, at the end of which the warrant ceases to have effect.

(7A) An authorised officer or a person assisting the authorised officer must, before any person enters the premises under a warrant issued under subsection (5):

(a) announce that he or she is authorised to enter the premises; and

(b) give any person at the premises an opportunity to allow entry to the premises.

(7B) An authorised officer or a person assisting the authorised officer is not required to comply with subsection (7A) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure:

(a) the safety of a person (including the authorised officer and the person assisting the authorised officer); or

(b) that the effective execution of the warrant is not frustrated.

(8) Where an authorised officer takes samples under paragraph (2)(b), the officer shall pay a reasonable price for the goods sampled.

(9) A person who refuses or fails to comply with a notice under this section is guilty of an offence punishable on conviction by a fine not exceeding 40 penalty points.

(9A) Subsection (9) does not apply if the person complies with the notice to the extent to which the person is capable of complying with it.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9A) (see subsection 13.3(3) of the *Criminal Code*).

(9B) Subsection (9) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(9C) If:

(a) a person, in purported compliance with a notice under this section, furnishes information or gives evidence; and

(b) the person does so knowing that the information or evidence is false or misleading in a material particular;

the person is guilty of an offence punishable on conviction by imprisonment for not longer than 12 months.

(10) A person who refuses or fails to provide an authorised officer acting in accordance with subsection (2) with all reasonable facilities and assistance for the effective exercise of the authorised officer's powers under that subsection is guilty of an offence.

Penalty: Imprisonment for 2 years.

Note: Penalty units are defined in section 4AA of the *Crimes Act 1914*. Under subsection 4D(1) of that Act, these penalties are only maximum penalties for the offences. Subsection 4B(2) of that Act allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of one of the offences, subsection 4B(3) of that Act allows a court to impose a fine of an amount not greater than 5 times the maximum fine that the court could impose on an individual convicted of the same offence.

(11) Any information furnished or evidence given by a person under this section, any document produced by a person under this section, and any information, evidence or document obtained under this section, is not admissible in evidence against the person:

(a) in any proceedings instituted by the person; or

(b) in any other proceedings, other than proceedings against the person for a contravention of a provision of this section.

65R Notification of voluntary recall

(1) Where a corporation voluntarily takes action to recall goods because the goods will or may cause injury to any person, the corporation shall, within 2 days after taking that action, give a notice in writing to the Minister:

(a) stating that the goods are subject to recall; and

(b) setting out the nature of the defect in, or dangerous characteristic of, the goods.

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

Note: Penalty units are defined in section 4AA of the *Crimes Act 1914*. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount not greater than 5 times the maximum fine that the court could impose on an individual convicted of the same offence.

(4) For the purposes of this section, ***goods*** includes things that were goods at the time they were supplied but became fixtures after the supply.

(3) Subsection (2) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For ***strict liability***, see section 6.1 of the *Criminal Code*.

65S Copies of certain notices to be given to suppliers or published in certain newspapers

(1) Where the Minister publishes a notice in writing in the *Gazette* under subsection 65B(1), 65J(1), 65L(1) or 65M(1), the Minister shall, within 2 days after the publication of that notice in the *Gazette*, or, if it is not practicable to do so within that period, as soon as practicable after the end of that period, either:

(a) cause a copy of the notice to be given to each person who, to the knowledge of the Minister, supplies goods of the kind to which the notice relates; or

(b) cause a copy of the notice to be published in a newspaper circulating in each part of Australia where goods of the kind to which the notice relates are, to the knowledge of the Minister, supplied.

(2) Any failure to comply with subsection (1) in relation to a notice does not invalidate the notice.

65T Certain action not to affect insurance contracts

The liability of an insurer under a contract of insurance with a corporation, being a contract relating to the recall of goods supplied or proposed to be supplied by the corporation or to the liability of the corporation with respect to possible defects in goods supplied or proposed to be supplied by the corporation, shall not be affected by reason only that the corporation gives to the Minister, to the Commission, to a person appointed or engaged under the *Public Service Act 1999*, or to an officer of an authority of the Commonwealth information relating to any goods supplied or proposed to be supplied by the corporation.

Division 2—Conditions and warranties in consumer transactions

66 Interpretation

(1) In this Division:

(a) a reference to the quality of goods includes a reference to the state or condition of the goods;

(b) a reference to a contract does not include a reference to a contract made before the commencing date;

(c) a reference to antecedent negotiations in relation to a contract for the supply by a corporation of goods to a consumer is a reference to any negotiations or arrangements conducted or made with the consumer by another person in the course of a business carried on by the other person whereby the consumer was induced to make the contract or which otherwise promoted the transaction to which the contract relates; and

(d) a reference to the person by whom any antecedent negotiations were conducted is a reference to the person by whom the negotiations or arrangements concerned were conducted or made.

(2) Goods of any kind are of merchantable quality within the meaning of this Division if they are as fit for the purpose or purposes for which goods of that kind are commonly bought as it is reasonable to expect having regard to any description applied to them, the price (if relevant) and all the other relevant circumstances.

66A Convention on Contracts for the International Sale of Goods

The provisions of the United Nations Convention on Contracts for the International Sale of Goods, adopted at Vienna, Austria, on 10 April 1980, prevail over the provisions of this Division to the extent of any inconsistency.

67 Conflict of laws

Where:

(a) the proper law of a contract for the supply by a corporation of goods or services to a consumer would, but for a term that it should be the law of some other country or a term to the like effect, be the law of any part of Australia; or

(b) a contract for the supply by a corporation of goods or services to a consumer contains a term that purports to substitute, or has the effect of substituting, provisions of the law of some other country or of a State or Territory for all or any of the provisions of this Division;

this Division applies to the contract notwithstanding that term.

68 Application of provisions not to be excluded or modified

(1) Any term of a contract (including a term that is not set out in the contract but is incorporated in the contract by another term of the contract) that purports to exclude, restrict or modify or has the effect of excluding, restricting or modifying:

(a) the application of all or any of the provisions of this Division;

(b) the exercise of a right conferred by such a provision;

(c) any liability of the corporation for breach of a condition or warranty implied by such a provision; or

(d) the application of section 75A;

is void.

(2) A term of a contract shall not be taken to exclude, restrict or modify the application of a provision of this Division or the application of section 75A unless the term does so expressly or is inconsistent with that provision or section.

68A Limitation of liability for breach of certain conditions or warranties

(1) Subject to this section, a term of a contract for the supply by a corporation of goods or services other than goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption is not void under section 68 by reason only that the term limits the liability of the corporation for a breach of a condition or warranty (other than a condition or warranty implied by section 69) to:

(a) in the case of goods, any one or more of the following:

(i) the replacement of the goods or the supply of equivalent goods;

(ii) the repair of the goods;

(iii) the payment of the cost of replacing the goods or of acquiring equivalent goods;

(iv) the payment of the cost of having the goods repaired; or

(b) in the case of services:

(i) the supplying of the services again; or

(ii) the payment of the cost of having the services supplied again.

(2) Subsection (1) does not apply in relation to a term of a contract if the person to whom the goods or services were supplied establishes that it is not fair or reasonable for the corporation to rely on that term of the contract.

(3) In determining for the purposes of subsection (2) whether or not reliance on a term of a contract is fair or reasonable, a court shall have regard to all the circumstances of the case and in particular to the following matters:

(a) the strength of the bargaining positions of the corporation and the person to whom the goods or services were supplied (in this subsection referred to as ***the buyer***) relative to each other, taking into account, among other things, the availability of equivalent goods or services and suitable alternative sources of supply;

(b) whether the buyer received an inducement to agree to the term or, in agreeing to the term, had an opportunity of acquiring the goods or services or equivalent goods or services from any source of supply under a contract that did not include that term;

(c) whether the buyer knew or ought reasonably to have known of the existence and extent of the term (having regard, among other things, to any custom of the trade and any previous course of dealing between the parties); and

(d) in the case of the supply of goods, whether the goods were manufactured, processed or adapted to the special order of the buyer.

68B Limitation of liability in relation to supply of recreational services

(1) A term of a contract for the supply by a corporation of recreational services is not void under section 68 by reason only that the term excludes, restricts or modifies, or has the effect of excluding, restricting or modifying:

(a) the application of section 74 to the supply of the recreational services under the contract; or

(b) the exercise of a right conferred by section 74 in relation to the supply of the recreational services under the contract; or

(c) any liability of the corporation for a breach of a warranty implied by section 74 in relation to the supply of the recreational services under the contract;

so long as:

(d) the exclusion, restriction or modification is limited to liability for death or personal injury; and

(e) the contract was entered into after the commencement of this section.

(2) In this section:

disease includes any physical or mental ailment, disorder, defect or morbid condition, whether of sudden onset or gradual development and whether of genetic or other origin.

injury means any physical or mental injury.

personal injury means:

(a) an injury of an individual (including the aggravation, acceleration or recurrence of an injury of the individual); or

(b) the contraction, aggravation, acceleration, or recurrence of a disease of an individual; or

(c) the coming into existence, the aggravation, acceleration or recurrence of any other condition, circumstance, occurrence, activity, form of behaviour, course of conduct or state of affairs in relation to an individual that is or may be harmful or disadvantageous to, or result in harm or disadvantage to:

(i) the individual; or

(ii) the community.

recreational services means services that consist of participation in:

(a) a sporting activity or a similar leisure-time pursuit; or

(b) any other activity that:

(i) involves a significant degree of physical exertion or physical risk; and

(ii) is undertaken for the purposes of recreation, enjoyment or leisure.

(3) The definition of ***injury*** in subsection (2) does not, by implication, affect the meaning of the expression ***injury*** when used in a provision of this Act other than this section.

69 Implied undertakings as to title, encumbrances and quiet possession

(1) In every contract for the supply of goods by a corporation to a consumer, other than a contract to which subsection (3) applies, there is:

(a) an implied condition that, in the case of a supply by way of sale, the supplier has a right to sell the goods, and, in the case of an agreement to sell or a hire-purchase agreement, the supplier will have a right to sell the goods at the time when the property is to pass;

(b) an implied warranty that the consumer will enjoy quiet possession of the goods except so far as it may lawfully be disturbed by the supplier or by another person who is entitled to the benefit of any charge or encumbrance disclosed or known to the consumer before the contract is made; and

(c) in the case of a contract for the supply of goods under which the property is to pass or may pass to the consumer—an implied warranty that the goods are free, and will remain free until the time when the property passes, from any charge or encumbrance not disclosed or known to the consumer before the contract is made.

(2) A corporation is not, in relation to a contract for the supply of goods, in breach of the implied warranty referred to in paragraph (1)(c) by reason only of the existence of a floating charge over assets of the corporation unless and until the charge becomes fixed and enforceable by the person to whom the charge is given.

(3) In a contract for the supply of goods by a corporation to a consumer in the case of which there appears from the contract or is to be inferred from the circumstances of the contract

an intention that the supplier should transfer only such title as he or she or a third person may have, there is:

(a) an implied warranty that all charges or encumbrances known to the supplier and not known to the consumer have been disclosed to the consumer before the contract is made; and

(b) an implied warranty that:

(i) the supplier;

(ii) in a case where the parties to the contract intend that the supplier should transfer only such title as a third person may have—that person; and

(iii) anyone claiming through or under the supplier or that third person otherwise than under a charge or encumbrance disclosed or known to the consumer before the contract is made;

will not disturb the consumer's quiet possession of the goods.

70 Supply by description

(1) Where there is a contract for the supply (otherwise than by way of sale by auction) by a corporation in the course of a business of goods to a consumer by description, there is an implied condition that the goods will correspond with the description, and, if the supply is by reference to a sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

(2) A supply of goods is not prevented from being a supply by description for the purposes of subsection (1) by reason only that, being exposed for sale or hire, they are selected by the consumer.

71 Implied undertakings as to quality or fitness

(1) Where a corporation supplies (otherwise than by way of sale by auction) goods to a consumer in the course of a business, there is an implied condition that the goods supplied under the contract for the supply of the goods are of merchantable quality, except that there is no such condition by virtue only of this section:

(a) as regards defects specifically drawn to the consumer's attention before the contract is made; or

(b) if the consumer examines the goods before the contract is made, as regards defects which that examination ought to reveal.

(2) Where a corporation supplies (otherwise than by way of sale by auction) goods to a consumer in the course of a business and the consumer, expressly or by implication, makes known to the corporation or to the person by whom any antecedent negotiations are conducted any particular purpose for which the goods are being acquired, there is an implied condition that the goods supplied under the contract for the supply of the goods are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, except where the circumstances show that the consumer does not rely, or that it is unreasonable for him or her to rely, on the skill or judgment of the corporation or of that person.

(3) Subsections (1) and (2) apply to a contract for the supply of goods made by a person who in the course of a business is acting as agent for a corporation as they apply to a contract for the supply of goods made by a corporation in the course of a business, except where that corporation is not supplying in the course of a business and either the consumer knows that fact or reasonable steps are taken to bring it to the notice of the consumer before the contract is made.

72 Supply by sample

Where in a contract for the supply (otherwise than by way of sale by auction) by a corporation in the course of a business of goods to a consumer there is a term in the contract, expressed or implied, to the effect that the goods are supplied by reference to a sample:

(a) there is an implied condition that the bulk will correspond with the sample in quality;

(b) there is an implied condition that the consumer will have a reasonable opportunity of comparing the bulk with the sample; and

(c) there is an implied condition that the goods will be free from any defect, rendering them unmerchantable, that would not be apparent on reasonable examination of the sample.

73 Liability for loss or damage from breach of certain contracts

(1) Where:

(a) a corporation (in this section referred to as the ***supplier***) supplies goods, or causes goods to be supplied, to a linked credit provider of the supplier and a consumer enters into a contract with the linked credit provider for the provision of credit in respect of the supply by way of sale, lease, hire or hire-purchase of the goods to the consumer; or

(b) a consumer enters into a contract with a linked credit provider of a corporation (in this section also referred to as the ***supplier***) for the provision of credit in respect of the supply by the supplier of goods or services, or goods and services, to the consumer;

and the consumer suffers loss or damage as a result of misrepresentation, breach of contract, or failure of consideration in relation to the contract, or as a result of a breach of a condition that is implied in the contract by virtue of section 70, 71 or 72 or of a warranty that is implied in the contract by virtue of section 74 of this Act or section 12ED of the *Australian Securities and Investments Commission Act 2001*, the supplier and the linked credit provider are, subject to this section, jointly and severally liable to the consumer for the amount of the loss or damage, and the consumer may recover that amount by action in accordance with this section in a court of competent jurisdiction.

(2) Where:

(a) a corporation (in this section also referred to as the ***supplier***) supplies goods, or causes goods to be supplied, to a credit provider who is not a linked credit provider of the supplier;

(b) a consumer enters into a contract with the credit provider for the provision of credit in respect of the supply by way of sale, lease, hire or hire-purchase of the goods to the consumer;

(c) antecedent negotiations in relation to the contract were conducted with the consumer by or on behalf of the supplier; and

(d) the credit provider did not take physical possession of the goods before they were delivered to the consumer;

or where a consumer enters into a contract with a credit provider for the provision of credit in respect of the supply of services to the consumer by a corporation (in this section also referred to as the ***supplier***) of which the credit provider is not a linked credit provider, and the consumer suffers loss or damage as a result of a breach of a condition that is implied in the contract by virtue of section 70, 71 or 72 or of a warranty that is implied in the contract by virtue of section 74 of this Act or section 12ED of the *Australian Securities and Investments Commission Act 2001*, the credit provider is not under any liability to the consumer for the amount of the loss or damage, but the

consumer may recover that amount by action in a court of competent jurisdiction against the supplier.

(3) A linked credit provider of a particular supplier is not liable to a consumer by virtue of subsection (1) in proceedings arising under that subsection if the credit provider establishes:

(a) that the credit provided by the credit provider to the consumer was the result of an approach made to the credit provider by the consumer that was not induced by the supplier;

(b) where the proceedings relate to the supply by way of lease, hire or hire-purchase of goods by the linked credit provider to the consumer, that:

(i) after due inquiry before becoming a linked credit provider of the supplier, the credit provider was satisfied that the reputation of the supplier in respect of the supplier's financial standing and business conduct was good; and

(ii) after becoming a linked credit provider of the supplier, the credit provider had not had cause to suspect that:

(A) the consumer might be entitled to recover an amount of loss or damage suffered as a result of misrepresentation or breach of a condition or warranty referred to in subsection (1); and

(B) the supplier might be unable to meet the supplier's liabilities as and when they fall due;

(c) where the proceedings relate to a contract of sale with respect to which a tied loan contract applies, that:

(i) after due inquiry before becoming a linked credit provider of the supplier, the credit provider was satisfied that the reputation of the supplier in respect of the supplier's financial standing and business conduct was good; and

(ii) after becoming a linked credit provider of the supplier, but before the tied loan contract was entered into, the linked credit provider had not had cause to suspect that:

(A) the consumer might, if the contract was entered into, be entitled to recover an amount of loss or damage suffered as a result of misrepresentation, breach of contract or failure of consideration in relation to the contract or as a result of a breach of a condition or warranty referred to in subsection (1); and

(B) the supplier might be unable to meet the supplier's liabilities as and when they fall due; or

(d) where the proceedings relate to a contract of sale with respect to which a tied continuing credit contract entered into by the linked credit provider applies, that, having regard to:

(i) the nature and volume of business carried on by the linked credit provider; and

(ii) such other matters as appear to be relevant in the circumstances of the case;

the linked credit provider, before becoming aware of the contract of sale or of proposals for the making of the contract of sale (whichever the linked credit provider first became aware of), had not had cause to suspect that a person entering into such a contract with the supplier might be entitled to claim damages against, or recover a sum of money from, the supplier for misrepresentation, breach of contract, failure of consideration, breach of a condition or breach of a warranty as referred to in subsection (1).

(4) Subject to subsection (5), in any proceedings in relation to a contract referred to in paragraph (1)(a) or (b) in which a credit provider claims damages or an amount of money from a consumer, the consumer may set up the liability of the credit provider under subsection (1) in diminution or extinction of the consumer's liability.

(5) Subject to subsection (6), a consumer may not, in respect of a liability for which, by reason of this section, a supplier and a linked credit provider are jointly and severally liable:

(a) bring proceedings to recover an amount of loss or damage from the credit provider; or

(b) where proceedings are brought against the consumer by the credit provider, make a counter-claim or exercise the right conferred by subsection (4) against the credit provider;

unless the consumer brings the action against the supplier and the credit provider jointly or, in the case of a counter-claim or right conferred by subsection (4), claims in the proceedings against the supplier in respect of the liability by third-party proceedings or otherwise.

(6) Subsection (5) and paragraphs (8)(a) and (9)(a) do not apply in relation to proceedings where:

(a) the supplier has been dissolved or is commenced to be wound up; or

(b) in the opinion of the court in which the proceedings are taken, it is not reasonably likely that a judgment obtained against the supplier would be satisfied and the court has, on the application of the consumer, declared that subsection (5) and paragraphs (8)(a) and (9)(a) do not apply in relation to the proceedings.

(7) The liability of a linked credit provider to a consumer for damages or a sum of money in respect of a contract referred to in subsection (1) does not exceed the sum of:

(a) the amount financed under the tied loan contract, tied continuing credit contract, lease contract, contract of hire or contract of hire-purchase;

(b) the amount of interest (if any) or damages in the nature of interest allowed or awarded against the linked credit provider by the court; and

(c) the amount of costs (if any) awarded by the court against the linked credit provider or supplier or both.

(8) Where in proceedings arising under subsection (1), judgment is given against a supplier and a linked credit provider, the judgment:

(a) shall not be enforced against the linked credit provider unless a written demand made on the supplier for satisfaction of the judgment has remained unsatisfied for not less than 30 days; and

(b) may be enforced against the linked credit provider only to the extent of:

(i) the amount calculated in accordance with subsection (7); or

(ii) so much of the judgment debt as has not been satisfied by the supplier;

whichever is the lesser.

(9) Where in proceedings arising under subsection (1), a right conferred by subsection (4) is established against a linked credit provider, the consumer:

(a) shall not receive the benefit of the right unless judgment has been given against the supplier and linked credit provider, a written demand has been made on the supplier for satisfaction of the judgment and the demand has remained unsatisfied for not less than 30 days; and

(b) may receive the benefit only to the extent of:

(i) the amount calculated in accordance with subsection (7); or

(ii) so much of the judgment debt as has not been satisfied by the supplier;

whichever is the lesser.

(10) Unless the linked credit provider and supplier otherwise agree, the supplier is liable to the linked credit provider for the amount of a loss suffered by the linked credit provider, being an amount not exceeding the maximum amount of the linked credit provider's

liability under subsection (7) and, unless the court otherwise determines, the amount of costs (if any) reasonably incurred by the linked credit provider in defending the proceedings by reason of which the liability was incurred.

(11) Notwithstanding any other law, where, in proceedings arising under subsection (1), judgment is given against a supplier and a linked credit provider or against a linked credit provider for an amount of loss or damage, the court in which the proceedings are taken shall, on the application of the consumer, unless good cause is shown to the contrary, award interest to the consumer against the supplier and credit provider or against the credit provider, as the case may be, upon the whole or a part of the amount, from the time when the consumer became entitled to recover the amount until the date on which the judgment is given, at whichever of the following rates is the greater:

(a) where the amount payable by the consumer to the credit provider for the obtaining of credit in connection with the goods or services to which the proceedings relate may be calculated at a percentage rate per annum—that rate or, if more than one such rate may be calculated, the lower or lowest of those rates;

(b) 8% or such other rate as is prescribed.

(12) In determining whether good cause is shown against awarding interest under subsection (11) on the whole or part of an amount of loss or damage, the court shall take into account any payment made into court by the supplier or credit provider.

(13) Where a judgment given in proceedings arising under subsection (1) is enforced against a linked credit provider of a particular supplier, the credit provider is subrogated to the extent of the judgment so enforced to any rights that the consumer would have had but for the judgment against the supplier or any other person.

(14) In this section:

credit provider means a corporation providing, or proposing to provide, in the course of a business carried on by the corporation, credit to consumers in relation to the acquisition of goods or services.

linked credit provider, in relation to a supplier, means a credit provider:

(a) with whom the supplier has a contract, arrangement or understanding relating to:

(i) the supply to the supplier of goods in which the supplier deals;

(ii) the business carried on by the supplier of supplying goods or services; or

(iii) the provision to persons to whom goods or services are supplied by the supplier of credit in respect of payment for those goods or services;

(b) to whom the supplier, by arrangement with the credit provider, regularly refers persons for the purpose of obtaining credit;

(c) whose forms of contract or forms of application or offers for credit are, by arrangement with the credit provider, made available to persons by the supplier; or

(d) with whom the supplier has a contract, arrangement or understanding under which contracts or applications or offers for credit from the credit provider may be signed by persons at premises of the supplier.

tied continuing credit contract means a continuing credit contract under which a credit provider provides credit in respect of the payment by a consumer for goods or services supplied by a supplier in relation to whom the credit provider is a linked credit provider.

tied loan contract means a loan contract entered into between a credit provider and a consumer where:

(a) the credit provider knows or ought reasonably to know that the consumer enters into the loan contract wholly or partly for the purposes of payment for goods or services supplied by a supplier; and

(b) at the time the loan contract is entered into the credit provider is a linked credit provider of the supplier.

73A Continuing credit contract

(1) For the purposes of this section:

(a) a reference to an agreement includes a reference to an arrangement, understanding or course of dealing; and

(b) a person shall be deemed to agree with another person with respect to a matter if the first-mentioned person has an agreement, arrangement or understanding with the other person, or is engaged in a course of dealing with the other person, with respect to the matter.

(2) Where:

(a) a person (in this section referred to as ***the creditor***), in the course of a business carried on by the creditor, agrees with a consumer to provide credit to the consumer in respect of:

(i) payment for goods or services or cash supplied by the creditor to the consumer from time to time; or

(ii) payment by the creditor to a third person in respect of goods or services or cash supplied by that third person to the consumer from time to time; and

(b) the amounts owing to the creditor from time to time under the agreement are or are to be calculated on the basis that all amounts owing, and all payments made, by the consumer under or in respect of the agreement are entered in one or more accounts kept for the purpose of the agreement;

the agreement is, for the purposes of section 73, a continuing credit contract.

(3) Where the creditor agrees to make payments to a third person in respect of goods or services or cash supplied by that third person to the consumer, as mentioned in subparagraph (2)(a)(ii), then, for the purposes of this section, the creditor shall, in respect of any goods or services or cash so supplied, be deemed to have provided credit to the consumer to the extent of any payments made or to be made by the creditor to that third person.

73B Loan contract

For the purposes of section 73, ***loan contract*** means a contract under which a person in the course of a business carried on by that person provides or agrees to provide, whether on one or more occasions, credit to a consumer in one or more of the following ways:

(a) by paying an amount to or in accordance with the instructions of the consumer;

(b) by applying an amount in satisfaction or reduction of an amount owed to the person by the consumer;

(c) by varying the terms of a contract under which money owed to the person by the consumer is payable;

(d) by deferring an obligation of the consumer to pay an amount to the person;

(e) by taking from the consumer a bill of exchange or other negotiable instrument on which the consumer (whether alone or with another person or other persons) is liable as drawer, acceptor or endorser.

74 Warranties in relation to the supply of services

(1) In every contract for the supply by a corporation in the course of a business of services to a consumer there is an implied warranty that the services will be rendered with due care and skill and that any materials supplied in connexion with those services will be reasonably fit for the purpose for which they are supplied.

(2) Where a corporation supplies services (other than services of a professional nature provided by a qualified architect or engineer) to a consumer in the course of a business and the consumer, expressly or by implication, makes known to the corporation any particular purpose for which the services are required or the result that he or she desires the services to achieve, there is an implied warranty that the services supplied under the contract for the supply of the services and any materials supplied in connexion with those services will be reasonably fit for that purpose or are of such a nature and quality that they might reasonably be expected to achieve that result, except where the circumstances show that the consumer does not rely, or that it is unreasonable for him or her to rely, on the corporation's skill or judgment.

(2A) If:

(a) there is a breach of an implied warranty that exists because of this section in a contract made after the commencement of this subsection; and

(b) the law of a State or Territory is the proper law of the contract;

the law of the State or Territory applies to limit or preclude liability for the breach, and recovery of that liability (if any), in the same way as it applies to limit or preclude liability, and recovery of a liability, for breach of another term of the contract.

(3) A reference in this section to services does not include a reference to services that are, or are to be, provided, granted or conferred under:

(a) a contract for or in relation to the transportation or storage of goods for the purposes of a business, trade, profession or occupation carried on or engaged in by the person for whom the goods are transported or stored; or

(b) a contract of insurance.

Division 2A—Actions against manufacturers and importers of goods

74A Interpretation

(1) In this Division:

express warranty, in relation to goods, means an undertaking, assertion or representation in relation to:

(a) the quality, performance or characteristics of the goods;

(b) the provision of services that are or may at any time be required in respect of the goods;

(c) the supply of parts that are or may at any time be required for the goods; or

(d) the future availability of identical goods, or of goods constituting or forming part of a set of which the goods in relation to which the undertaking, assertion or representation is given or made form part;

given or made in connection with the supply of the goods or in connection with the promotion by any means of the supply or use of the goods, the natural tendency of which is to induce persons to acquire the goods.

manufactured includes grown, extracted, produced, processed and assembled.

(2) In this Division:

(a) a reference to goods shall, unless the contrary intention appears, be read as a reference to goods of a kind ordinarily acquired for personal, domestic or household use or consumption;

(aa) a reference to a person who acquires goods from a consumer does not include a reference to a person who acquires goods for the purpose of re-supply;

(b) a reference to the quality of goods includes a reference to the state or condition of the goods;

(c) a reference to antecedent negotiations in relation to the acquisition of goods by a consumer shall be read as a reference to any negotiations or arrangements conducted or made with the consumer by another person in the course of a business carried on by the other person whereby the consumer was induced to acquire the goods or which otherwise promoted the acquisition of the goods by the consumer; and

(d) a reference to the person by whom any antecedent negotiations were conducted shall be read as a reference to the person by whom the negotiations or arrangements concerned were conducted or made.

(3) If:

(a) a corporation holds itself out to the public as the manufacturer of goods;

(b) a corporation causes or permits the name of the corporation, a name by which the corporation carries on business or a brand or mark of the corporation to be applied to goods supplied by the corporation; or

(c) a corporation causes or permits another person, in connexion with the supply or possible supply of goods by that other person, or in connexion with the promotion by that other person by any means of the supply or use of goods, to hold out the corporation to the public as the manufacturer of the goods;

the corporation shall be deemed, for the purposes of this Division, to have manufactured the goods.

(4) If:

(a) goods are imported into Australia by a corporation that was not the manufacturer of the goods; and

(b) at the time of the importation the manufacturer of the goods does not have a place of business in Australia;

the corporation shall be deemed, for the purposes of this Division, to have manufactured the goods.

(5) For the purposes of paragraph (3)(b):

(a) a name, brand or mark shall be deemed to be applied to goods if it:

(i) is woven in, impressed on, worked into or annexed or affixed to the goods; or

(ii) is applied to a covering, label, reel or thing in or with which the goods are supplied; and

(b) if the name of a corporation, a name in which a corporation carries on business or a brand or mark of a corporation is applied to goods, it shall be presumed, unless the contrary is established, that the corporation caused or permitted the name, brand or mark to be applied to the goods.

(6) The reference in subsection (5) to a covering includes a reference to a stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper and the reference in that subsection to a label includes a reference to a band or ticket.

(7) If goods are imported into Australia on behalf of a corporation, the corporation shall be deemed, for the purposes of this Division, to have imported the goods into Australia.

(8) For the purposes of this Division, goods shall be taken to be supplied to a consumer notwithstanding that, at the time of the supply, they are affixed to land or premises.

74B Actions in respect of unsuitable goods

(1) Where:

(a) a corporation, in trade or commerce, supplies goods manufactured by the corporation to another person who acquires the goods for re-supply;

(b) a person (whether or not the person who acquired the goods from the corporation) supplies the goods (otherwise than by way of sale by auction) to a consumer;

(c) the goods are acquired by the consumer for a particular purpose that was, expressly or by implication, made known to the corporation, either directly, or through the person from whom the consumer acquired the goods or a person by whom any antecedent negotiations in connexion with the acquisition of the goods were conducted;

(d) the goods are not reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied; and

(e) the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer suffers loss or damage by reason that the goods are not reasonably fit for that purpose;

the corporation is liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the compensation by action against the corporation in a court of competent jurisdiction.

(2) Subsection (1) does not apply:

(a) if the goods are not reasonably fit for the purpose referred to in that subsection by reason of:

(i) an act or default of any person (not being the corporation or a servant or agent of the corporation); or

(ii) a cause independent of human control;

occurring after the goods have left the control of the corporation; or

(b) where the circumstances show that the consumer did not rely, or that it was unreasonable for the consumer to rely, on the skill or judgment of the corporation.

74C Actions in respect of false descriptions

(1) Where:

(a) a corporation, in trade or commerce, supplies goods manufactured by the corporation to another person who acquires the goods for re-supply;

(b) a person (whether or not the person who acquired the goods from the corporation) supplies the goods (otherwise than by way of sale by auction) to a consumer by description;

(c) the goods do not correspond with the description; and

(d) the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer suffers loss or damage by reason that the goods do not correspond with the description;

the corporation is liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the compensation by action against the corporation in a court of competent jurisdiction.

(2) Subsection (1) does not apply if the goods do not correspond with the description referred to in that subsection by reason of:

(a) an act or default of any person (not being the corporation or a servant or agent of the corporation); or

(b) a cause independent of human control;

occurring after the goods have left the control of the corporation.

(3) A corporation is not liable to compensate a person for loss or damage suffered by the person by reason that goods do not correspond with a description unless the description was applied to the goods:

(a) by or on behalf of the corporation; or

(b) with the consent of the corporation, whether express or implied.

(4) If the goods referred to in subsection (1) are supplied to the consumer by reference to a sample as well as by description, it is not a defence to an action under this section that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

(5) A supply of goods is not prevented from being a supply by description for the purposes of subsection (1) by reason only that, being exposed for sale or hire, they are selected by the consumer.

74D Actions in respect of goods of unmerchantable quality

(1) Where:

(a) a corporation, in trade or commerce, supplies goods manufactured by the corporation to another person who acquires the goods for re-supply;

(b) a person (whether or not the person who acquired the goods from the corporation) supplies the goods (otherwise than by way of sale by auction) to a consumer;

(c) the goods are not of merchantable quality; and

(d) the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer suffers loss or damage by reason that the goods are not of merchantable quality;

the corporation is liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the compensation by action against the corporation in a court of competent jurisdiction.

(2) Subsection (1) does not apply:

(a) if the goods are not of merchantable quality by reason of:

(i) an act or default of any person (not being the corporation or a servant or agent of the corporation); or

(ii) a cause independent of human control;

occurring after the goods have left the control of the corporation;

(b) as regards defects specifically drawn to the consumer's attention before the making of the contract for the supply of the goods to the consumer; or

(c) if the consumer examines the goods before that contract is made, as regards defects that the examination ought to reveal.

(3) Goods of any kind are of merchantable quality within the meaning of this section if they are as fit for the purpose or purposes for which goods of that kind are commonly bought as it is reasonable to expect having regard to:

(a) any description applied to the goods by the corporation;

(b) the price received by the corporation for the goods (if relevant); and

(c) all the other relevant circumstances.

74E Actions in respect of non-correspondence with samples etc.

(1) Where:

(a) a corporation, in trade or commerce, supplies goods manufactured by the corporation to another person who acquires the goods for re-supply;

(b) a person (whether or not the person who acquired the goods from the corporation) supplies the goods (otherwise than by way of sale by auction) to a consumer;

(c) the goods are supplied to the consumer by reference to a sample;

(d) the bulk of the goods does not correspond with the sample in quality or the goods have a defect, rendering them unmerchantable, that is not, or would not be, apparent on reasonable examination of the sample; and

(e) the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer suffers loss or damage by reason that the bulk does not correspond with the sample in quality or by reason that the goods have that defect;

the corporation is liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the loss or damage by action against the corporation in a court of competent jurisdiction.

(2) Subsection (1) does not apply where:

(a) the sample is not supplied by the corporation;

(b) the supply by sample is made without the express or implied concurrence of the corporation; or

(c) the failure of the bulk of the goods to correspond with the sample in quality or the existence of the defect is due to:

(i) an act or default of any person (not being the corporation or a servant or agent of the corporation), or a cause independent of human control, occurring after the goods have left the control of the corporation; or

(ii) other circumstances that were beyond the control of the corporation and that it could not reasonably be expected to have foreseen.

74F Actions in respect of failure to provide facilities for repairs or parts

(1) Where:

(a) a corporation, in trade or commerce, supplies goods (otherwise than by way of sale by auction) manufactured by the corporation to a consumer; or

(b) a corporation, in trade or commerce, supplies goods manufactured by the corporation to another person who acquires the goods for re-supply and a person (whether or not the person who acquired the goods from the corporation) supplies the goods (otherwise than by way of sale by auction) to a consumer;

and:

(c) at a time (in this section referred to as the ***relevant time***) after the acquisition of the goods by the consumer:

(i) the goods require to be repaired but facilities for their repair are not reasonably available to the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer; or

(ii) a part is required for the goods but the part is not reasonably available to the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer;

(d) the corporation acted unreasonably in failing to ensure that facilities for the repair of the goods were, or that the part was, reasonably available to the consumer or that other person at the relevant time; and

(e) the consumer or that other person suffers loss or damage by reason of the failure of the corporation to ensure that facilities for the repair of the goods were, or that the part was, reasonably available to the consumer or that other person at the relevant time;

the corporation is liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the compensation by action against the corporation in a court of competent jurisdiction.

(2) Subsection (1) does not apply where the corporation took reasonable action to ensure that the consumer acquiring the goods would be given notice at or before the time when he or she acquired the goods that:

(a) the corporation did not promise that facilities for the repair of the goods, or that parts for the goods, would be available; or

(b) the corporation did not promise that facilities for the repair of the goods, or that parts for the goods, would be available after a specified period, being a period that expired before the relevant time.

(3) Where the corporation took reasonable action to ensure that the consumer acquiring the goods would be given notice at or before the time when he or she acquired the goods that the corporation did not promise that:

(a) facilities for the repair of the goods, being facilities of a kind specified in the notice, would be available;

(b) parts for the goods, being parts of a kind specified in the notice, would be available; or

(c) facilities for the repair of the goods would be available at, or parts for the goods would be available from, a place or places specified in the notice;

the corporation is not liable to compensate the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer for loss or damage suffered by the consumer or that other person by reason of the failure of the corporation to ensure that facilities of the kind specified in the notice, or parts of the kind specified in the notice, were available, or that facilities for the repair of the goods were available at, or parts for the goods were available from, a place or places specified in the notice, as the case may be.

(4) In determining whether a corporation acted unreasonably in failing to ensure that facilities for the repair of goods were, or that a part was, reasonably available to a person at the relevant time, a court shall have regard to all the circumstances of the case, and in particular to the existence, at the relevant time, of circumstances that prevented those

facilities or that part being so available, being circumstances beyond the control of the corporation.

74G Actions in respect of non-compliance with express warranty

(1) Where:

(a) a corporation, in trade or commerce, supplies goods (otherwise than by way of sale by auction) manufactured by the corporation to a consumer; or

(b) a corporation, in trade or commerce, supplies goods manufactured by the corporation to another person who acquires the goods for re-supply and a person (whether or not the person who acquired the goods from the corporation) supplies the goods (otherwise than by way of sale by auction) to a consumer;

and:

(c) the corporation fails to comply with an express warranty given or made by the corporation in relation to the goods; and

(d) the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer suffers loss or damage by reason of the failure;

the corporation is liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the compensation by action against the corporation in a court of competent jurisdiction.

(2) For the purposes of any action instituted by a person against a corporation under this section, where:

(a) an undertaking, assertion or representation was given or made in connection with the supply of goods or in connection with the promotion by any means of the supply or use of goods; and

(b) the undertaking, assertion or representation would, if it had been given or made by the corporation or a person acting on its behalf, have constituted an express warranty in relation to the goods;

it shall be presumed that the undertaking, assertion or representation was given or made by the corporation or a person acting on its behalf unless the corporation proves that it did not give or make, and did not cause or permit the giving or making of, the undertaking, assertion or representation.

74H Right of seller to recover against manufacturer or importer

Where:

(a) a person (in this section referred to as the ***seller***) is under a liability to another person (in this section referred to as the ***consumer***) in respect of loss or damage suffered by the consumer as a result of a breach of a condition or warranty implied by a provision of Division 2 in a contract for the supply of goods (whether or not the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption) by the seller to the consumer; and

(b) a third person (in this section referred to as the ***manufacturer***):

(i) is liable to compensate the consumer in respect of the same loss or damage by reason of a provision of this Division; or

(ii) in a case where the goods referred to in paragraph (a) are not of a kind ordinarily acquired for personal, domestic or household use or consumption—would, if the provisions of sections 74B, 74C, 74D and 74E applied in relation to those goods, be liable to compensate the consumer in respect of the same loss or damage by reason of any of those provisions;

the manufacturer is liable to indemnify the seller in respect of the liability of the seller to the consumer and the seller may, in respect of the manufacturer's liability to indemnify the seller, institute an action against the manufacturer in a court of competent jurisdiction

for such legal or equitable relief as the seller could have obtained if the liability of the manufacturer to indemnify the seller had arisen under a contract of indemnity made between the manufacturer and the seller.

74J Time for commencing actions

(1) Subject to this section, an action under a provision of this Division may be commenced at any time within 3 years after the day on which the cause of the action accrued.

(2) For the purposes of this section, a cause of action shall be deemed to have accrued:

(a) in the case of an action other than an action under section 74H, on the day on which the consumer or a person who acquired the goods from, or derived title to the goods through or under, the consumer first became aware, or ought reasonably to have become aware:

(i) in the case of an action under section 74B—that the goods were not reasonably fit for the purpose referred to in that section;

(ii) in the case of an action under section 74C—that the goods did not correspond with the description referred to in that section;

(iii) in the case of an action under section 74D—that the goods were not of merchantable quality;

(iv) in the case of an action under section 74E—that the bulk of the goods did not correspond with the sample in quality or the goods had the defect referred to in that section;

(v) in the case of an action under section 74F—that the goods required to be repaired or that the part was required for the goods, as the case may be; or

(vi) in the case of an action under section 74G—of the failure of the corporation to comply with the express warranty referred to in that section; or

(b) in the case of an action under section 74H, on:

(i) the day, or the first day, as the case may be, on which the seller referred to in that section made a payment in respect of, or otherwise discharged in whole or in part, the liability of that seller to the consumer referred to in that section; or

(ii) the day on which a proceeding was instituted by that consumer against that seller in respect of that liability or, if more than one such proceeding was instituted, the day on which the first such proceeding was instituted;

whichever was the earlier.

(3) In an action under a provision of this Division, it is a defence if the defendant proves that the action was not commenced within 10 years after the time of the first supply to a consumer of the goods to which the action relates.

Note: Part VIB restricts awards of compensation for death or personal injury, and sets out time limits for commencing actions for compensation for death or personal injury.

74K Application of Division not to be excluded or modified

(1) Any term of a contract (including a term that is not set out in the contract but is incorporated in the contract by another term of the contract) that purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying, any liability of a person to compensate or indemnify another person that may arise under this Division, is void.

(2) A term of a contract shall not be taken to exclude, restrict or modify the application of a provision of this Division unless the term does so expressly or is inconsistent with that provision.

(3) Nothing in this section applies to a term of a contract referred to in subsection 74L(4).

74L Limitation in certain circumstances of liability of manufacturer to seller

(1) Notwithstanding section 74H but subject to this section, in the case of goods other than goods of a kind ordinarily acquired for personal, domestic or household use or consumption, the liability under that section of a manufacturer to a seller is limited to a liability to pay to the seller an amount equal to:

(a) the cost of replacing the goods;

(b) the cost of obtaining equivalent goods; or

(c) the cost of having the goods repaired;

whichever is the lowest amount.

(2) Subsection (1) does not apply in relation to particular goods if the seller establishes that it is not fair or reasonable for the liability of the manufacturer in respect of those goods to be limited as mentioned in subsection (1).

(3) In determining for the purposes of subsection (2) whether or not it is fair or reasonable for the liability of a manufacturer to a seller in respect of goods to be limited as mentioned in subsection (1), a court shall have regard to all the circumstances of the case and, in particular, to:

(a) the availability of suitable alternative sources of supply of the goods;

(b) the availability of equivalent goods; and

(c) whether the goods were manufactured, processed or adapted to the special order of the seller.

(4) This section is subject to any term of a contract between the manufacturer and the seller imposing on the manufacturer a greater liability than the liability mentioned in subsection (1).

(5) In this section, the expressions ***manufacturer*** and ***seller*** have the same respective meanings as in section 74H.

74M The effect of Part VIB on this Division

This Division has effect subject to Part VIB.

Division 3—Miscellaneous

75 Saving of other laws and remedies

(1) Except as provided by subsection (2), this Part is not intended to exclude or limit the concurrent operation of any law of a State or Territory.

(2) Where an act or omission of a person is both an offence against section 79 and an offence under the law of a State or Territory and that person is convicted of either of those offences, he or she is not liable to be convicted of the other of those offences.

(3) Except as expressly provided by this Part, nothing in this Part shall be taken to limit, restrict or otherwise affect any right or remedy a person would have had if this Part had not been enacted.

75A Rescission of contracts

(1) Where:

(a) a corporation supplies goods to a consumer in the course of a business; and

(b) there is a breach of a condition that is, by virtue of a provision of Division 2, implied in the contract for the supply of the goods;

the consumer is, subject to this section, entitled to rescind the contract by:

(c) causing to be served on the corporation a notice in writing signed by him or her giving particulars of the breach; or

(d) causing the goods to be returned to the corporation and giving to the corporation, either orally or in writing, particulars of the breach.

(2) Where a consumer purports to rescind under this section a contract for the supply of goods by a corporation, the purported rescission does not have any effect if:

(a) the notice is not served or the goods are not returned within a reasonable time after the consumer has had a reasonable opportunity of inspecting the goods;

(b) in the case of a rescission effected by service of a notice, after the delivery of the goods to the consumer but before the notice is served:

(i) the goods were disposed of by the consumer, were lost, or were destroyed otherwise than by reason of a defect in the goods;

(ii) the consumer caused the goods to become unmerchantable or failed to take reasonable steps to prevent the goods from becoming unmerchantable; or

(iii) the goods were damaged by abnormal use; or

(c) in the case of a rescission effected by return of the goods, while the goods were in the possession of the consumer:

(i) the consumer caused the goods to become unmerchantable or failed to take reasonable steps to prevent the goods from becoming unmerchantable; or

(ii) the goods were damaged by abnormal use.

(3) Where a contract for the supply of goods by a corporation to a consumer has been rescinded in accordance with this section:

(a) if the property in the goods had passed to the consumer before the notice of rescission was served on, or the goods were returned to, the corporation—the property in the goods re-vests in the corporation upon the service of the notice or the return of the goods; and

(b) the consumer may recover from the corporation, as a debt, the amount or value of any consideration paid or provided by him or her for the goods.

(4) The right of rescission conferred by this section is in addition to, and not in derogation of, any other right or remedy under this Act or any other Act, any State Act, any law of a Territory or any rule of law.

Part VA—Liability of manufacturers and importers for defective goods

75AA Interpretation

In this Part:

action goods, in relation to a liability action, means the goods whose supply and defect is alleged in the action.

Commonwealth mandatory standard, in relation to goods, means a mandatory standard in respect of the goods imposed by a law of the Commonwealth.

defendant, in relation to a liability action, means a person against whom the action is brought (however described).

liability action means an action under section 75AD, 75AE, 75AF or 75AG and includes such an action because of paragraph 75AD(1)(f) or section 75AH.

loss includes damage.

mandatory standard, in relation to goods, means a standard:

(a) for the goods or anything relating to the goods; and

(b) that, under a law of the Commonwealth, a State or a Territory, must be complied with when the goods are supplied by their manufacturer, being a law creating an offence or liability where there is such non-compliance;

but does not include a standard which may be complied with by meeting a higher standard.

manufactured includes grown, extracted, produced, processed and assembled.

plaintiff, in relation to a liability action, means the person by whom the action is brought (however described).

use includes consume.

75AB Certain interpretation provisions (importers and others taken to be manufacturers etc.) apply to this Part

Subsections 74A(3) to (8) (inclusive) operate as if references in them to Division 2A of Part V included references to this Part.

75AC Meaning of goods having defect

(1) For the purposes of this Part, goods have a defect if their safety is not such as persons generally are entitled to expect.

(2) In determining the extent of the safety of goods, regard is to be given to all relevant circumstances including:

(a) the manner in which, and the purposes for which, they have been marketed; and

(b) their packaging; and

(c) the use of any mark in relation to them; and

(d) any instructions for, or warnings with respect to, doing, or refraining from doing, anything with or in relation to them; and

(e) what might reasonably be expected to be done with or in relation to them; and

(f) the time when they were supplied by their manufacturer.

(3) An inference that goods have a defect is not to be made only because of the fact that, after they were supplied by their manufacturer, safer goods of the same kind were supplied.

(4) An inference that goods have a defect is not to be made only because:

(a) there was compliance with a Commonwealth mandatory standard for them; and

(b) that standard was not the safest possible standard having regard to the latest state of scientific or technical knowledge when they were supplied by their manufacturer.

75AD Liability for defective goods causing injuries—loss by injured individual

If:

(a) a corporation, in trade or commerce, supplies goods manufactured by it; and

(b) they have a defect; and

(c) because of the defect, an individual suffers injuries;

then:

(d) the corporation is liable to compensate the individual for the amount of the individual's loss suffered as a result of the injuries; and

(e) the individual may recover that amount by action against the corporation; and

(f) if the individual dies because of the injuries—a law of a State or Territory about liability in respect of the death of individuals applies as if:

(i) the action were an action under the law of the State or Territory for damages in respect of the injuries; and

(ii) the defect were the corporation's wrongful act, neglect or default.

75AE Liability for defective goods causing injuries—loss by person other than injured individual

(1) If:

(a) a corporation, in trade or commerce, supplies goods manufactured by it; and

(b) they have a defect; and

(c) because of the defect, an individual suffers injuries; and

(d) a person, other than the individual, suffers loss because of:

(i) the injuries; or

(ii) if the individual dies because of the injuries—the individual's death; and

(e) the loss does not come about because of a business relationship between the person and the individual;

then:

(f) the corporation is liable to compensate the person for the amount of the person's loss; and

(g) the person may recover that amount by action against the corporation.

(2) For the purposes of this section:

(a) a profession is taken to be a business; and

(b) a relationship between employer and employee or a similar relationship is a business relationship.

75AF Liability for defective goods—loss relating to other goods

If:

(a) a corporation, in trade or commerce, supplies goods manufactured by it; and

(b) they have a defect; and

(c) because of the defect, goods of a kind ordinarily acquired for personal, domestic or household use (not being the defective goods) are destroyed or damaged; and

(d) a person who:

(i) so used; or

(ii) intended to so use;

the destroyed or damaged goods, suffers loss as a result of the destruction or damage;

then:

(e) the corporation is liable to compensate the person for the amount of the loss; and

(f) the person may recover that amount by action against the corporation.

75AG Liability for defective goods—loss relating to buildings etc.

If:

(a) a corporation, in trade or commerce, supplies goods manufactured by it; and

(b) they have a defect; and

(c) because of the defect, land, buildings, or fixtures, ordinarily acquired for private use are destroyed or damaged; and

(d) a person who:

(i) so used; or

(ii) intended to so use;

the land, buildings or fixtures, suffers loss as a result of the destruction or damage;

then:

(e) the corporation is liable to compensate the person for the amount of the loss; and

(f) the person may recover that amount by action against the corporation.

75AH Survival of liability actions

A law of a State or Territory about the survival of causes of action vested in persons who die applies to actions under section 75AD, 75AE, 75AF or 75AG.

75AI No liability action where workers' compensation or law giving effect to an international agreement applies

Section 75AD, 75AE, 75AF or 75AG does not apply to a loss in respect of which an amount has been, or could be, recovered under a law of the Commonwealth, a State or a Territory that:

(a) relates to workers' compensation; or

(b) gives effect to an international agreement.

75AJ Unidentified manufacturer

(1) If a person who wishes to institute a liability action does not know who manufactured the action goods, the person may serve on a supplier, or each supplier, of the action goods who is known to the person a written request to give the person particulars identifying:

(a) the corporation which manufactured the goods (having regard to section 75AB); or

(b) the supplier of the goods to the supplier requested.

(2) If, 30 days after the person has made the request or requests, the person still does not know who manufactured the action goods, then the corporation, or each corporation, that is a supplier:

(a) to whom a request was made; and

(b) who did not comply with the request;

is taken, for the purposes of the action, to have manufactured the action goods.

75AK Defences

(1) In a liability action, it is a defence if it is established that:

(a) the defect in the action goods that is alleged to have caused the loss did not exist at the supply time; or

(b) they had that defect only because there was compliance with a mandatory standard for them; or

(c) the state of scientific or technical knowledge at the time when they were supplied by their actual manufacturer was not such as to enable that defect to be discovered; or

(d) if they were comprised in other goods (***finished goods***)—that defect is attributable only to:

(i) the design of the finished goods; or

(ii) the markings on or accompanying the finished goods; or

(iii) the instructions or warnings given by the manufacturer of the finished goods.

(2) In this section:

supply time means:

(a) in relation to electricity—the time at which it was generated, being a time before it was transmitted or distributed; or

(b) in relation to other goods—the time when they were supplied by their actual manufacturer.

75AL Commonwealth liability for goods that are defective only because of compliance with Commonwealth mandatory standard

(1) If a defendant in a liability action raises the defence that the action goods had the alleged defect only because there was compliance with a Commonwealth mandatory standard for them, that defendant must, as soon as practicable after raising that defence, serve on the Commonwealth a prescribed notice of the action and of that defence together with a copy of that defendant's defence in the action.

(2) Service of the notice and defence makes the Commonwealth a defendant in the action.

(3) If, in the action, the Court finds that the plaintiff would have succeeded against the defendant who served the notice but for the action goods having the alleged defect only because there was compliance with a Commonwealth mandatory standard for them, then:

(a) the Commonwealth, and not the defendant who served the notice, is liable to pay the plaintiff for the amount of the loss caused by the defect; and

(b) the Court is to enter judgment against the Commonwealth for that amount; and

(c) the Court may make such orders for costs as the Court considers just.

75AM Liability joint and several

If 2 or more corporations are liable under section 75AD, 75AE, 75AF or 75AG for the same loss they are jointly and severally liable.

75AN Contributory acts or omissions to reduce compensation

(1) If the loss in a liability action under section 75AD or 75AE was caused by both:

(a) an act or omission of the individual who suffers the injuries concerned; and

(b) a defect of the action goods;

the amount of the loss is to be reduced to such extent (which may be to nil) as the court thinks fit having regard to that individual's share in causing the loss.

(2) If the loss in a liability action under section 75AF or 75AG was caused by both:

(a) an act or omission of the person who suffered the loss; and

(b) a defect of the action goods;

the amount of the loss is to be reduced to such extent (which may be to nil) as the court thinks fit having regard to the person's share in causing the loss.

(3) For the purposes of this section, the acts and omissions of a person who is responsible for another person include the acts and omissions of that other person.

75AO Time for commencing actions

(1) Subject to subsection (2), a person may commence a liability action at any time within 3 years after the time the person became aware, or ought reasonably to have become aware, of the alleged loss, the defect and the identity of the person who manufactured the action goods.

(2) A liability action must be commenced within 10 years of the supply by the manufacturer of the action goods.

Note: Part VIB restricts awards of compensation for death or personal injury, and sets out time limits for commencing actions for compensation for death or personal injury.

75AP Application of provisions not to be excluded or modified

(1) Any term of a contract (including a term that is not set out in the contract but is incorporated in the contract by another term) that purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying:

(a) the application of all or any of the provisions of this Part; or

(b) the exercise of a right conferred by any of those provisions; or

(c) any liability under any of those provisions;

is void.

(2) A term of a contract is not taken to exclude, restrict or modify the application of a provision of this Part unless the term does so expressly or is inconsistent with that provision.

75AQ Representative actions by the Commission

(1) The Commission may, by application, commence a liability action on behalf of one or more persons identified in the application who has suffered the loss for whose amount the action is commenced.

(2) The Commission may only make an application under this section if it has obtained the written consent of the person, or each of the persons, on whose behalf the application is being made.

75AR Saving of other laws and remedies

(1) This Part is not intended to exclude or limit the concurrent operation of any law, whether written or unwritten, in force in a State or Territory.

(2) This Part is not to be taken to limit, restrict or otherwise affect any right or remedy a person would have had if this Part had not been enacted.

75AS Jurisdiction of courts

Subsections 75B(2) and 86(1), (2), (3) and (4) and sections 86A and 86B operate in relation to an action under this Part as if:

(a) references in them to Part VI included references to this Part; and

(b) references in them to Division 1, 1A or 1AA of Part V included references to this Part; and

(c) references in them to the Minister were omitted.

Part VB—Price exploitation in relation to A New Tax System

75AT Definitions

In this Part, unless the contrary intention appears:

GST has the same meaning as in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999*.

Note: The operation of the GST Act is affected by the GST Transition Act.

GST implementation date means the day on which the GST Act commences.

GST Transition Act means the *A New Tax System (Goods and Services Tax Transition) Act 1999*.

New Tax System changes means the following:

(a) the amendment of the former *Sales Tax (Exemptions and Classifications) Act 1992* made by the GST Transition Act;

(b) the ending of sales tax, as provided for in the former *A New Tax System (End of Sales Tax) Act 1999*;

(c) the imposition of GST;

(d) any other changes (including changes to Commonwealth, State or Territory laws) prescribed by the regulations for the purposes of this definition.

New Tax System transition period means the period:

(a) starting on the later of 1 July 1999 and the commencement of the *A New Tax System (Trade Practices Amendment) Act 1999*; and

(b) ending on the day that is 2 years after the GST implementation date.

price, in relation to a supply, includes:

(a) a charge of any description for the supply; and

(b) any pecuniary or other benefit, whether direct or indirect, received or to be received by a person for or in connection with the supply.

regulated supply means:

(a) a supply that:

(i) occurs during the New Tax System transition period and before the GST implementation date; and

(ii) is by a person who would be required to be registered under the GST Act had the supply occurred on or after 1 July 2000; and

(iii) had the supply occurred on or after 1 July 2000, it would have been a taxable supply for the purposes of the GST Act or would have been a taxable supply had it not been GST-free or input taxed for the purposes of that Act; or

(b) a supply that:

(i) occurs during the New Tax System transition period and on or after the GST implementation date; and

(ii) is by a person who is registered or required to be registered under the GST Act; and

(iii) is a taxable supply for the purposes of the GST Act, or would have been a taxable supply for the purposes of the GST Act had it not been GST-free or input taxed for the purposes of that Act.

supply means:

(a) a supply of goods, including by way of sale, exchange, lease, hire or hire-purchase; or

(b) any other transaction or dealing that is a supply for the purposes of the GST Act.

75AU Price exploitation in relation to New Tax System changes

(1) A corporation contravenes this section if it engages in price exploitation in relation to the New Tax System changes.

(2) For the purposes of this section, a corporation engages in price exploitation in relation to the New Tax System changes if:

(a) it makes a regulated supply; and

(b) the price for the supply is unreasonably high, having regard alone to the New Tax System changes (whether the supply took place before or after those changes); and

(c) the price for the supply is unreasonably high even if the following other matters are also taken into account:

(i) the supplier's costs;

(ii) supply and demand conditions;

(iii) any other relevant matter.

75AV Price exploitation—guidelines about when prices contravene section 75AU

(1) The Commission must, by written instrument, formulate guidelines about when prices for regulated supplies may be regarded as being in contravention of section 75AU.

(2) The Commission may, by written instrument, vary the guidelines.

(3) The Commission must have regard to the guidelines in making decisions under section 75AW or 75AX in relation to the issue, variation and revocation of notices under that section.

(4) The Court may have regard to the guidelines in any proceedings:

(a) under section 76 relating to section 75AU; or

(b) under section 80 for an injunction relating to section 75AU.

(5) As soon as practicable after making or varying the guidelines, the Commission must cause a copy of the guidelines, or of the variation, to be published in the *Gazette*. However, failure to do so does not affect the validity of the guidelines or of the variation.

75AW Commission may issue notice to corporation it considers has contravened section 75AU

(1) If the Commission considers that a corporation has made a supply in contravention of section 75AU, the Commission may give the corporation a notice in writing under this section.

(2) The notice must:

(a) be expressed to be given under this section; and

(b) identify:

(i) the corporation that made the supply; and

(ii) the kind of supply made; and

(iii) the circumstances in which the supply was made; and

(c) state that, in the Commission's opinion:

(i) the price for the supply was unreasonably high as mentioned in paragraph 75AU(2)(b); and

(ii) that unreasonably high price was not attributable to matters referred to in paragraph 75AU(2)(c).

(3) In any proceedings:

(a) under section 76 relating to section 75AU; or

(b) under section 80 for an injunction relating to section 75AU;

the notice is taken to be prima facie evidence that:

(c) the price for the supply was unreasonably high as mentioned in paragraph 75AU(2)(b); and

(d) that unreasonably high price was not attributable to matters referred to in paragraph 75AU(2)(c).

(4) The Commission may vary or revoke the notice on its own initiative or on application made by the corporation. The Commission must give the corporation notice in writing of the variation or revocation.

75AX Commission may issue notice to aid prevention of price exploitation

(1) The Commission may give a corporation a notice in writing under this section if the Commission considers that doing so will aid the prevention of price exploitation (within the meaning of section 75AU).

(2) The notice must:

(a) be expressed to be given under this section; and

(b) be expressed to relate to any supply that the corporation makes that is:

(i) of a kind specified in the notice; and

(ii) made in circumstances specified in the notice; and

(iii) made during the period specified in the notice (which must not be a period ending after the end of the New Tax System Transition period); and

(c) specify the maximum price that, in the Commission's opinion, may be charged for a supply to which the notice is expressed to relate.

(3) The Commission may, on its own initiative or on application made by the corporation:

(a) vary the notice to:

(i) change the period specified as required by subparagraph (2)(b)(iii); or

(ii) change the price specified in the notice as required by paragraph (2)(c); or

(b) revoke the notice.

The Commission must give the corporation notice in writing of the variation or revocation.

(4) The Commission may publish the notice, or particulars of any variation or revocation of the notice, in such manner as the Commission considers appropriate, including, for example, in a national newspaper.

75AY Commission may monitor prices

(1) The Commission may monitor prices for either or both of the following purposes:

(a) to assess the general effect of the New Tax System changes on prices charged by corporations for supplies during the New Tax System transition period;

(b) to assist its consideration of whether section 75AU has been, is being, or may in the future be, contravened.

(2) A member of the Commission may, by notice in writing served on a person, require the person:

(a) to give the Commission specified information in writing signed by:

(i) the person; or

(ii) if the person is a body corporate—a competent officer of the body corporate; or

(b) to produce to the Commission specified documents;

being information, or documents containing information, relating to prices or the setting of prices that the member considers will or may be useful to the Commission in monitoring prices as mentioned in subsection (1).

Note: The powers under this section are in addition to the powers under section 155. Under section 155, the Commission may obtain information about particular matters that constitute or may constitute a contravention of section 75AU.

(3) Without limiting subsection (2), information or documents that may be required under that subsection may relate to prices, or the setting of prices:

(a) before or after all or any of the New Tax System changes have taken effect; and

(b) before or after the start of the New Tax System transition period; and

(c) in a situation, or during a period, specified in the notice.

(4) A person must not:

(a) refuse or fail to comply with a notice under subsection (2) to the extent that the person is capable of complying with it; or

(b) in purported compliance with such a notice, provide information or a document that is false or misleading.

Penalty: 20 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

75AYA Prohibition on misrepresenting the effect of the New Tax System changes

A corporation must not, in trade or commerce, for the purpose of price exploitation, in connection with:

(a) the supply or possible supply of goods or services; or

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

engage in conduct, at any time during the period starting when this section commences and ending at the end of the New Tax System transition period, that:

(c) falsely represents (whether expressly or impliedly) the effect, or likely effect, of all or any of the New Tax System changes; or

(d) misleads or deceives, or is likely to mislead or deceive, a person about the effect, or likely effect, of all or any of the New Tax System changes.

75AZ Reporting

(1) The Commission must, within 28 days after the end of each quarter, give the Minister a written report about the operations of the Commission under this Part during the quarter.

(2) Without otherwise limiting subsection (1), a report under that subsection must include particulars of:

(a) all notices given under section 75AX during the quarter; and

(b) all variations or revocations during the quarter of notices given under section 75AX.

(3) For this purpose, a ***quarter*** is a period of 3 months:

(a) that occurs wholly or partly during the New Tax System transition period; and

(b) that starts on any of the following days in a year:

(i) 1 January;

(ii) 1 April;

(iii) 1 July;

(iv) 1 October.

(4) As soon as practicable after the Minister receives a report under subsection (1), the Minister must make the report public by such means as the Minister considers appropriate.

(5) If this section commences during a quarter (but not on the first day of a quarter):

(a) no report is to be made at the end of the quarter; but

(b) the report made at the end of the next quarter is also to include the information required by subsection (1) in relation to the previous quarter.

Part VC—Offences

Division 1—Application of Part

75AZA Part does not apply to financial services

(1) This Part does not apply to the supply, or possible supply, of services that are financial services.

(2) Without limiting subsection (1):

(a) section 75AZI does not apply to conduct engaged in relation to financial services; and

(b) if a financial product consists of or includes an interest in land, section 75AZD does not apply to that interest; and

(c) section 75AZP does not apply to:

(i) a credit card that is part of, or that provides access to, a credit facility that is a financial product; or

(ii) a debit card that allows access to an account that is a financial product.

(3) In subsection (2):

credit card has the same meaning as in section 75AZP.

debit card has the same meaning as in section 75AZP.

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

75AZAA Concurrent operation of State and Territory laws

This Part is not intended to exclude or limit the concurrent operation of any law of a State or Territory.

Division 2—Offences relating to unfair practices

75AZB Interpretation

(1) For the purposes of this Division, if:

(a) a corporation makes a representation about a future matter (including the doing of, or the refusing to do, an act); and

(b) the corporation does not have reasonable grounds for making the representation;

the representation is taken to be misleading.

(2) For the purposes of the application of subsection (1) in proceedings relating to a representation made by a corporation about a future matter, the corporation is taken not to have had reasonable grounds for making the representation, unless it adduces evidence to the contrary.

(3) Subsection (1) does not limit by implication the meaning of a reference in this Division to a misleading representation, a representation that is misleading in a material particular or conduct that is misleading or is likely or liable to mislead.

75AZC False or misleading representations

(1) A corporation must not, in trade or commerce, in connection with the supply or possible supply of goods or services, or in connection with the promotion by any means of the supply or use of goods or services, do any of the following:

(a) falsely represent that goods are of a particular standard, quality, value, grade, composition, style or model, or have had a particular history or particular previous use;

(b) falsely represent that services are of a particular standard, quality, value or grade;

(c) falsely represent that goods are new;

(d) falsely represent that a particular person has agreed to acquire goods or services;

(e) represent that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have;

(f) represent that the corporation has a sponsorship, approval or affiliation it does not have;

(g) make a false or misleading representation about the price of goods or services;

(h) make a false or misleading representation about the availability of facilities for the repair of goods or of spare parts for goods;

(i) make a false or misleading representation about the place of origin of goods;

(j) make a false or misleading representation about the need for any goods or services;

(k) make a false or misleading representation about the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.

Penalty: 10,000 penalty units.

Note 1: The penalty specified above is the maximum penalty that may be imposed on a corporation: subsection 4B(3) of the *Crimes Act 1914* does not apply.

Note 2: For the application of this offence to a person other than a corporation (and the corresponding penalty), see section 6.

(2) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Note 3: For rules relating to representations as to the country of origin of goods, see Division 1AA of Part V (sections 65AA to 65AN).

75AZD False representations and other misleading or offensive conduct in relation to land

(1) A corporation must not, in trade or commerce, in connection with the sale or grant, or the possible sale or grant, of an interest in land, or in connection with the promotion by any means of the sale or grant of an interest in land:

(a) represent that the corporation has a sponsorship, approval or affiliation it does not have; or

(b) make a false or misleading representation about the nature of the interest in the land, the price payable for the land, the location of the land, the characteristics of the land, the use to which the land is capable of being put, or may lawfully be put, or the existence or availability of facilities associated with the land.

Penalty: 10,000 penalty units.

Note 1: The penalty specified above is the maximum penalty that may be imposed on a corporation: subsection 4B(3) of the *Crimes Act 1914* does not apply.

Note 2: For the application of this offence to a person other than a corporation (and the corresponding penalty), see section 6.

(2) If:

(a) a corporation offers gifts, prizes or other free items; and

(b) the corporation offers the gifts, prizes or other items, in trade or commerce, in connection with the sale or grant, or the possible sale or grant, of an interest in land, or in connection with the promotion by any means of the sale or grant of an interest in land; and

(c) when the corporation so offers the gifts, prizes or other free items it intends not to provide them, or not to provide them as offered;

the corporation is guilty of an offence punishable on conviction by a fine not exceeding 10,000 penalty units.

Note 1: The penalty specified in subsection (2) is the maximum penalty that may be imposed on a corporation: subsection 4B(3) of the *Crimes Act 1914* does not apply.

Note 2: For the application of the offence in subsection (2) to a person other than a corporation (and the corresponding penalty), see section 6.

(3) If:

(a) a corporation uses physical force or undue harassment or coercion; and

(b) the corporation uses such force, harassment or coercion in connection with the sale or grant, or the possible sale or grant, of an interest in land, or the payment for an interest in land;

the corporation is guilty of an offence punishable on conviction by a fine not exceeding 10,000 penalty units.

Note 1: The penalty specified in subsection (3) is the maximum penalty that may be imposed on a corporation: subsection 4B(3) of the *Crimes Act 1914* does not apply.

Note 2: For the application of the offence in subsection (3) to a person other than a corporation (and the corresponding penalty), see section 6.

(4) For the purposes of the application of the *Criminal Code* in relation to subsection (2), paragraphs (2)(b) and (c) are taken to be circumstances in which the conduct described in paragraph (2)(a) occurs.

(5) Subsection (1) is an offence of strict liability.

(6) Strict liability applies to paragraphs (2)(b) and (3)(b).

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(7) Nothing in this section is to be taken as implying that other provisions in this Part do not apply in relation to the supply or acquisition, or the possible supply or acquisition, of an interest in land.

(8) In this section:

interest, in relation to land, has the same meaning as in section 53A.

75AZE Misleading conduct in relation to employment

(1) A corporation must not, in relation to employment that is to be, or may be, offered by the corporation or by another person, engage in conduct that is liable to mislead persons seeking the employment about the availability, nature, terms or conditions of, or any other matter relating to, the employment.

Penalty: 10,000 penalty units.

Note 1: The penalty specified above is the maximum penalty that may be imposed on a corporation: subsection 4B(3) of the *Crimes Act 1914* does not apply.

Note 2: For the application of this offence to a person other than a corporation (and the corresponding penalty), see section 6.

(2) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For ***strict liability***, see section 6.1 of the *Criminal Code*.

75AZF Single price to be stated in certain circumstances

(1) A corporation must not, in trade or commerce, in connection with:

(a) the supply or possible supply of goods or services to a person (the ***relevant person***); or

(b) the promotion by any means of the supply of goods or services to a person (the ***relevant person***) or of the use of goods or services by a person (the ***relevant person***);

make a representation with respect to an amount that, if paid, would constitute a part of the consideration for the supply of the goods or services.

Penalty: 10,000 penalty units.

Note 1: The penalty specified above is the maximum penalty that may be imposed on a corporation: subsection 4B(3) of the *Crimes Act 1914* does not apply.

Note 2: For the application of this offence to a person other than a corporation (and the corresponding penalty), see section 6.

(2) Subsection (1) does not apply if the corporation also:

(a) specifies, in a prominent way and as a single figure, the single price for the goods or services; and

(b) if, in relation to goods:

(i) the corporation does not include in the single price a charge that is payable in relation to sending the goods from the supplier to the relevant person; and

(ii) the corporation knows, at the time of the representation, the minimum amount of a charge in relation to sending the goods from the supplier to the relevant person that must be paid by the relevant person;

specifies that minimum amount.

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

(2A) A corporation is not required to include, in the single price for goods, a charge that is payable in relation to sending the goods from the supplier to the relevant person.

(2B) Subsection (1) does not apply if the representation is made exclusively to a body corporate.

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

(2C) For the purposes of paragraph (2)(a), the corporation is taken not to have specified a single price for the goods or services in a prominent way unless the single price is at least as prominent as the most prominent of the parts of the consideration for the supply.

(2D) Subsection (2C) does not apply in relation to services to be supplied under a contract if the following apply:

(a) the contract provides for the supply of the services for the term of the contract;

(b) the contract provides for periodic payments for the services to be made during the term of the contract;

(c) if the contract also provides for the supply of goods—the goods are directly related to the supply of the services.

(3) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(4) A reference in this section to goods or services is a reference to goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption.

(5) In this section:

single price means the minimum quantifiable consideration for the supply concerned at the time of the representation concerned, including each of the following amounts (if any) that is quantifiable at that time:

(a) a charge of any description payable by the relevant person to the corporation making the representation (other than a charge that is payable at the option of the relevant person);

(b) the amount which reflects any tax, duty, fee, levy or charge imposed, on the corporation making the representation, in relation to the supply concerned;

(c) any amount paid or payable, by the corporation making the representation, in relation to the supply concerned with respect to any tax, duty, fee, levy or charge if:

(i) the amount is paid or payable under an agreement or arrangement made under a law of the Commonwealth, a State or a Territory; and

(ii) the tax, duty, fee, levy or charge would have otherwise been payable by the relevant person in relation to the supply concerned.

75AZG Offering gifts and prizes

(1) If:

(a) a corporation offers gifts, prizes or other free items; and

(b) the corporation offers the gifts, prizes or other free items in trade or commerce, in connection with the supply or possible supply of goods or services, or in connection with the promotion by any means of the supply or use of goods or services; and

(c) when the corporation so offers them, it intends not to provide them, or not to provide them as offered;

the corporation is guilty of an offence punishable on conviction by a fine not exceeding 10,000 penalty units.

Note 1: The penalty specified in subsection (1) is the maximum penalty that may be imposed on a corporation: subsection 4B(3) of the *Crimes Act 1914* does not apply.

Note 2: For the application of the offence in subsection (1) to a person other than a corporation (and the corresponding penalty), see section 6.

(2) For the purposes of the application of the *Criminal Code* in relation to subsection (1), paragraphs (1)(b) and (c) are taken to be circumstances in which the conduct described in paragraph (1)(a) occurs.

(3) Strict liability applies in relation to paragraph (1)(b).

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For ***strict liability***, see section 6.1 of the *Criminal Code*.

75AZH Misleading conduct to which Industrial Property Convention applies

(1) A person must not, in trade or commerce, engage in conduct that is liable to mislead the public about the nature, the manufacturing process, the characteristics, the suitability for their purpose, or quantity, of any goods.

Penalty: 2,000 penalty units.

Note: If a corporation is convicted of an offence under this subsection, subsection 4B(3) of the *Crimes Act 1914* allows the Court to impose a fine that is not greater than 5 times the maximum fine that could be imposed by the Court on an individual convicted of the offence.

(2) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For ***strict liability***, see section 6.1 of the *Criminal Code*.

75AZI Certain misleading conduct in relation to services

(1) A corporation must not, in trade or commerce, engage in conduct that is liable to mislead the public about the nature, the characteristics, the suitability for their purpose, or the quantity, of any services.

Penalty: 10,000 penalty units.

Note 1: The penalty specified above is the maximum penalty that may be imposed on a corporation: subsection 4B(3) of the *Crimes Act 1914* does not apply.

Note 2: For the application of this offence to a person other than a corporation (and the corresponding penalty), see section 6.

(2) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For ***strict liability***, see section 6.1 of the *Criminal Code*.

75AZJ Bait advertising

(1) A corporation must not, in trade or commerce, advertise for supply at a specified price, goods or services if there are reasonable grounds for believing that the corporation will not be able to offer those goods or services for supply at that price for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the corporation carries on business, and the nature of the advertisement.

Penalty: 10,000 penalty units.

Note 1: The penalty specified above is the maximum penalty that may be imposed on a corporation: subsection 4B(3) of the *Crimes Act 1914* does not apply.

Note 2: For the application of this offence to a person other than a corporation (and the corresponding penalty), see section 6.

(2) A corporation that has, in trade or commerce, advertised goods or services for supply at a specified price must not fail to offer such goods or services for supply at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the corporation carries on business, and the nature of the advertisement.

Penalty: 10,000 penalty units.

Note 1: The penalty specified above is the maximum penalty that may be imposed on a corporation: subsection 4B(3) of the *Crimes Act 1914* does not apply.

Note 2: For the application of this offence to a person other than a corporation (and the corresponding penalty), see section 6.

(3) Subsections (1) and (2) are offences of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(4) In a prosecution of a corporation under subsection (2), for failing to offer goods or services to a person (the ***customer***), it is a defence if the corporation proves that:

(a) it offered to supply, or to procure another person to supply goods or services of the kind advertised to the customer within a reasonable time, in a reasonable quantity and at the advertised price; or

(b) it offered to supply immediately, or to procure another person to supply within a reasonable time, equivalent goods or services to the customer in a reasonable quantity and at the price at which the first-mentioned goods or services were advertised;

and, in either case, if the offer was accepted by the customer, the corporation has so supplied, or procured another person to supply, goods or services.

Note: A defendant bears a legal burden in relation to the matters in subsection (4) (see section 13.4 of the *Criminal Code*).

75AZK Referral selling

(1) A corporation must not, in trade or commerce, induce a consumer to acquire goods or services by representing that the consumer will, after the contract for the acquisition of the goods or services is made, receive a rebate, commission or other benefit in return for giving the corporation the names of prospective customers or otherwise assisting the corporation to supply goods or services to other consumers, if receipt of the rebate, commission or other benefit is contingent on an event occurring after that contract is made.

Penalty: 10,000 penalty units.

Note 1: The penalty specified above is the maximum penalty that may be imposed on a corporation: subsection 4B(3) of the *Crimes Act 1914* does not apply.

Note 2: For the application of this offence to a person other than a corporation (and the corresponding penalty), see section 6.

(2) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For ***strict liability***, see section 6.1 of the *Criminal Code*.

75AZL Accepting payment without intending or being able to supply as ordered

(1) If:

(a) a corporation, in trade or commerce, accepts payment or other consideration for goods or services; and

(b) at the time of acceptance, the corporation intends:

(i) not to supply the goods or services; or

(ii) to supply goods or services materially different from the goods or services in respect of which the payment or other consideration is accepted;

the corporation is guilty of an offence punishable on conviction of a fine not exceeding 10,000 penalty units.

Note 1: The penalty specified in subsection (1) is the maximum penalty that may be imposed on a corporation: subsection 4B(3) of the *Crimes Act 1914* does not apply.

Note 2: For the application of the offence in subsection (1) to a person other than a corporation (and the corresponding penalty), see section 6.

(2) Strict liability applies to paragraph (1)(a).

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3) If:

(a) a corporation, in trade or commerce, accepts payment or other consideration for goods or services; and

(b) at the time of acceptance, there are reasonable grounds for believing that the corporation will not be able to supply the goods or services within the period specified by the corporation or, if no period is specified, within a reasonable time;

the corporation is guilty of an offence punishable on conviction by a fine not exceeding 10,000 penalty units.

Note 1: The penalty specified in subsection (3) is the maximum penalty that may be imposed on a corporation: subsection 4B(3) of the *Crimes Act 1914* does not apply.

Note 2: For the application of the offence in subsection (3) to a person other than a corporation (and the corresponding penalty), see section 6.

(4) Subsection (3) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For ***strict liability***, see section 6.1 of the *Criminal Code*.

75AZM Misleading representations about certain business activities

(1) A corporation must not, in trade or commerce, make a representation that is false or misleading in a material particular about the profitability or risk or any other material aspect of any business activity that the corporation has represented as one that can be, or can be to a considerable extent, carried on at or from a person's place of residence.

Penalty: 10,000 penalty units.

Note 1: The penalty specified above is the maximum penalty that may be imposed on a corporation: subsection 4B(3) of the *Crimes Act 1914* does not apply.

Note 2: For the application of this offence to a person other than a corporation (and the corresponding penalty), see section 6.

(2) If a corporation, in trade or commerce, invites (whether by advertisement or otherwise) persons to engage or participate, or to offer or apply to engage or participate, in a business activity requiring the performance by the persons concerned of work, or the investment of money by the persons concerned and the performance by them of work associated with the investment, the corporation must not make a representation that is

false or misleading in a material particular about the profitability or risk or any other material aspect of the business activity.

Penalty: 10,000 penalty units.

Note 1: The penalty specified above is the maximum penalty that may be imposed on a corporation: subsection 4B(3) of the *Crimes Act 1914* does not apply.

Note 2: For the application of this offence to a person other than a corporation (and the corresponding penalty), see section 6.

(3) Subsections (1) and (2) are offences of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For ***strict liability***, see section 6.1 of the *Criminal Code*.

75AZN Harassment and coercion

(1) If:

(a) a corporation uses physical force or undue harassment or coercion; and

(b) the corporation uses such force, harassment or coercion in connection with the supply or possible supply of goods or services to a consumer, or the payment for goods or services by a consumer;

the corporation is guilty of an offence punishable on conviction by a fine not exceeding 10,000 penalty units.

Note 1: The penalty specified in subsection (1) is the maximum penalty that may be imposed on a corporation: subsection 4B(3) of the *Crimes Act 1914* does not apply.

Note 2: For the application of the offence in subsection (1) to a person other than a corporation (and the corresponding penalty), see section 6.

(2) Strict liability applies to paragraph (1)(b).

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For ***strict liability***, see section 6.1 of the *Criminal Code*.

75AZO Pyramid selling

(1) A corporation must not participate in a pyramid selling scheme.

Penalty: 10,000 penalty units.

(2) A corporation must not induce, or attempt to induce, a person to participate in a pyramid selling scheme.

Penalty: 10,000 penalty units.

(3) Subsections (1) and (2) are offences of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(4) In this section:

participate has the meaning given by section 65AAB.

pyramid selling scheme has the meaning given by sections 65AAD and 65AAE.

75AZP Unsolicited credit and debit cards

(1) A corporation must not send a prescribed card to a person.

Penalty: 10,000 penalty units.

Note 1: The penalty specified above is the maximum penalty that may be imposed on a corporation: subsection 4B(3) of the *Crimes Act 1914* does not apply.

Note 2: For the application of this offence to a person other than a corporation (and the corresponding penalty), see section 6.

(2) Subsection (1) applies only in relation to the sending of a prescribed card by or on behalf of the person who issued the card.

(3) Subsection (1) does not apply if a corporation sends a prescribed card to a person:

(a) in pursuance of a request in writing by the person who will be under a liability to the person who issued the card in respect of the use of the card; or

(b) in renewal or replacement of, or in substitution for:

(i) a prescribed card of the same kind previously sent to the first-mentioned person in pursuance of a request in writing by the person who was under a liability to the person who issued the card previously so sent in respect of the use of that card; or

(ii) a prescribed card of the same kind previously sent to the first-mentioned person and used for a purpose for which it was intended to be used.

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

(4) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(5) A corporation must not take any action that enables a person who has a credit card or a debit card to use the card as a debit card or a credit card, as the case may be.

Penalty: 10,000 penalty units.

Note 1: The penalty specified above is the maximum penalty that may be imposed on a corporation: subsection 4B(3) of the *Crimes Act 1914* does not apply.

Note 2: For the application of this offence to a person other than a corporation (and the corresponding penalty), see section 6.

(6) Subsection (5) does not apply in relation to action taken by a corporation in accordance with a written request by the person.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

(7) Subsection (5) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(8) In this section:

article, ***credit card***, ***debit card*** and ***prescribed card*** have the same respective meanings as in section 63A.

75AZQ Assertion of right to payment for unsolicited goods or services or for making an entry in a directory

(1) A corporation must not, in trade or commerce, assert a right to payment from a person for unsolicited goods or unsolicited services.

Penalty: 10,000 penalty units.

Note 1: The penalty specified above is the maximum penalty that may be imposed on a corporation: subsection 4B(3) of the *Crimes Act 1914* does not apply.

Note 2: For the application of this offence to a person other than a corporation (and the corresponding penalty), see section 6.

(2) Subsection (1) does not apply if the corporation proves that it had reasonable cause to believe that there was a right to payment.

Note: A defendant bears a legal burden in relation to the matter in subsection (2) (see section 13.4 of the *Criminal Code*).

(3) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(4) A corporation must not assert a right to payment from a person of a charge for making in a directory an entry relating to the person, or to the person's profession, business, trade or occupation.

Penalty: 10,000 penalty units.

Note 1: The penalty specified above is the maximum penalty that may be imposed on a corporation: subsection 4B(3) of the *Crimes Act 1914* does not apply.

Note 2: For the application of this offence to a person other than a corporation (and the corresponding penalty), see section 6.

(5) Subsection (4) does not apply if the corporation proves that it believed, or had reasonable cause to believe, that the person had authorised the making of the entry.

Note: A defendant bears a legal burden in relation to the matter in subsection (5) (see section 13.4 of the *Criminal Code*).

(6) Subsection (4) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(7) A person is not liable to make any payment to a corporation, and is entitled to recover by action in a court of competent jurisdiction against a corporation any payment made by the person to the corporation, in full or part satisfaction of a charge for the making of an entry in a directory, unless the person has authorised the making of the entry.

(8) For the purposes of this section, a corporation is taken to assert a right to a payment from a person for unsolicited goods or services, or of a charge for the making of an entry in a directory, if the corporation:

(a) makes a demand for the payment or asserts a present or prospective right to the payment; or

(b) threatens to bring any legal proceedings with a view to obtaining the payment; or

(c) places or causes to be placed the name of the person on a list of defaulters or debtors, or threatens to do so, with a view to obtaining the payment; or

(d) invokes or causes to be invoked any other collection procedure, or threatens to do so, with a view to obtaining the payment; or

(e) sends any invoice or other document stating the amount of the payment or setting out the price of the goods or services or the charge for the making of the entry and not stating as prominently (or more prominently) that no claim is made to the payment, or to payment of the price or charge, as the case may be.

(9) A person is not taken for the purposes of this section to have authorised the making of an entry in a directory, unless:

(a) a document authorising the making of the entry has been signed by the person or by another person authorised by him or her; and

(b) a copy of the document has been given to the person before the right to payment of a charge for the making of the entry is asserted; and

(c) the document specifies:

(i) the name of the directory; and

(ii) the name and address of the person publishing the directory; and

(iii) particulars of the entry; and

(iv) the amount of the charge for the making of the entry or the basis on which the charge is, or is to be, calculated.

(10) For the purposes of this section, an invoice or other document purporting to have been sent by or on behalf of a corporation is taken to have been sent by that corporation unless the contrary is established.

(11) In this section:

directory and ***making*** have the same respective meanings as in section 64.

75AZR Application of provisions of Division to prescribed information providers

(1) Nothing in section 75AZC, 75AZD, 75AZH, 75AZI or 75AZM applies to a prescribed publication of matter by a prescribed information provider, other than:

(a) a publication of matter in connection with:

(i) the supply or possible supply of goods or services; or

(ii) the sale or grant, or possible sale or grant, of interests in land; or

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

(iv) the promotion by any means of the sale or grant of interests in land;

where:

(v) the goods or services were relevant goods or services, or the interests in land were relevant interests in land, as the case may be, in relation to the prescribed information provider; or

(vi) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with:

(A) a person who supplies goods or services of that kind, or who sells or grants interests in land, being interests of that kind; or

(B) a body corporate that is related to a body corporate that supplies goods or services of that kind, or that sells or grants interests in land, being interests of that kind; or

(b) a publication of an advertisement.

(2) For the purposes of this section, a publication by a prescribed information provider is a prescribed publication if:

(a) in any case—the publication was made by the prescribed information provider in the course of carrying on a business of providing information; or

(b) in the case of a person who is a prescribed information provider by virtue of paragraph (a), (b) or (c) of the definition of ***prescribed information provider*** in subsection 65A(3) (whether or not the person is also a prescribed information provider by virtue of another operation of that definition)—the publication was by way of a radio or television broadcast by the prescribed information provider.

(3) In this section:

prescribed information provider, ***relevant goods or services*** and ***relevant interests in land*** have the same respective meanings as in section 65A.

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

Division 3—Offences relating to product safety and product information

75AZS Product safety standards and unsafe goods

(1) If:

(a) a corporation, in trade or commerce, supplies goods; and

(b) the goods are intended to be used, or are of a kind likely to be used, by a consumer; and

(c) the goods are of a kind:

(i) in respect of which there is a consumer product safety standard prescribed by regulations made for the purposes of section 65C and which do not comply with that standard; or

(ii) in respect of which there is in force a notice under section 65C declaring the goods to be unsafe goods; or

(iii) in respect of which there is in force a notice under section 65C imposing a permanent ban on the goods;

the corporation is guilty of an offence punishable on conviction by a fine not exceeding 10,000 penalty units.

Note 1: The penalty specified in subsection (1) is the maximum penalty that may be imposed on a corporation: subsection 4B(3) of the *Crimes Act 1914* does not apply.

Note 2: For the application of the offence in subsection (1) to a person other than a corporation (and the corresponding penalty), see section 6.

Note 3: For the purposes of this section, subsection 65E(2) treats a consumer product safety standard identified in a notice published by the Minister as a consumer product safety standard prescribed by regulations made for the purposes of section 65C.

(2) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3) A corporation must not export goods whose supply in Australia would constitute an offence against subsection (1).

Penalty: 10,000 penalty units.

Note 1: The penalty specified above is the maximum penalty that may be imposed on a corporation: subsection 4B(3) of the *Crimes Act 1914* does not apply.

Note 2: For the application of this offence to a person other than a corporation (and the corresponding penalty), see section 6.

(4) Subsection (3) does not apply if the Minister has, by written notice given to the corporation, approved the export of the goods under subsection 65C(3).

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

(5) Subsection (3) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For ***strict liability***, see section 6.1 of the *Criminal Code*.

75AZT Product information standards

(1) If:

(a) a corporation, in trade or commerce, supplies goods; and

(b) the goods are intended to be used, or are of a kind likely to be used, by a consumer; and

(c) the goods are of a kind in respect of which a consumer product information standard has been prescribed by regulations made for the purpose of subsection 65D(2);

the corporation is guilty of an offence punishable on conviction by a fine not exceeding 10,000 penalty units.

Note 1: The penalty specified in subsection (1) is the maximum penalty that may be imposed on a corporation: subsection 4B(3) of the *Crimes Act 1914* does not apply.

Note 2: For the application of the offence in subsection (1) to a person other than a corporation (and the corresponding penalty), see section 6.

Note 3: For the purposes of this section, subsection 65E(2) treats a consumer product information standard identified in a notice published by the Minister as a consumer product information standard prescribed by regulations made for the purpose of subsection 65D(2).

(2) Subsection (1) does not apply if the corporation has complied with the standard in relation to the goods.

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

(3) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(4) Subsection (1) does not apply to goods that are intended to be used outside Australia.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

(5) If there is applied to goods:

(a) a statement that the goods are for export only; or

(b) a statement indicating by the use of words authorised by the regulations to be used for the purposes of this subsection that the goods are intended to be used outside Australia;

it must be presumed for the purposes of this section, unless the contrary is established, that the goods are intended to be so used.

(6) For the purposes of subsection (4), a statement is taken to be applied to goods if:

(a) the statement is woven in, impressed on, worked into or annexed or affixed to the goods; or

(b) the statement is applied to a covering, label, reel or thing in or with which the goods are supplied.

(7) A reference in subsection (6) to a covering includes a reference to a stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper and a reference in that subsection to a label includes a reference to a band or ticket.

75AZU Compliance with product recall notice

(1) If a notice under subsection 65F(1) is in force in relation to a corporation, the corporation must not contravene a requirement or direction in the notice.

Penalty: 10,000 penalty units.

Note 1: The penalty specified above is the maximum penalty that may be imposed on a corporation: subsection 4B(3) of the *Crimes Act 1914* does not apply.

Note 2: For the application of this offence to a person other than a corporation (and the corresponding penalty), see section 6.

(2) If a notice under subsection 65F(1) is in force in relation to a corporation, the corporation must not, in trade or commerce:

(a) if the notice identifies a defect in, or a dangerous characteristic of, the goods—supply goods of the kind to which the notice relates which contain the defect or have that characteristic; or

(b) in any other case—supply goods of the kind to which the notice relates.

Penalty: 10,000 penalty units.

Note 1: The penalty specified above is the maximum penalty that may be imposed on a corporation: subsection 4B(3) of the *Crimes Act 1914* does not apply.

Note 2: For the application of this offence to a person other than a corporation (and the corresponding penalty), see section 6.

(3) Subsections (1) and (2) are offences of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Part VI—Enforcement and remedies

75B Interpretation

(1) A reference in this Part to a person involved in a contravention of a provision of Part IV, IVA, IVB, V or VC, or of section 75AU, 75AYA or 95AZN, shall be read as a reference to a person who:

(a) has aided, abetted, counselled or procured the contravention;

(b) has induced, whether by threats or promises or otherwise, the contravention;

(c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or

(d) has conspired with others to effect the contravention.

(2) In this Part, unless the contrary intention appears:

(a) a reference to the Court in relation to a matter is a reference to any court having jurisdiction in the matter;

(b) a reference to the Federal Court is a reference to the Federal Court of Australia; and

(c) a reference to a judgment is a reference to a judgment, decree or order, whether final or interlocutory.

76 Pecuniary penalties

(1) If the Court is satisfied that a person:

(a) has contravened any of the following provisions:

(i) a provision of Part IV (other than section 44ZZRF or 44ZZRG);

(ii) section 75AU or 75AYA;

(iii) section 95AZN; or

(b) has attempted to contravene such a provision; or

(c) has aided, abetted, counselled or procured a person to contravene such a provision; or

(d) has induced, or attempted to induce, a person, whether by threats or promises or otherwise, to contravene such a provision; or

(e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or

(f) has conspired with others to contravene such a provision;

the Court may order the person to pay to the Commonwealth such pecuniary penalty, in respect of each act or omission by the person to which this section applies, as the Court determines to be appropriate having regard to all relevant matters including the nature and extent of the act or omission and of any loss or damage suffered as a result of the act or omission, the circumstances in which the act or omission took place and whether the person has previously been found by the Court in proceedings under this Part or Part XIB to have engaged in any similar conduct.

Note: Section 87AA provides that, if boycott conduct is involved in proceedings, the Court must have regard to certain matters in exercising its powers under this Part. (***Boycott conduct*** is defined in subsection 87AA(2).)

(1A) The pecuniary penalty payable under subsection (1) by a body corporate is not to exceed:

(a) for each act or omission to which this section applies that relates to section 45D, 45DB, 45E or 45EA—$750,000; and

(aa) for each act or omission to which this section applies that relates to section 44ZZRJ or 44ZZRK—the greatest of the following:

(i) $10,000,000;

(ii) if the court can determine the total value of the benefits that have been obtained (within the meaning of Division 1 of Part IV) by one or more persons and that are reasonably attributable to the act or omission—3 times that total value;

(iii) if the Court cannot determine the total value of those benefits—10% of the annual turnover (within the meaning of Division 1 of Part IV) of the body corporate during the period (the ***turnover period***) of 12 months ending at the end of the month in which the act or omission occurred; and

(b) for each act or omission to which this section applies that relates to any other provision of Part IV—the greatest of the following:

(i) $10,000,000;

(ii) if the Court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the act or omission—3 times the value of that benefit;

(iii) if the Court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the period (the ***turnover period***) of 12 months ending at the end of the month in which the act or omission occurred; and

(c) for each act or omission to which this section applies that relates to section 95AZN—$33,000; and

(d) for each other act or omission to which this section applies—$10,000,000.

Note: For ***annual turnover***, see subsection (5).

(1B) The pecuniary penalty payable under subsection (1) by a person other than a body corporate is not to exceed:

(a) for each act or omission to which this section applies that relates to section 95AZN—$6,600; and

(b) for each other act or omission to which this section applies—$500,000.

(2) Nothing in subsection (1) authorises the making of an order against an individual because the individual has contravened or attempted to contravene, or been involved in a contravention of, section 45D, 45DA, 45DB, 45E or 45EA.

(3) If conduct constitutes a contravention of two or more provisions of Part IV (other than section 44ZZRF or 44ZZRG), a proceeding may be instituted under this Act against a person in relation to the contravention of any one or more of the provisions but a person is not liable to more than one pecuniary penalty under this section in respect of the same conduct.

(4) The single pecuniary penalty that may be imposed in accordance with subsection (3) in respect of conduct that contravenes provisions to which 2 or more of the limits in paragraphs (1A)(aa), (a) and (b) apply is an amount up to the highest of those limits.

Annual turnover

(5) For the purposes of this section, the ***annual turnover*** of a body corporate, during the turnover period, is the sum of the values of all the supplies that the body corporate, and any body corporate related to the body corporate, have made, or are likely to make, during that period, other than:

(a) supplies made from any of those bodies corporate to any other of those bodies corporate; or

(b) supplies that are input taxed; or

(c) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the *A New Tax System (Goods and Services Tax) Act 1999*); or

(d) supplies that are not made in connection with an enterprise that the body corporate carries on; or

(e) supplies that are not connected with Australia.

(6) Expressions used in subsection (5) that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as in that Act.

76A Defence to proceedings under section 76 relating to a contravention of section 75AYA or 95AZN

(1) In this section:

contravention, in relation to a section, includes conduct referred to in paragraph 76(1)(b), (c), (d), (e) or (f) that relates to a contravention of the section.

(2) In proceedings against a person (the ***respondent***) under section 76 in relation to an alleged contravention of section 75AYA or 95AZN, it is a defence if the respondent establishes:

(a) that the contravention in respect of which the proceedings were instituted was due to reasonable mistake; or

(b) that the contravention in respect of which the proceedings were instituted was due to reasonable reliance on information supplied by another person; or

(c) that:

(i) the contravention in respect of which the proceedings were instituted was due to the act or default of another person, to an accident or to some other cause beyond the respondent's control; and

(ii) the respondent took reasonable precautions and exercised due diligence to avoid the contravention.

(3) In paragraphs (2)(b) and (c), ***another person*** does not include a person who was:

(a) a servant or agent of the respondent; or

(b) if the respondent is a body corporate—a director, servant or agent of the respondent;

at the time when the alleged contravention occurred.

76B What happens if substantially the same conduct is a contravention of Part IV or section 75AYA or 95AZN and an offence?

(1) In this section or Part:

contravention, in relation to a section or Part, includes conduct referred to in paragraph 76(1)(b), (c), (d), (e) or (f) that relates to a contravention of the section or Part.

pecuniary penalty order means an order under section 76 for the payment of a pecuniary penalty.

(2) The Court must not make a pecuniary penalty order against a person in relation to a contravention of Part IV or section 75AYA or 95AZN if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

(3) Proceedings for a pecuniary penalty order against a person in relation to a contravention of Part IV or section 75AYA or 95AZN are stayed if:

(a) criminal proceedings are started or have already been started against the person for an offence; and

(b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.

The proceedings for the pecuniary penalty order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings are dismissed.

(4) Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of Part IV or section 75AYA or 95AZN regardless of whether a pecuniary penalty order has been made against the person in respect of the contravention.

(5) Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:

(a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the individual for a contravention of Part IV or section 75AYA or 95AZN (whether or not the order was made); and

(b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

(6) In this section:

offence means an offence against a law of the Commonwealth, a State or a Territory.

76C Defence to proceedings relating to exclusionary provisions

Defence

(1) In proceedings against a person in relation to a contravention of subparagraph 45(2)(a)(i) or (b)(i) in relation to an exclusionary provision, it is a defence if the person establishes that the provision:

(a) is for the purposes of a joint venture; and

(b) does not have the purpose, and does not have and is not likely to have the effect, of substantially lessening competition.

Application of subsections 45(3) and (4)

(2) Subsections 45(3) and (4) apply for the purposes of subsection (1) in the same way as they apply for the purposes of section 45.

Definitions

(3) In this section:

contravention of subparagraph 45(2)(a)(i) or (b)(i) includes conduct referred to in paragraph 76(1)(b), (c), (d), (e) or (f) that relates to a contravention of subparagraph 45(2)(a)(i) or (b)(i).

proceedings means proceedings instituted under:

(a) this Part or section 163A; or

(b) section 21 or 23 of the *Federal Court of Australia Act 1976*; or

(c) section 39B of the *Judiciary Act 1903*.

77 Civil action for recovery of pecuniary penalties

(1) The Commission may institute a proceeding in the Court for the recovery on behalf of the Commonwealth of a pecuniary penalty referred to in section 76.

(2) A proceeding under subsection (1) may be commenced within 6 years after the contravention.

77A Indemnification of officers

(1) A body corporate (the ***first body***), or a body corporate related to the first body, must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against any of the following liabilities incurred as an officer of the first body:

(a) a civil liability;

(b) legal costs incurred in defending or resisting proceedings in which the person is found to have such a liability.

Penalty: 25 penalty units.

(2) For the purposes of subsection (1), the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

Definitions

(3) In this section:

civil liability means a liability to pay a pecuniary penalty under section 76 for a contravention of a provision of Part IV.

officer has the same meaning as in the *Corporations Act 2001*.

77B Certain indemnities not authorised and certain documents void

(1) Section 77A does not authorise anything that would otherwise be unlawful.

(2) Anything that purports to indemnify a person against a liability is void to the extent that it contravenes section 77A.

77C Application of section 77A to a person other than a body corporate

If, as a result of the operation of Part 2.4 of the *Criminal Code*, a person other than a body corporate is:

(a) convicted of an offence (the ***relevant offence***) against subsection 77A(1) of this Act; or

(b) convicted of an offence (the ***relevant offence***) against section 11.4 of the *Criminal Code* in relation to an offence referred to in subsection 77A(1) of this Act;

the relevant offence is taken to be punishable on conviction by a fine not exceeding 5 penalty units.

78 Criminal proceedings not to be brought for contraventions of Part IV or V or section 75AU or 75AYA

Criminal proceedings do not lie against a person by reason only that the person:

(a) has contravened any of the following provisions:

(i) a provision of Part IV (other than section 44ZZRF or 44ZZRG);

(ia) a provision of Part V (other than section 65Q or 65R or subsection 65F(9));

(ii) section 75AU or 75AYA;

(b) has attempted to contravene such a provision;

(c) has aided, abetted, counselled or procured a person to contravene such a provision;

(d) has induced, or attempted to induce, a person, whether by threats or promises or otherwise, to contravene such a provision;

(e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or

(f) has conspired with others to contravene such a provision.

79 Offences against section 44ZZRF or 44ZZRG or Part VC etc.

(1) A person who:

(aa) attempts to contravene; or

(a) aids, abets, counsels or procures a person to contravene; or

(b) induces, or attempts to induce, a person (whether by threats or promises or otherwise) to contravene; or

(c) is in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of; or

(d) conspires with others to contravene;

a cartel offence provision or a provision of Part VC is taken to have contravened that provision and is punishable:

(e) in a case where:

(i) the provision is a cartel offence provision; and

(ii) the person is not a body corporate;

by a term of imprisonment not exceeding 10 years or a fine not exceeding 2,000 penalty units, or both; or

(f) in any other case—accordingly.

(1AA) For the purposes of the application of subsection (1) to a case where:

(a) the provision is a cartel offence provision; and

(b) the person is a body corporate other than a corporation;

assume that each reference in paragraph 44ZZRF(3)(c) or 44ZZRG(3)(c) to a corporation were read as a reference to a body corporate.

(1AB) Subsections 11.1(2) to (6) (inclusive) of the *Criminal Code* apply in relation to paragraph (1)(aa) in the same way that they apply in relation to the offence of attempt under subsection 11.1(1) of the *Criminal Code*.

(1A) Subsections 11.2(2) to (5) (inclusive) of the *Criminal Code* apply in relation to paragraph (1)(a) in the same way that they apply in relation to subsection 11.2(1) of the *Criminal Code*.

(1B) Subsections 11.5(2) to (5) (inclusive) of the *Criminal Code* apply in relation to paragraph (1)(d) in the same way that they apply in relation to the offence of conspiracy under subsection 11.5(1) of the *Criminal Code*.

(2) Where a person is convicted of two or more offences constituted by, or relating to, contraventions of the same provision of Part VC, being contraventions that appear to the Court to have been of the same nature or a substantially similar nature and to have occurred at or about the same time (whether or not the person is also convicted of an offence or offences constituted by, or relating to, another contravention or other contraventions of that provision that were of a different nature or occurred at a different time), the Court shall not, in respect of the first-mentioned offences, impose on the person fines that, in the aggregate, exceed the maximum fine that would be applicable in respect of one offence by that person against that provision.

(3) Where:

(a) a person is convicted of an offence constituted by, or relating to, a contravention of a provision of Part VC; and

(b) a fine has, or fines have, previously been imposed on the person by the Court for an offence or offences constituted by, or relating to, another contravention or other contraventions of the same provision, being a contravention that, or contraventions each of which, appears to the Court to have been of the same nature as, or of a substantially similar nature to, and to have occurred at or about the same time as, the first-mentioned contravention (whether or not a fine has, or fines have, also previously been imposed on the person for an offence or offences constituted by, or relating to, a contravention or contraventions of that provision that were of a different nature or occurred at a different time);

the Court shall not, in respect of the offence mentioned in paragraph (a), impose on the person a fine that exceeds the amount (if any) by which the maximum fine applicable in respect of that offence is greater than the amount of the fine, or the sum of the amounts of the fines, first referred to in paragraph (b).

(4) In proceedings against a person for contravening a provision of Part VC, the Court may:

(a) grant an injunction under section 80 against the person in relation to:

(i) the conduct that constitutes, or is alleged to constitute, the contravention; or

(ii) other conduct of that kind; or

(b) make an order under section 86C or 86D in relation to the contravention.

(5) Sections 5, 7 and 7A of the *Crimes Act 1914*, and section 11.1 of the *Criminal Code*, do not apply in relation to an offence against a cartel offence provision or a provision of Part VC.

(6) A prosecution for an offence against a provision of Part VC may be commenced within 3 years after the commission of the offence.

(7) In this section:

cartel offence provision means section 44ZZRF or 44ZZRG.

79A Enforcement and recovery of certain fines

(1) Where a person on whom a fine has been imposed for an offence against a provision of Part VC or section 44ZZRF, 44ZZRG, 65Q, 65R, 154Q or 155 or subsection 65F(9) or 87A(5) or section 149.1 of the *Criminal Code* that relates to Part XID defaults in payment of the fine, a Court may:

(a) exercise any power that the Court has apart from this section with respect to the enforcement and recovery of fines imposed by the Court; or

(b) make an order, on the application of the Minister or the Commission, declaring that the fine is to have effect, and may be enforced, as if it were a judgment debt under a judgment of the Court.

(2) Where a person in relation to whom an order is made under subsection (1) in respect of a fine gives security for the payment of the fine, the Court shall cancel the order in respect of the fine.

(3) Where the Court makes an order in relation to a person in respect of a fine, the Court may, at any time before the order is executed in respect of the fine, allow the person a specified time in which to pay the fine or allow the person to pay the fine by specified instalments, and, in that case:

(a) the order shall not be executed unless the person fails to pay the fine within that time or fails to pay an instalment at or before the time when it becomes payable, as the case may be; and

(b) if the person pays the fine within that time or pays all the instalments, as the case may be, the order shall be deemed to have been discharged in respect of the fine.

(4) Subject to subsection (7), an order under subsection (1) in respect of a fine ceases to have effect:

(a) on payment of the fine; or

(b) if the fine is not paid—on full compliance with the order.

(5) The term of a sentence of imprisonment imposed by an order under a law of a State or Territory applied by section 15A of the *Crimes Act 1914* (including an order described in subsection 15A(1AA) of that Act) in respect of a fine shall be calculated at the rate of one day's imprisonment for each $25 of the amount of the fine that is from time to time unpaid.

(6) Subject to subsection (7), where a person is required to serve periods of imprisonment by virtue of an order or orders under subsection (1) in respect of 2 or more fines, those periods of imprisonment shall be served consecutively.

(7) Subject to subsection (8), where:

(a) a person would, but for this subsection, be required by virtue of an order or orders under subsection (1) in respect of 3 or more fines to serve periods of imprisonment in respect of those fines exceeding in the aggregate 3 years; and

(b) those fines were imposed (whether or not in the same proceedings) for offences constituted by contraventions that occurred within a period of 2 years, being contraventions that appear to the Court to have been of the same nature or a substantially similar nature;

the Court shall, by order, declare that the order or orders shall cease to have effect in respect of those fines after the person has served an aggregate of 3 years' imprisonment in respect of those fines.

(8) Where subsection (7) would, but for this subsection, apply to a person with respect to offences committed by the person within 2 or more overlapping periods of 2 years, the Court shall make an order under that subsection with respect to one only of those periods, being whichever period would give the person the maximum benefit from the application of that subsection.

(9) For the purposes of subsection (8), the Court may vary or revoke an order made under subsection (7).

(11) This section applies only in relation to fines imposed for offences committed after the commencement of this section.

79B Preference must be given to compensation for victims

If the Court considers that:

(a) it is appropriate to order a person (the ***defendant***):

(i) to pay a pecuniary penalty under section 76; or

(ii) to impose a fine under section 44ZZRF or 44ZZRG or Part VC;

in respect of a contravention, or an involvement in a contravention, of this Act; and

(b) it is appropriate to order the defendant to pay compensation to a person who has suffered loss or damage in respect of the contravention or the involvement; and

(c) the defendant does not have sufficient financial resources to pay both the pecuniary penalty or fine and the compensation;

the Court must give preference to making an order for compensation.

80 Injunctions

(1) Subject to subsections (1A), (1AAA) and (1B), where, on the application of the Commission or any other person, the Court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute:

(a) a contravention of any of the following provisions:

(i) a provision of Part IV, IVA, IVB, V or VC;

(ii) section 75AU or 75AYA;

(b) attempting to contravene such a provision;

(c) aiding, abetting, counselling or procuring a person to contravene such a provision;

(d) inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene such a provision;

(e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or

(f) conspiring with others to contravene such a provision;

the Court may grant an injunction in such terms as the Court determines to be appropriate.

Note: Section 87AA provides that, if boycott conduct is involved in proceedings, the Court must have regard to certain matters in exercising its powers under this Part. (***Boycott conduct*** is defined in subsection 87AA(2).)

(1AA) Where an application for an injunction under subsection (1) has been made, whether before or after the commencement of this subsection, the Court may, if the Court determines it to be appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that a person has engaged, or is proposing to engage, in conduct of a kind mentioned in subsection (1).

(1A) A person other than the Commission is not entitled to make an application under subsection (1) for an injunction by reason that a person has contravened or attempted to contravene or is proposing to contravene, or has been or is proposing to be involved in a contravention of, section 50, 75AU or 75AYA.

(1AAA) Subject to subsection (1B), a person other than the Minister or the Commission may not apply for an injunction on the ground of:

(a) a person's actual, attempted or proposed contravention of section 50A; or

(b) a person's actual or proposed involvement in a contravention of section 50A.

(1B) Where the Tribunal has, on the application of a person (in this subsection referred to as the ***applicant***) other than the Minister or the Commission, made a declaration under subsection 50A(1) in relation to the acquisition by a person of a controlling interest in a corporation, the applicant is entitled to make an application under subsection (1) for an injunction by reason that the corporation has contravened or attempted to contravene or is proposing to contravene subsection 50A(6) in relation to that declaration.

(2) Where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

(3) The Court may rescind or vary an injunction granted under subsection (1) or (2).

(4) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:

(a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind;

(b) whether or not the person has previously engaged in conduct of that kind; and

(c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

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

(a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;

(b) whether or not the person has previously refused or failed to do that act or thing; and

(c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

(6) Where the Minister or the Commission makes an application to the Court for the grant of an injunction under this section, the Court shall not require the applicant or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

(6A) Subsection (6) does not apply to an application by the Minister for an injunction relating to Part IV.

(7) Where:

(a) in a case to which subsection (6) does not apply the Court would, but for this subsection, require a person to give an undertaking as to damages or costs; and

(b) the Minister gives the undertaking;

the Court shall accept the undertaking by the Minister and shall not require a further undertaking from any other person.

(8) Subsection (7) does not apply in relation to an application for an injunction relating to Part IV.

(9) If the Director of Public Prosecutions makes an application to the Court for the grant of an injunction under this section in relation to:

(a) a person's contravention, or proposed contravention, of section 44ZZRF or 44ZZRG; or

(b) a person's involvement, or proposed involvement, in a contravention of section 44ZZRF or 44ZZRG;

the Court must not require the Director of Public Prosecutions or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

80AB Stay of injunctions

(1) The Court may stay the operation of an injunction granted under section 80 if:

(a) the injunction is in respect of conduct that constitutes or would constitute a contravention of subsection 45D(1), 45DA(1), 45DB(1), 45E(2) or 45E(3) or section 45EA or an associated contravention; and

(b) there is a proceeding in respect of a dispute relating to the conduct pending before a court, tribunal or authority of a State or Territory under a prescribed provision of a law of the State or Territory; and

(c) the conduct relates to the supply of goods or services to, or the acquisition of goods or services from, a person who is or becomes a party to the proceeding referred to in paragraph (b); and

(d) any of the following has applied for the stay:

(i) a Minister of the Commonwealth;

(ii) if subparagraph (b)(ii) applies—a Minister of the State or Territory concerned;

(iii) a party to the proceeding for the injunction; and

(e) the Court considers that granting the stay:

(i) would be likely to facilitate the settlement of the dispute by conciliation; and

(ii) would, in all the circumstances, be just.

(2) An order staying the operation of the injunction may be expressed to have effect for a specified period and may be varied or rescinded by the Court at any time.

(3) If the proceeding referred to in paragraph (1)(b) is terminated because the State or Territory court, tribunal or authority has settled the dispute to which the conduct relates by conciliation, the Court must not make any order in relation to the costs of the proceedings in respect of the granting of the injunction or in relation to the costs of any proceedings for the rescission of the injunction.

(4) Nothing in this section affects other powers of the Court.

(5) In this section:

associated contravention means:

(a) attempting to contravene subsection 45D(1), 45DA(1), 45DB(1), 45E(2) or 45E(3) or section 45EA; or

(b) aiding, abetting, counselling or procuring a person to contravene any of those provisions; or

(c) inducing, or attempting to induce, a person (whether by threats, promises or otherwise) to contravene any of those provisions; or

(d) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of any of those provisions; or

(e) conspiring with others to contravene any of those provisions.

injunction includes an interim injunction.

80AC Injunctions to prevent mergers if clearance or authorisation granted on the basis of false or misleading information

(1) If, on the application of the Commission, the Court is satisfied that:

(a) a person is proposing to acquire shares in the capital of a body corporate or assets of a person; and

(b) the person was granted, under Division 3 of Part VII (mergers), a clearance or an authorisation for the proposed acquisition on the basis of information that was false or misleading in a material particular; and

(c) that information was given by the person or a body corporate that was related to the person; and

(d) if that information had not been given, the clearance or authorisation would not have been granted; and

(e) apart from the clearance or authorisation, the acquisition would contravene section 50 if it occurred;

then the Court may grant an injunction in such terms as the Court determines to be appropriate.

(2) However, the Court must not grant the injunction if:

(a) the person was granted both a clearance and an authorisation for the acquisition under Division 3 of Part VII; and

(b) the Court could not grant an injunction under this section in relation to both the clearance and the authorisation.

Example: If a clearance for an acquisition was granted by the Commission on the basis of false or misleading information, and an authorisation for the acquisition was granted by the Tribunal on the basis of true information, then the Court cannot grant an injunction under this section because it would not be able to grant the injunction in relation to the authorisation.

80B Section 75AU contraventions—orders limiting prices or requiring refunds of money

Without limiting the generality of section 80, where, on the application of the Commission, the Court is satisfied that a person has engaged in conduct constituting a contravention of section 75AU, the Court may make either or both of the following orders:

(a) an order requiring that person, or a person involved in the contravention, not to make a regulated supply of a kind specified in the order for a price in excess of the price specified in the order while the order remains in force;

(b) an order requiring that person, or a person involved in the contravention, to refund money to a person specified in the order.

81 Divestiture where merger contravenes section 50 or 50A

(1) The Court may, on the application of the Commission or any other person, if it finds, or has in another proceeding instituted under this Part found, that a person has contravened section 50, by order, give directions for the purpose of securing the disposal by the person of all or any of the shares or assets acquired in contravention of that section.

(1A) Where:

(a) the Court finds, in a proceeding instituted under this Part, that a person (in this subsection referred to as the ***acquirer***) has acquired shares in the capital of a body corporate or any assets of a person in contravention of section 50;

(b) the Court finds, whether in that proceeding or any other proceeding instituted under this Part, that the person (in this section referred to as the ***vendor***) from whom the acquirer acquired those shares or those assets, as the case may be, was involved in the contravention; and

(c) at the time when the finding referred to in paragraph (b) is made, any of those shares or those assets, as the case may be, are vested in the acquirer or, if the acquirer is a body corporate, in any body corporate that is related to the acquirer;

the Court may, on the application of the Commission, declare that the acquisition, in so far as it relates to the shares or assets referred to in paragraph (c), is void as from the day on which it took place and, where the Court makes such a declaration:

(d) the shares or the assets to which the declaration relates shall be deemed not to have been disposed of by the vendor; and

(e) the vendor shall refund to the acquirer any amount paid to the vendor in respect of the acquisition of the shares or assets to which the declaration relates.

(1B) Where a declaration has been made under subsection 50A(1) in relation to the obtaining of a controlling interest in a corporation, or in each of 2 or more corporations, the Court may, on the application of the Minister or the Commission, if it finds, or has in a proceeding instituted under section 80 found, that that corporation, or any of those corporations, as the case may be (in this subsection referred to as the ***relevant corporation***), has contravened subsection 50A(6), by order, for the purpose of ensuring that the obtaining of that controlling interest ceases to have the result referred to in paragraph 50A(1)(a), direct the relevant corporation to dispose of such of its assets as are specified in the order within such period as is so specified.

(1C) Where an application is made to the Court for an order under subsection (1) or a declaration under subsection (1A), the Court may, instead of making an order under subsection (1) for the purpose of securing the disposal by a person of shares or assets or an order under subsection (1A) that the acquisition by a person of shares or assets is void, accept, upon such conditions (if any) as the Court thinks fit, an undertaking by the person to dispose of other shares or assets owned by the person.

(2) An application under subsection (1), (1A) or (1B) may be made at any time within 3 years after the date on which the contravention occurred.

(3) Where an application for directions under subsection (1) or for a declaration under subsection (1A) has been made, whether before or after the commencement of this subsection, the Court may, if the Court determines it to be appropriate, give directions or make a declaration by consent of all the parties to the proceedings, whether or not the Court has made the findings referred to in subsections (1) and (1A).

81A Divestiture where merger done under clearance or authorisation granted on false etc. information

Circumstances when this section applies

(1) This section applies if the Court is satisfied that:

(a) a person (the ***acquirer***) has acquired shares in the capital of a body corporate or assets of another person; and

(b) before the acquisition, the acquirer was granted, under Division 3 of Part VII (mergers), a clearance or an authorisation for the acquisition on the basis of information that was false or misleading in a material particular; and

(c) that information was provided by the acquirer or a body corporate that was related to the acquirer; and

(d) the Court or another court has found that the acquirer or related body corporate has contravened section 95AZN or Part 7.4 of the *Criminal Code* by giving that information; and

(e) if that information had not been given, the clearance or authorisation would not have been granted; and

(f) apart from the clearance or authorisation, the acquisition would have contravened section 50; and

(g) any or all of those shares or assets are vested in the acquirer, the related body corporate or any other body corporate that is related to the acquirer.

Divestiture by the acquirer and related bodies corporate

(2) The Court may, on the application of the Commission, by order, give directions for the purpose of securing the disposal of all or any of those shares or assets by the acquirer, the related body corporate or any other body corporate that is related to the acquirer.

(3) However, the Court must not make an order under subsection (2) if:

(a) the acquirer was granted, under Division 3 of Part VII, both a clearance and an authorisation for the acquisition; and

(b) the matters in subsection (1) are not satisfied in relation to both the clearance and the authorisation.

Example: If a clearance for an acquisition was granted by the Commission on the basis of false or misleading information, and an authorisation for the acquisition was granted by the Tribunal on the basis of true information, then the Court cannot make an order under subsection (2) because subsection (1) would not be satisfied in relation to the authorisation.

Declaration that acquisition void—when vendor involved

(4) In addition to being satisfied of the matters in subsection (1), if the Court, or another court, has found that the person (the ***vendor***) from whom the acquirer acquired the shares or assets was involved in the contravention referred to in paragraph (1)(d), then the Court may, on the application of the Commission, by order, declare that the acquisition, in so far as it relates to those shares or assets, is void as from the day on which it occurred.

(5) If the Court makes an order under subsection (4), then:

(a) the shares or assets to which the declaration relates are taken not to have been disposed of by the vendor; and

(b) the vendor must refund to the acquirer any amount paid to the vendor for acquiring the shares or assets.

(6) However, the Court must not make an order under subsection (4) if:

(a) the acquirer was granted, under Division 3 of Part VII, both a clearance and an authorisation for the acquisition; and

(b) the matters in subsections (1) and (4) are not satisfied in relation to both the clearance and the authorisation.

Alternative to orders under subsections (2) and (4)

(7) If an application is made to the Court for an order under subsection (2) or (4) against a person, the Court may, instead of making an order of the kind mentioned in that subsection, accept, upon such conditions (if any) as the Court thinks fit, an undertaking by the person to dispose of other shares or assets owned by the person.

When application for orders under this section must be made

(8) An application under subsection (2) or (4) may be made at any time within 3 years after the day on which the acquisition occurred.

Court may make orders even if not satisfied of all matters

(9) If an application for an order under subsection (2) or (4) is made, the Court may, if the Court determines it to be appropriate, make an order by consent of all the parties to the proceedings, whether or not the Court is satisfied of:

(a) for an order under subsection (2)—the matters in subsection (1); and

(b) for an order under subsection (4)—the matters in subsections (1) and (4).

82 Actions for damages

(1) Subject to subsection (1AAA), a person who suffers loss or damage by conduct of another person that was done in contravention of a provision of Part IV, IVA, IVB or V or section 51AC may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention.

(1AAA) A person who suffers loss or damage by conduct of another person may not recover the amount of the loss or damage by an action under subsection (1) to the extent to which:

(a) the action would be based on the conduct contravening a provision of Division 1 of Part V; and

(b) the loss or damage is, or results from, death or personal injury; and

(c) the death or personal injury does not result from smoking or other use of tobacco products.

(1AAB) Divisions 2 and 7 of Part VIB apply to an action under subsection (1) for loss or damage a person suffers by conduct of another person to the extent to which:

(a) the action is based on the conduct contravening a provision of Division 1 of Part V; and

(b) the loss or damage is, or results from, death or personal injury; and

(c) the death or personal injury results from smoking or other use of tobacco products;

as if the action were a proceeding to which Part VIB applies.

Note 1: Division 2 of Part VIB deals with the limitation periods that apply for claims for damages or compensation for death or personal injury and, to the extent to which that Division is applied to the action by this subsection, it overrides subsection (2) of this section.

Note 2: Division 7 of Part VIB deals with structured settlements for claims for damages or compensation for death or personal injury.

(1AA) Subsection (1) has effect subject to section 87AB.

Note: Section 87AB may limit the amount that the person may recover for a contravention of section 52 (Misleading or deceptive conduct) from the other person or from another person involved in the contravention.

(1B) Despite subsection (1), if:

(a) a person (the ***claimant***) makes a claim under subsection (1) in relation to:

(i) economic loss; or

(ii) damage to property;

caused by conduct of another person (the ***defendant***) that was done in contravention of section 52; and

(b) the claimant suffered the loss or damage:

(i) as a result partly of the claimant's failure to take reasonable care; and

(ii) as a result partly of the conduct referred to in paragraph (a); and

(c) the defendant:

(i) did not intend to cause the loss or damage; and

(ii) did not fraudulently cause the loss or damage;

the damages that the claimant may recover in relation to the loss or damage are to be reduced to the extent to which the court thinks just and equitable having regard to the claimant's share in the responsibility for the loss or damage.

Note: Part VIA also applies proportionate liability to a claim for damages under this section for a contravention of section 52.

(2) An action under subsection (1) may be commenced at any time within 6 years after the day on which the cause of action that relates to the conduct accrued.

Note: Part VIB restricts awards of compensation for death or personal injury, and sets out time limits for commencing actions for damages for death or personal injury.

(3) In this section:

smoking has the same meaning as in the *Tobacco Advertising Prohibition Act 1992*.

tobacco product has the same meaning as in the *Tobacco Advertising Prohibition Act 1992*.

83 Finding in proceedings to be evidence

In a proceeding against a person under section 82 or in an application under subsection 87(1A) for an order against a person, a finding of any fact by a court made in proceedings under section 77, 80, 81, 86C, 86D or 86E, or for an offence against section 44ZZRF or 44ZZRG or a provision of Part VC, in which that person has been found to have contravened, or to have been involved in a contravention of, a provision of Part IV, IVA, IVB, V or VC is *prima facie* evidence of that fact and the finding may be proved by production of a document under the seal of the court from which the finding appears.

84 Conduct by directors, employees or agents

(1) If, in:

(a) a prosecution for an offence against section 44ZZRF or 44ZZRG in respect of conduct engaged in by a body corporate; or

(b) a proceeding under this Part in respect of conduct engaged in by a body corporate, being conduct in relation to which section 44ZZRJ, 44ZZRK, 46 or 46A or Part IVA, IVB, V, VB or VC applies;

it is necessary to establish the state of mind of the body corporate, it is sufficient to show that:

(c) a director, employee or agent of the body corporate engaged in that conduct; and

(d) the director, employee or agent was, in engaging in that conduct, acting within the scope of his or her actual or apparent authority; and

(e) the director, employee or agent had that state of mind.

(2) Any conduct engaged in on behalf of a body corporate:

(a) by a director, employee or agent of the body corporate within the scope of the person's actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent;

shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.

(3) If, in:

(a) a prosecution for an offence against section 44ZZRF or 44ZZRG in respect of conduct engaged in by a person other than a body corporate; or

(b) a proceeding under this Part in respect of conduct engaged in by a person other than a body corporate, being conduct in relation to which section 44ZZRJ or 44ZZRK or Part IVA, IVB, V, VB or VC applies;

it is necessary to establish the state of mind of the person, it is sufficient to show that:

(c) an employee or agent of the person engaged in that conduct; and

(d) the employee or agent was, in engaging in that conduct, acting within the scope of his or her actual or apparent authority; and

(e) the employee or agent had that state of mind.

(4) Conduct engaged in on behalf of a person other than a body corporate:

(a) by an employee or agent of the person within the scope of the actual or apparent authority of the employee or agent; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent;

shall be deemed, for the purposes of this Act, to have been engaged in also by the first-mentioned person.

(4A) If:

(a) a person other than a body corporate is convicted of an offence; and

(b) subsection (3) or (4) applied in relation to the conviction on the basis that the person was the person first mentioned in that subsection; and

(c) the person would not have been convicted of the offence if that subsection had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the person's intention, opinion, belief or purpose.

85 Defences

(1) Subject to subsection (2), in a prosecution for a contravention of a provision of Part VC, it is a defence if the defendant establishes:

(a) that the contravention in respect of which the proceedings were instituted was caused by a reasonable mistake of fact, including a mistake of fact caused by reasonable reliance on information supplied by another person; or

(c) that:

(i) the contravention in respect of which the proceeding was instituted was due to the act or default of another person, to an accident or to some other cause beyond the defendant's control; and

(ii) the defendant took reasonable precautions and exercised due diligence to avoid the contravention.

Note: A defendant bears a legal burden in relation to the matters in subsection (1) (see section 13.4 of the *Criminal Code*).

(1AA) Paragraph (1)(a) is to be interpreted as having the same effect in relation to a contravention of a provision of Part VC as section 9.2 of the *Criminal Code* has in relation to offences of strict liability.

(1A) In paragraphs (1)(a) and (c), ***another person*** does not include a person who was:

(a) a servant or agent of the defendant; or

(b) in the case of a defendant being a body corporate, a director, servant or agent of the defendant;

at the time when the contravention occurred.

(2) If a defence provided by subsection (1) involves an allegation that a contravention was due to reliance on information supplied by another person or to the act or default of another person, the defendant is not, without leave of the Court, entitled to rely on that defence unless he or she has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person by whom the proceeding was instituted a notice in writing giving such information that would identify or assist in the identification of the other person as was then in his or her possession.

(3) In a proceeding in relation to a contravention of a provision of Part V or VC committed by the publication of an advertisement, it is a defence if the defendant establishes that he or she is a person whose business it is to publish or arrange for the publication of advertisements and that he or she received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to a contravention of a provision of that Part.

Note: In a prosecution for an offence against Part VC, a defendant bears a legal burden in relation to the matter in subsection (3) (see section 13.4 of the *Criminal Code*).

(4) In a proceeding in relation to a contravention of a provision of Part V or VC committed by the supplying of goods that did not comply with a consumer product safety standard or in relation to which the supplier did not comply with a consumer product information standard, it is a defence if the defendant establishes:

(a) that the goods were acquired by him or her for the purpose of re-supply and were so acquired from a person who carried on in Australia a business of supplying such goods otherwise than as the agent of a person outside Australia; and

(b) that he or she did not know, and could not with reasonable diligence have ascertained, that the goods did not comply with that standard or that he or she had

not complied with that standard in relation to the goods, as the case may be, or he or she relied in good faith on a representation by the person from whom he or she acquired the goods that a consumer product safety standard or a consumer product information standard, as the case may be, had not been prescribed in respect of the goods.

Note: In a prosecution for an offence against Part VC, a defendant bears a legal burden in relation to the matter in subsection (4) (see section 13.4 of the *Criminal Code*).

(5) A person is not, without leave of the Court, entitled to rely on the defence provided by subsection (4) unless he or she has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person by whom the proceeding was instituted a notice in writing identifying the person from whom he or she acquired the goods.

(6) Where, in any proceedings under this Part against a person other than a body corporate, it appears to the Court that the person has or may have engaged in conduct in contravention of a provision of Part IV or in conduct referred to in paragraph 76(1)(b), (c), (d), (e) or (f) but that the person acted honestly and reasonably and, having regard to all the circumstances of the case, ought fairly to be excused, the Court may relieve the person either wholly or partly from liability to any penalty or damages on such terms as the Court thinks fit.

86 Jurisdiction of courts

(1AA) A reference in this section to this Act, or to a Part, Division or section of this Act, is a reference to this Act, or to that Part, Division or section, as it has effect as a law of the Commonwealth.

(1) Jurisdiction is conferred on the Federal Court in any matter arising under this Act in respect of which a civil proceeding has, whether before or after the commencement of this section, been instituted under this Part.

(1A) Jurisdiction is conferred on the Federal Magistrates Court in any matter arising under section 46, Part IVA, Part IVB, Division 1, 1AAA, 1A or 2A of Part V or Part VA in respect of which a civil proceeding is instituted by a person other than the Minister.

(2) The several courts of the States are invested with federal jurisdiction within the limits of their several jurisdictions, whether those limits are as to locality, subject-matter or otherwise, and, subject to the Constitution, jurisdiction is conferred on the several courts of the Territories, with respect to any matter arising under Part IVA or IVB or Division 1, 1A or 1AA of Part V in respect of which a civil proceeding is instituted by a person other than the Minister or the Commission.

(3) Nothing in subsection (2) shall be taken to enable an inferior court of a State or Territory to grant a remedy other than a remedy of a kind that the court is able to grant under the law of that State or Territory.

(3A) The Supreme Court of a State is invested with federal jurisdiction with respect to any matter in respect of which a civil proceeding covered by section 44ZZRI is instituted in that Court.

(3B) Subject to the Constitution, the Supreme Court of a Territory is conferred with jurisdiction with respect to any matter in respect of which a civil proceeding covered by section 44ZZRI is instituted in that Court.

(4) The jurisdiction conferred by subsection (1) on the Federal Court is exclusive of the jurisdiction of any other court other than:

(a) the jurisdiction of the Federal Magistrates Court under subsection (1A); and

(b) the jurisdiction of the several courts of the States and Territories under subsection (2); and

(ba) the jurisdiction of the Supreme Courts of the States under subsection (3A); and

(bb) the jurisdiction of the Supreme Courts of the Territories under subsection (3B); and

(c) the jurisdiction of the High Court under section 75 of the Constitution.

86AA Limit on jurisdiction of Federal Magistrates Court

If proceedings under Part VA or section 82 are instituted in, or transferred to, the Federal Magistrates Court, the Federal Magistrates Court does not have jurisdiction to award an amount for loss or damage that exceeds:

(a) $750,000; or

(b) if another amount is specified in the regulations—that other amount.

Note: For transfers from the Federal Court to the Federal Magistrates Court, see section 32AB of the *Federal Court of Australia Act 1976*. For transfers from the Federal Magistrates Court to the Federal Court, see section 39 of the *Federal Magistrates Act 1999*.

86A Transfer of matters

(1) Where:

(a) a civil proceeding instituted (whether before or after the commencement of this section) by a person other than the Minister or the Commission is pending in the Federal Court; and

(b) a matter for determination in the proceeding arose under Part IVA or IVB or Division 1, 1A or 1AA of Part V;

the Federal Court may, subject to subsection (2), upon the application of a party or of the Federal Court's own motion, transfer to a court of a State or Territory the matter referred to in paragraph (b) and may also transfer to that court any other matter for determination in the proceeding.

(2) The Federal Court shall not transfer a matter to another court under subsection (1) unless the other court has power to grant the remedies sought before the Federal Court in the matter and it appears to the Federal Court that:

(a) the matter arises out of or is related to a proceeding that is pending in the other court; or

(b) it is otherwise in the interests of justice that the matter be determined by the other court.

(3) Where the Federal Court transfers a matter to another court under subsection (1):

(a) further proceedings in the matter shall be as directed by the other court; and

(b) the judgment of the other court in the matter is enforceable throughout Australia and the external Territories as if it were a judgment of the Federal Court.

(4) Where:

(a) a proceeding is pending in a court (other than the Supreme Court) of a State or Territory; and

(b) a matter for determination in the proceeding arose under Part IVA or Division 1, 1A or 1AA of Part V;

the court shall, if directed to do so by the Federal Court, transfer to the Federal Court the matter referred to in paragraph (b) and such other matters for determination in the proceeding the determination of which would, apart from any law of a State or of the Northern Territory relating to cross-vesting of jurisdiction, be within the jurisdiction of the Federal Court as the Federal Court determines.

(5) Where:

(a) a proceeding is pending in a court (other than the Supreme Court) of a State or Territory; and

(b) a matter for determination in the proceeding arose under Part IVA or Division 1, 1A or 1AA of Part V;

the court may, subject to subsection (6), upon the application of a party or of the court's own motion, transfer to a court (other than the Supreme Court) of a State or Territory other than the State or Territory referred to in paragraph (a) the matter referred to in paragraph (b).

(6) A court shall not transfer a matter to another court under subsection (5) unless the other court has power to grant the remedies sought before the first-mentioned court in the matter and it appears to the first-mentioned court that:

(a) the matter arises out of or is related to a proceeding that is pending in the other court; or

(b) it is otherwise in the interests of justice that the matter be determined by the other court.

(7) Where a court transfers a matter to another court under subsection (5), further proceedings in the matter shall be as directed by the other court.

86B Transfer of certain proceedings to Family Court

(1) Subject to subsection (2), where:

(a) a civil proceeding is pending in the Federal Court; and

(b) a matter for determination in the proceeding arises under Part IVA or Division 1, 1A or 1AA of Part V;

the Federal Court may, on the application of a party to the proceeding or of its own motion, transfer the proceeding to the Family Court.

(2) A proceeding that is pending in the Federal Court at the commencement of this section shall not be transferred to the Family Court unless the parties to the proceeding consent to the transfer.

(3) Subject to subsection (4), where a proceeding is transferred to the Family Court:

(a) the Family Court has jurisdiction to hear and determine the proceeding;

(b) the Family Court also has jurisdiction to hear and determine matters not otherwise within its jurisdiction (whether by virtue of paragraph (a) or otherwise):

(i) that are associated with matters arising in the proceeding; or

(ii) that, apart from subsection 32(1) of the *Federal Court of Australia Act 1976*, the Federal Court would have had jurisdiction to hear and determine in the proceeding;

(c) the Family Court may, in and in relation to the proceeding:

(i) grant such remedies;

(ii) make orders of such kinds; and

(iii) issue, and direct the issue of, writs of such kinds;

as the Federal Court could have granted, made, issued or directed the issue of, as the case may be, in and in relation to the proceeding;

(d) remedies, orders and writs granted, made or issued by the Family Court in and in relation to the proceeding have effect, and may be enforced by the Family Court, as if they had been granted, made or issued by the Federal Court;

(e) appeals lie from judgments of the Family Court given in and in relation to the proceeding as if the judgments were judgments of the Federal Court constituted by a single Judge of that Court, and do not otherwise lie; and

(f) subject to paragraphs (a) to (e) (inclusive), this Act, the regulations, the *Federal Court of Australia Act 1976*, the Rules of Court made under that Act, and other laws of the Commonwealth, apply in and in relation to the proceeding as if:

(i) a reference to the Federal Court (other than in the expression ***the Court or a Judge***) included a reference to the Family Court;

(ii) a reference to a Judge of the Federal Court (other than in the expression ***the Court or a Judge***) included a reference to a Family Court Judge;

(iii) a reference to the expression ***the Court or a Judge*** when used in relation to the Federal Court included a reference to a Family Court Judge sitting in Chambers;

(iv) a reference to a Registrar of the Federal Court included a reference to a Registrar of the Family Court; and

(v) any other necessary changes were made.

(4) Where any difficulty arises in the application of paragraphs (3)(c), (d) and (f) in or in relation to a particular proceeding, the Family Court may, on the application of a party to the proceeding or of its own motion, give such directions, and make such orders, as it considers appropriate to resolve the difficulty.

(5) An appeal does not lie from a decision of the Federal Court in relation to the transfer of a proceeding under this Act to the Family Court.

86C Non-punitive orders

(1) The Court may, on application by the Commission, make one or more of the orders mentioned in subsection (2) in relation to a person who has engaged in contravening conduct.

(1A) The Court may, on application by the Director of Public Prosecutions, make one or more of the orders mentioned in subsection (2) in relation to a person who has engaged in contravening conduct that is:

(a) a contravention of section 44ZZRF or 44ZZRG; or

(b) an involvement in a contravention of section 44ZZRF or 44ZZRG.

(2) The orders that the Court may make in relation to the person are:

(a) a community service order; and

(b) a probation order for a period of no longer than 3 years; and

(c) an order requiring the person to disclose, in the way and to the persons specified in the order, such information as is so specified, being information that the person has possession of or access to; and

(d) an order requiring the person to publish, at the person's expense and in the way specified in the order, an advertisement in the terms specified in, or determined in accordance with, the order.

(3) This section does not limit the Court's powers under any other provision of this Act.

(4) In this section:

community service order, in relation to a person who has engaged in contravening conduct, means an order directing the person to perform a service that:

(a) is specified in the order; and

(b) relates to the conduct;

for the benefit of the community or a section of the community.

Example: The following are examples of community service orders:

(a) an order requiring a person who has made false representations to make available a training video which explains advertising obligations under this Act; and

(b) an order requiring a person who has engaged in misleading or deceptive conduct in relation to a product to carry out a community awareness program to address the needs of consumers when purchasing the product.

contravening conduct means conduct that:

(a) contravenes Part IV, IVA, IVB, V or VC or section 75AU, 75AYA or 95AZN; or

(b) constitutes an involvement in a contravention of any of those provisions.

probation order, in relation to a person who has engaged in contravening conduct, means an order that is made by the Court for the purpose of ensuring that the person does not engage in the contravening conduct, similar conduct or related conduct during the period of the order, and includes:

(a) an order directing the person to establish a compliance program for employees or other persons involved in the person's business, being a program designed to ensure their awareness of the responsibilities and obligations in relation to the contravening conduct, similar conduct or related conduct; and

(b) an order directing the person to establish an education and training program for employees or other persons involved in the person's business, being a program designed to ensure their awareness of the responsibilities and obligations in relation to the contravening conduct, similar conduct or related conduct; and

(c) an order directing the person to revise the internal operations of the person's business which lead to the person engaging in the contravening conduct.

86D Punitive orders—adverse publicity

(1) The Court may, on application by the Commission, make an adverse publicity order in relation to a person who:

(a) has been ordered to pay a pecuniary penalty under section 76; or

(b) is guilty of an offence against section 44ZZRF or 44ZZRG or Part VC.

(1A) The Court may, on application by the Director of Public Prosecutions, make an adverse publicity order in relation to a person who is guilty of an offence against section 44ZZRF or 44ZZRG.

(2) In this section, an ***adverse publicity order***, in relation to a person, means an order that:

(a) requires the person to disclose, in the way and to the persons specified in the order, such information as is so specified, being information that the person has possession of or access to; and

(b) requires the person to publish, at the person's expense and in the way specified in the order, an advertisement in the terms specified in, or determined in accordance with, the order.

(3) This section does not limit the Court's powers under any other provision of this Act.

86E Order disqualifying a person from managing corporations

(1) On application by the Commission, the Court may make an order disqualifying a person from managing corporations for a period that the Court considers appropriate if:

(a) the Court is satisfied that the person has contravened, has attempted to contravene or has been involved in a contravention of Part IV; and

(b) the Court is satisfied that the disqualification is justified.

Note: Section 206EA of the *Corporations Act 2001* provides that a person is disqualified from managing corporations if a court order is in force under this section. That Act contains various consequences for persons so disqualified.

(1A) On application by the Director of Public Prosecutions, the Court may make an order disqualifying a person from managing corporations for a period that the Court considers appropriate if:

(a) the Court is satisfied that the person has contravened or has been involved in a contravention of section 44ZZRF or 44ZZRG; and

(b) the Court is satisfied that the disqualification is justified.

Note: Section 206EA of the *Corporations Act 2001* provides that a person is disqualified from managing corporations if a court order is in force under this section. That Act contains various consequences for persons so disqualified.

(2) In determining under subsection (1) or (1A) whether the disqualification is justified, the Court may have regard to:

(a) the person's conduct in relation to the management, business or property of any corporation; and

(b) any other matters that the Court considers appropriate.

(3) The Commission must notify ASIC if the Court makes an order under subsection (1). The Commission must give ASIC a copy of the order.

Note: ASIC must keep a register of persons who have been disqualified from managing corporations: see section 1274AA of the *Corporations Act 2001*.

(3A) The Director of Public Prosecutions must notify ASIC if the Court makes an order under subsection (1A). The Director of Public Prosecutions must give ASIC a copy of the order.

Note: ASIC must keep a register of persons who have been disqualified from managing corporations—see section 1274AA of the *Corporations Act 2001*.

(3B) For the purposes of this Act (other than this section or section 86F), an order under this section is not a penalty.

(4) In this section:

ASIC means the Australian Securities and Investments Commission.

86F Privilege against exposure to penalty—disqualification from managing corporations

Court proceeding

(1) In a civil or criminal proceeding under, or arising out of, this Act, a person is not entitled to refuse or fail to comply with a requirement:

(a) to answer a question or give information; or

(b) to produce a document or any other thing; or

(c) to do any other act;

on the ground that the answer or information, production of the document or other thing, or doing that other act, as the case may be, might tend to expose the person to a penalty by way of an order under section 86E.

(2) Subsection (1) applies whether or not the person is a defendant in the proceeding or in any other proceeding.

Statutory requirement

(3) A person is not entitled to refuse or fail to comply with a requirement under this Act:

(a) to answer a question or give information; or

(b) to produce a document or any other thing; or

(c) to do any other act;

on the ground that the answer or information, production of the document or other thing, or doing that other act, as the case may be, might tend to expose the person to a penalty by way of an order under section 86E.

Definition

(4) In this section:

penalty includes forfeiture.

87 Other orders

(1) Subject to subsection (1AA) but without limiting the generality of section 80, where, in a proceeding instituted under this Part, or for an offence against section 44ZZRF or 44ZZRG or Part VC, the Court finds that a person who is a party to the proceeding has suffered, or is likely to suffer, loss or damage by conduct of another person that was engaged in (whether before or after the commencement of this subsection) in contravention of a provision of Part IV, IVA, IVB, V or VC, the Court may, whether or not it grants an injunction under section 80 or makes an order under section 82, 86C or , 86D or 86E, make such order or orders as it thinks appropriate against the person who engaged in the conduct or a person who was involved in the contravention (including all or any of the orders mentioned in subsection (2) of this section) if the Court considers that the order or orders concerned will compensate the first-mentioned person in whole or in part for the loss or damage or will prevent or reduce the loss or damage.

(1A) Subject to subsection (1AA) but without limiting the generality of section 80, the Court may:

(a) on the application of a person who has suffered, or is likely to suffer, loss or damage by conduct of another person that was engaged in in contravention of Part IVA, IVB, V or VC; or

(b) on the application of the Commission in accordance with subsection (1B) on behalf of one or more persons who have suffered, or who are likely to suffer, loss or damage by conduct of another person that was engaged in in contravention of Part IV (other than section 45D or 45E), IVA, IVB, V or VC; or

(ba) on the application of the Director of Public Prosecutions in accordance with subsection (1BA) on behalf of one or more persons who have suffered, or who are likely to suffer, loss or damage by conduct of another person that was engaged in in contravention of section 44ZZRF or 44ZZRG;

make such order or orders as the Court thinks appropriate against the person who engaged in the conduct or a person who was involved in the contravention (including all or any of the orders mentioned in subsection (2)) if the Court considers that the order or orders concerned will:

(c) compensate the person who made the application, or the person or any of the persons on whose behalf the application was made, in whole or in part for the loss or damage; or

(d) prevent or reduce the loss or damage suffered, or likely to be suffered, by such a person.

(1AA) The Court may not make an order under subsection (1) or (1A) to compensate a person for loss or damage the person suffers by conduct of another person to the extent to which:

(a) the order would be based on the conduct contravening a provision of Division 1 of Part V; and

(b) the loss or damage is, or results from, death or personal injury; and

(c) the death or personal injury does not result from smoking or other use of tobacco products.

Note: As a result, the Commission will not be able to apply on the person's behalf under paragraph (1A)(b) for an order in relation to the loss or damage.

(1AB) Division 2 of Part VIB applies to an application for an order under subsection (1A) to compensate a person for loss or damage the person suffers by conduct of another person to the extent to which:

(a) the order would be based on the conduct contravening a provision of Division 1 of Part V; and

(b) the loss or damage is, or results from, death or personal injury; and

(c) the death or personal injury results from smoking or other use of tobacco products;

as if the proceeding in relation to the application were a proceeding to which Part VIB applies and as if the making of the application were the commencement of the proceeding.

Note: Division 2 of Part VIB deals with the limitation periods that apply for claims for damages or compensation for death or personal injury and, to the extent to which that Division is applied to the application by this subsection, it overrides subsection (1CA) of this section.

(1AC) Division 7 of Part VIB applies to a proceeding in which an order under subsection (1) or (1A) to compensate a person for loss or damage the person suffers by conduct of another person is made to the extent to which:

(a) the order is based on the conduct contravening a provision of Division 1 of Part V; and

(b) the loss or damage is, or results from, death or personal injury; and

(c) the death or personal injury results from smoking or other use of tobacco products;

as if the proceeding were a proceeding to which Part VIB applies.

Note: Division 7 of Part VIB deals with structured settlements for claims for damages or compensation for death or personal injury.

(1B) The Commission may make an application under paragraph (1A)(b) on behalf of one or more persons identified in the application who:

(a) have suffered, or are likely to suffer, loss or damage by conduct of another person that was engaged in in contravention of Part IV (other than section 45D or 45E), IVA, IVB, V or VC; and

(b) have, before the application is made, consented in writing to the making of the application.

(1BA) The Director of Public Prosecutions may make an application under paragraph (1A)(ba) on behalf of one or more persons identified in the application who:

(a) have suffered, or are likely to suffer, loss or damage by conduct of another person that was engaged in in contravention of section 44ZZRF or 44ZZRG; and

(b) have, before the application is made, consented in writing to the making of the application.

(1C) An application may be made under subsection (1A) in relation to a contravention of Part IV, IVA, IVB, V or VC even if a proceeding has not been instituted under another provision in relation to that contravention.

(1CA) An application under subsection (1A) may be made at any time within 6 years after the day on which the cause of action that relates to the conduct accrued.

(1D) For the purpose of determining whether to make an order under this section in relation to a contravention of Part IVA, the Court may have regard to the conduct of parties to the proceeding since the contravention occurred.

(2) The orders referred to in subsection (1) and (1A) are:

(a) an order declaring the whole or any part of a contract made between the person who suffered, or is likely to suffer, the loss or damage and the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, or of a collateral arrangement relating to such a contract, to be void and, if the Court thinks fit, to have been void *ab initio* or at all times on and after such date before the date on which the order is made as is specified in the order;

(b) an order varying such a contract or arrangement in such manner as is specified in the order and, if the Court thinks fit, declaring the contract or arrangement to have had effect as so varied on and after such date before the date on which the order is made as is so specified;

(ba) an order refusing to enforce any or all of the provisions of such a contract;

(c) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to refund money or return property to the person who suffered the loss or damage;

(d) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to pay to the person who suffered the loss or damage the amount of the loss or damage;

(e) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, at his or her own expense, to repair, or provide parts for, goods that had been supplied by the person who engaged in the conduct to the person who suffered, or is likely to suffer, the loss or damage;

(f) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, at his or her own expense, to supply specified services to the person who suffered, or is likely to suffer, the loss or damage; and

(g) an order, in relation to an instrument creating or transferring an interest in land, directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to execute an instrument that:

(i) varies, or has the effect of varying, the first-mentioned instrument; or

(ii) terminates or otherwise affects, or has the effect of terminating or otherwise affecting, the operation or effect of the first-mentioned instrument.

(2A) Subsections (1) and (1A) have effect subject to section 87AB.

Note: Section 87AB may limit the liability, under an order under subsection (1) or (1A) of this section, of a person for his or her contravention of section 52 (Misleading or deceptive conduct) or involvement in such a contravention.

(3) Where:

(a) a provision of a contract made, or a covenant given, whether before or after the commencement of the *Trade Practices Amendment Act 1977*:

(i) in the case of a provision of a contract, is unenforceable by reason of section 45 in so far as it confers rights or benefits or imposes duties or obligations on a corporation; or

(ii) in the case of a covenant, is unenforceable by reason of section 45B in so far as it confers rights or benefits or imposes duties or obligations on a corporation or on a person associated with a corporation; or

(b) the engaging in conduct by a corporation in pursuance of or in accordance with a contract made before the commencement of the *Trade Practices Amendment Act 1977* would constitute a contravention of section 47;

the Court may, on the application of a party to the contract or of a person who would, but for subsection 45B(1), be bound by, or entitled to the benefit of, the covenant, as the case may be, make an order:

(c) varying the contract or covenant, or a collateral arrangement relating to the contract or covenant, in such manner as the Court considers just and equitable; or

(d) directing another party to the contract, or another person who would, but for subsection 45B(1), be bound by, or entitled to the benefit of, the covenant, to do any act in relation to the first-mentioned party or person that the Court considers just and equitable.

(4) The orders that may be made under subsection (3) include an order directing the termination of a lease or the increase or reduction of any rent or premium payable under a lease.

(5) The powers conferred on the Court under this section in relation to a contract or covenant do not affect any powers that any other court may have in relation to the contract or covenant in proceedings instituted in that other court in respect of the contract or covenant.

(6) In subsection (2), ***interest***, in relation to land, has the same meaning as in section 53A.

Note: Part VIB restricts awards of compensation for death or personal injury, and sets out time limits for commencing actions for compensation for death or personal injury.

(7) In this section:

smoking has the same meaning as in the *Tobacco Advertising Prohibition Act 1992*.

tobacco product has the same meaning as in the *Tobacco Advertising Prohibition Act 1992*.

87A Power of Court to prohibit payment or transfer of moneys or other property

(1) Where:

(a) proceedings have been commenced against a person for an offence against a provision of Part VC; or

(b) an application has been made under section 80 for an injunction against a person in relation to a contravention of a provision of Part IVA, V or VC; or

(c) an action has been commenced under subsection 82(1) against a person in relation to a contravention of a provision of Part V; or

(d) an application for an order under subsection 87(1A) or (1B) has been or may be made against a person in relation to a contravention of a provision of Part IVA, V or VC;

the Court may, on the application of the Minister or the Commission, make an order or orders mentioned in subsection (2) if the Court is satisfied that:

(e) it is necessary or desirable to do so for the purpose of preserving money or other property held by or on behalf of a person referred to in paragraph (a), (b), (c) or (d), as the case may be (in this section referred to as the ***relevant person***), where the relevant person is liable or may become liable under this Act to pay moneys by way of a fine, damages, compensation, refund or otherwise or to transfer, sell or refund other property; and

(f) it will not unduly prejudice the rights and interests of any other person.

(2) The orders referred to in subsection (1) are:

(a) an order prohibiting, either absolutely or subject to conditions, a person who is indebted to the relevant person or to an associate of the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed;

(b) an order prohibiting, either absolutely or subject to conditions, a person who is holding money or other property on behalf of the relevant person or on behalf of an associate of the relevant person from paying all or any of the money, or transferring, or otherwise parting with possession of, the other property, to, or to another person at the direction or request of, the person on whose behalf the money or other property is held;

(c) an order prohibiting, either absolutely or subject to conditions, the taking or sending by any person of money of the relevant person or of an associate of the relevant person to a place outside the State or Territory in which the money is held;

(d) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer by any person of other property of the relevant person or of an associate of the relevant person to a place outside the State or Territory in which the other property is located; and

(e) an order appointing, where the relevant person is a natural person, a receiver or trustee of the property or of part of the property of the relevant person with such powers as are specified in the order.

(3) Subject to subsection (4), an order under this section may be expressed to operate:

(a) for a period specified in the order; or

(b) until proceedings under any other provision of this Part in relation to which the order was made have been concluded.

(4) An order under this section made on an application *ex parte* shall not be expressed to operate for a period exceeding 30 days.

(5) A person who contravenes or fails to comply with an order by the Court under this section that is applicable to the person is guilty of an offence punishable on conviction:

(a) in the case of a person not being a body corporate—by a fine not exceeding $20,000; or

(b) in the case of a person being a body corporate—by a fine not exceeding $100,000.

(5A) Subsection (5) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(6) Nothing in this section affects the powers that the Court has apart from this section.

(7) This section has effect subject to the *Bankruptcy Act 1966*.

(8) A reference in this section to a person who is an associate of a relevant person is a reference to:

(a) a person holding money or other property on behalf of the relevant person; or

(b) if the relevant person is a body corporate—a wholly owned subsidiary of the relevant person.

87AA Special provision relating to Court's exercise of powers under this Part in relation to boycott conduct

(1) In exercising its powers in proceedings under this Part in relation to boycott conduct, the Court is to have regard to any action the applicant in the proceedings has taken, or could take, before an industrial authority in relation to the boycott conduct. In particular, the Court is to have regard to any application for conciliation that the applicant has made or could make.

(2) In this section:

boycott conduct means conduct that constitutes or would constitute:

(a) a contravention of subsection 45D(1), 45DA(1), 45DB(1), 45E(2) or 45E(3) or section 45EA; or

(b) attempting to contravene one of those provisions; or

(c) aiding, abetting, counselling or procuring a person to contravene one of those provisions; or

(d) inducing, or attempting to induce, a person (whether by threats, promises or otherwise) to contravene one of those provisions; or

(e) being in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of one of those provisions; or

(f) conspiring with others to contravene one of those provisions.

industrial authority means:

(a) a board or court of conciliation or arbitration, or tribunal, body or persons, having authority under a law of a State to exercise any power of conciliation or arbitration in relation to industrial disputes within the limits of the State; or

(b) a special board constituted under a law of a State relating to factories; or

(c) any other State board, court, tribunal, body or official prescribed by the regulations for the purposes of this definition.

87AB Limit on liability for misleading or deceptive conduct

State or Territory professional standards law limits liability

(1) A professional standards law of a State, the Australian Capital Territory or the Northern Territory applies to limit occupational liability relating to an action for contravention of section 52 in the same way as it limits occupational liability arising under a law of the State or Territory.

Note: Section 52 prohibits misleading or deceptive conduct by corporations in trade or commerce and (because of sections 5 and 6) by other persons in certain types of trade or commerce.

(2) However, the professional standards law applies for that purpose:

(a) only in relation to a scheme that was prescribed by the regulations at the time (the ***contravention time***) of the contravention; and

(b) as if the scheme were in force under that law at the contravention time in the form the scheme would have been in if:

(i) the scheme had not been amended or revoked under that law since the scheme was first prescribed; and

(ii) the modifications (if any) prescribed by the regulations at the contravention time had been made to the scheme.

Which State's or Territory's professional standards law applies?

(3) For the purposes of working out whether a professional standards law of a particular State or Territory applies under subsection (1) in relation to a particular contravention of section 52, choice of law rules operate in relation to the contravention in the same way as they operate in relation to a tort.

Definitions

(4) In this section:

modifications includes additions, omissions and substitutions.

occupation includes profession and trade.

occupational association means a body:

(a) that represents the interests of persons who have the same occupation; and

(b) whose membership is limited principally to such persons.

occupational liability means civil liability arising directly or vicariously from anything done or omitted by a member of an occupational association in the course of his or her occupation.

professional standards law means a law providing for the limitation of occupational liability by reference to schemes for limiting that liability that were formulated and published in accordance with that law.

87B Enforcement of undertakings

(1) The Commission may accept a written undertaking given by a person for the purposes of this section in connection with a matter in relation to which the Commission has a power or function under this Act (other than Part X).

(1A) The Commission may accept a written undertaking given by a person for the purposes of this section in connection with a clearance or an authorisation under Division 3 of Part VII.

(2) The person may withdraw or vary the undertaking at any time, but only with the consent of the Commission.

(3) If the Commission considers that the person who gave the undertaking has breached any of its terms, the Commission may apply to the Court for an order under subsection (4).

(4) If the Court is satisfied that the person has breached a term of the undertaking, the Court may make all or any of the following orders:

(a) an order directing the person to comply with that term of the undertaking;

(b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;

(c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;

(d) any other order that the Court considers appropriate.

87C Enforcement of undertakings—Secretary to the Department

(1) The Secretary to the Department may accept a written undertaking given by a person for the purposes of this section in connection with a matter in relation to which the Secretary has a power or function under this Act.

(2) The person may withdraw or vary the undertaking at any time, but only with the consent of the Secretary to the Department.

(3) If the Secretary to the Department considers that the person who gave the undertaking has breached any of its terms, the Secretary may apply to the Court for an order under subsection (4).

(4) If the Court is satisfied that the person has breached a term of the undertaking, the Court may make all or any of the following orders:

(a) an order directing the person to comply with that term of the undertaking;

(b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;

(c) any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;

(d) any other order that the Court considers appropriate.

87CA Intervention by Commission

(1) The Commission may, with the leave of the Court and subject to any conditions imposed by the Court, intervene in any proceeding instituted under this Act.

(2) If the Commission intervenes in a proceeding, the Commission is taken to be a party to the proceeding and has all the rights, duties and liabilities of such a party.

87CAA The effect of Part VIB on this Part

This Part has effect subject to Part VIB.

Part VIA—Proportionate liability for misleading and deceptive conduct

87CB Application of Part

(1) This Part applies to a claim (an ***apportionable claim***) if the claim is a claim for damages made under section 82 for:

(a) economic loss; or

(b) damage to property;

caused by conduct that was done in a contravention of section 52.

(2) For the purposes of this Part, there is a single apportionable claim in proceedings in respect of the same loss or damage even if the claim for the loss or damage is based on more than one cause of action (whether or not of the same or a different kind).

(3) In this Part, a ***concurrent wrongdoer***, in relation to a claim, is a person who is one of 2 or more persons whose acts or omissions (or act or omission) caused, independently of each other or jointly, the damage or loss that is the subject of the claim.

(4) For the purposes of this Part, apportionable claims are limited to those claims specified in subsection (1).

(5) For the purposes of this Part, it does not matter that a concurrent wrongdoer is insolvent, is being wound up or has ceased to exist or died.

87CC Certain concurrent wrongdoers not to have benefit of apportionment

(1) Nothing in this Part operates to exclude the liability of a concurrent wrongdoer (an ***excluded concurrent wrongdoer***) in proceedings involving an apportionable claim if:

(a) the concurrent wrongdoer intended to cause the economic loss or damage to property that is the subject of the claim; or

(b) the concurrent wrongdoer fraudulently caused the economic loss or damage to property that is the subject of the claim.

(2) The liability of an excluded concurrent wrongdoer is to be determined in accordance with the legal rules (if any) that (apart from this Part) are relevant.

(3) The liability of any other concurrent wrongdoer who is not an excluded concurrent wrongdoer is to be determined in accordance with the provisions of this Part.

87CD Proportionate liability for apportionable claims

(1) In any proceedings involving an apportionable claim:

(a) the liability of a defendant who is a concurrent wrongdoer in relation to that claim is limited to an amount reflecting that proportion of the damage or loss claimed that the court considers just having regard to the extent of the defendant's responsibility for the damage or loss; and

(b) the court may give judgment against the defendant for not more than that amount.

(2) If the proceedings involve both an apportionable claim and a claim that is not an apportionable claim:

(a) liability for the apportionable claim is to be determined in accordance with the provisions of this Part; and

(b) liability for the other claim is to be determined in accordance with the legal rules, if any, that (apart from this Part) are relevant.

(3) In apportioning responsibility between defendants in the proceedings:

(a) the court is to exclude that proportion of the damage or loss in relation to which the plaintiff is contributorily negligent under any relevant law; and

(b) the court may have regard to the comparative responsibility of any concurrent wrongdoer who is not a party to the proceedings.

(4) This section applies in proceedings involving an apportionable claim whether or not all concurrent wrongdoers are parties to the proceedings.

(5) A reference in this Part to a defendant in proceedings includes any person joined as a defendant or other party in the proceedings (except as a plaintiff) whether joined under this Part, under rules of court or otherwise.

87CE Defendant to notify plaintiff of concurrent wrongdoer of whom defendant aware

(1) If:

(a) a defendant in proceedings involving an apportionable claim has reasonable grounds to believe that a particular person (the ***other person***) may be a concurrent wrongdoer in relation to the claim; and

(b) the defendant fails to give the plaintiff, as soon as practicable, written notice of the information that the defendant has about:

(i) the identity of the other person; and

(ii) the circumstances that may make the other person a concurrent wrongdoer in relation to the claim; and

(c) the plaintiff unnecessarily incurs costs in the proceedings because the plaintiff was not aware that the other person may be a concurrent wrongdoer in relation to the claim;

the court hearing the proceedings may order that the defendant pay all or any of those costs of the plaintiff.

(2) The court may order that the costs to be paid by the defendant be assessed on an indemnity basis or otherwise.

87CF Contribution not recoverable from defendant

A defendant against whom judgment is given under this Part as a concurrent wrongdoer in relation to an apportionable claim:

(a) cannot be required to contribute to any damages or contribution recovered from another concurrent wrongdoer in respect of the apportionable claim (whether or not the damages or contribution are recovered in the same proceedings in which judgment is given against the defendant); and

(b) cannot be required to indemnify any such wrongdoer.

87CG Subsequent actions

(1) In relation to an apportionable claim, nothing in this Part or any other law prevents a plaintiff who has previously recovered judgment against a concurrent wrongdoer for an apportionable part of any damage or loss from bringing another action against any other concurrent wrongdoer for that damage or loss.

(2) However, in any proceedings in respect of any such action, the plaintiff cannot recover an amount of damages that, having regard to any damages previously recovered by the plaintiff in respect of the damage or loss, would result in the plaintiff receiving compensation for damage or loss that is greater than the damage or loss actually sustained by the plaintiff.

87CH Joining non-party concurrent wrongdoer in the action

(1) The court may give leave for any one or more persons to be joined as defendants in proceedings involving an apportionable claim.

(2) The court is not to give leave for the joinder of any person who was a party to any previously concluded proceedings in respect of the apportionable claim.

87CI Application of Part

Nothing in this Part:

(a) prevents a person being held vicariously liable for a proportion of an apportionable claim for which another person is liable; or

(b) prevents a partner from being held severally liable with another partner for that proportion of an apportionable claim for which the other partner is liable; or

(c) affects the operation of any other Act to the extent that it imposes several liability on any person in respect of what would otherwise be an apportionable claim.

Part VIB—Claims for damages or compensation for death or personal injury

Division 1—Introduction

87D Definitions

In this Part, unless the contrary intention appears:

applicable percentage has the meaning given by subsection 87Q(2).

average weekly earnings has the meaning given by section 87V.

capable parent or guardian, of a minor, means a person who is a parent or guardian of the minor, and who is not under a disability.

date of discoverability has the meaning given by section 87G.

gratuitous attendant care services has the meaning given by subsection 87W(5).

incapacitated person means a person who is incapable of, or substantially impeded in, the management of his or her affairs in relation to a proceeding under this Act because of:

(a) any disease, or any impairment of his or her mental condition; or

(b) restraint of his or her person, lawful or unlawful, including detention or custody under a law of a State or Territory relating to mental health; or

(c) war or warlike operations, or circumstances arising out of war or warlike operations.

index number has the meaning given by section 87N.

long-stop period has the meaning given by section 87H.

maximum amount of damages for non-economic loss has the meaning given by section 87M.

minor means a person under 18.

most extreme case has the meaning given by subsection 87P(2).

non-economic loss means any one or more of the following:

(a) pain and suffering;

(b) loss of amenities of life;

(c) loss of expectation of life;

(d) disfigurement.

personal injury damages means damages or compensation for loss or damage that is, or results from, the death of or personal injury to a person.

plaintiff, in relation to a proceeding, means:

(a) if the proceeding is a proceeding that the Commission commences under section 75AQ or paragraph 87(1A)(b)—a person on whose behalf the Commission commences the proceeding; or

(aa) if the proceeding is a proceeding that the Director of Public Prosecutions commences under paragraph 87(1A)(ba)—a person on whose behalf the Director of Public Prosecutions commences the proceeding; or

(b) in any other case—the person by whom the proceeding is brought (however described).

proceeding to which this Part applies means a proceeding referred to in section 87E.

quarter means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.

smoking has the same meaning as in the *Tobacco Advertising Prohibition Act 1992*.

tobacco product has the same meaning as in the *Tobacco Advertising Prohibition Act 1992*.

87E Proceedings to which this Part applies

(1) This Part applies to proceedings taken under this Act:

(a) that relate to Part IVA, to Division 1A or 2A of Part V or to Part VA; and

(b) in which the plaintiff is seeking an award of personal injury damages; and

(c) that are not proceedings in respect of the death of or personal injury to a person resulting from smoking or other use of tobacco products.

(2) However, for the purposes of Divisions 2 and 7, paragraph (1)(c) does not apply.

Division 2—Limitation periods

87F Basic rule

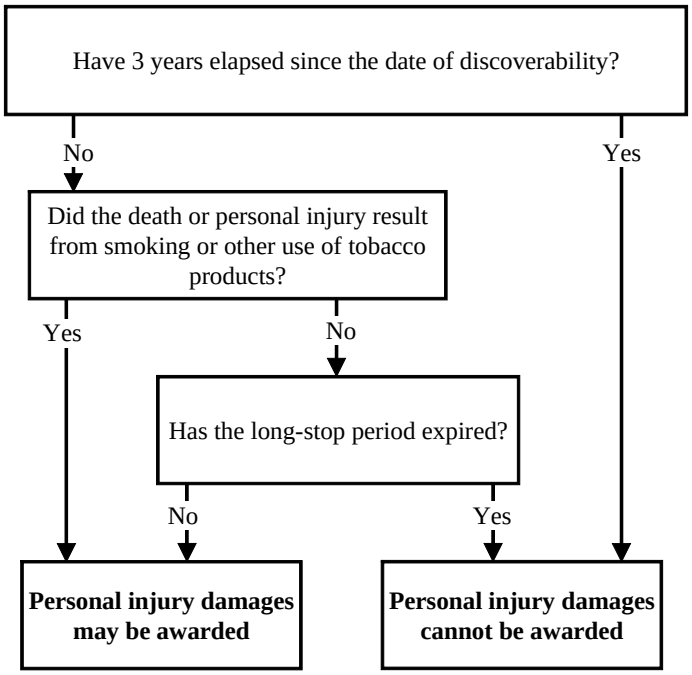
(1) A court must not award personal injury damages in a proceeding to which this Part applies if the proceeding was commenced:

(a) after the end of the period of 3 years after the date of discoverability for the death or injury to which the personal injury damages would relate; or

(b) after the end of the long-stop period for that death or injury.

(1A) However, paragraph (1)(b) does not apply in relation to a proceeding in respect of the death of or personal injury to a person resulting from smoking or other use of tobacco products.

(2) This diagram shows when this Division prevents an award of personal injury damages.



87G Date of discoverability

Definition

(1) The ***date of discoverability*** for the death or injury is the first date when the plaintiff in the proceeding knows or ought to know each of the following:

(a) that the death or personal injury has occurred;

(b) that the death or personal injury was attributable to a contravention of this Act;

(c) that in the case of a personal injury—the injury was significant enough to justify bringing an action.

Constructive knowledge

(2) For the purposes of subsection (1), the plaintiff ***ought to know*** a fact if the plaintiff would have ascertained the fact had the plaintiff taken all reasonable steps before the date in question to ascertain the fact.

Use of the plaintiff's conduct and statements

(3) In determining what the plaintiff knows or ought to have known, the court may have regard to the plaintiff's conduct, and to the plaintiff's oral or written statements.

Minors

(4) If the plaintiff is a minor, facts that a capable parent or guardian of the plaintiff knows or ought to know are taken for the purposes of subsection (1) to be facts that the plaintiff knows or ought to know.

Incapacitated persons

(5) If:

(a) the plaintiff is an incapacitated person; and

(b) there is a guardian of the plaintiff, or other person to manage all or part of the plaintiff's estate, under a law of a State or Territory relating to the protection of incapacitated persons;

facts that the guardian or other person knows or ought to know are taken for the purposes of subsection (1) to be facts that the plaintiff knows or ought to know.

Proceedings by personal representatives

(6) Despite subsection (1), if the plaintiff brings the proceeding in the capacity of the personal representative of a deceased person, the ***date of discoverability*** for the death or injury is the earliest of:

(a) if, had the deceased person commenced a proceeding, in relation to the contravention to which the death or injury relates, before his or her death, the date of discoverability under subsection (1) would have occurred more than 3 years before the death—that date; or

(b) if, at the time of the plaintiff's appointment as personal representative, the plaintiff knew, or ought to have known, all of the matters referred to in paragraphs (1)(a), (b) and (c)—the date of the appointment; or

(c) if the first time at which the plaintiff knew, or ought to have known, all of the matters referred to in paragraphs (1)(a), (b) and (c) was after the date of appointment—the date of that first time.

87H Long-stop period

(1) The ***long-stop period*** for the death or injury of a person is:

(a) the period of 12 years following the act or omission alleged to have caused the death or injury; or

(b) that period as extended by the court.

(2) The court must not extend the period by more than 3 years beyond the date of discoverability for the death or injury.

(3) In considering whether to extend the period, the court must have regard to the justice of the case, and, in particular, must have regard to:

(a) whether the passage of time has prejudiced a fair trial; and

(b) the nature and extent of the person's loss or damage; and

(c) the nature of the defendant's conduct alleged to have caused the death or injury; and

(d) the nature of the defendant's conduct since the alleged act or omission.

87J The effect of minority or incapacity

In working out whether the period of 3 years after the date of discoverability, or the long-stop period, has expired, disregard any period during which the plaintiff has been:

(a) a minor who is not in the custody of a capable parent or guardian; or

(b) an incapacitated person in respect of whom there is no guardian, and no other person to manage all or part of the person's estate, under a law of a State or Territory relating to the protection of incapacitated persons.

87K The effect of close relationships

(1) If:

(a) a cause of action to which the proceeding relates is founded on the death or injury to a person (the ***victim***) who was a minor at the time of the act or omission alleged to have caused the death or injury; and

(b) the proceeding is taken against a person who was at that time:

(i) a parent or guardian of the victim; or

(ii) a person in a close relationship with a parent or guardian of the victim;

in working out whether the period of 3 years after the date of discoverability, or the long-stop period, has expired, disregard any period:

(c) before the victim turns 25; or

(d) if the victim dies before turning 25—before the victim's death.

(2) For the purposes of subparagraph (1)(b)(ii), a person is taken to be in a ***close relationship*** with a parent or guardian of the victim if the person's relationship with the parent or guardian is such that:

(a) the person might influence the parent or guardian not to bring a claim on behalf of the victim against the person; or

(b) the victim might be unwilling to disclose to the parent or guardian the acts, omissions or events in respect of which the cause of action is founded.

Division 3—Limits on personal injury damages for non-economic loss

87L Limits on damages for non-economic loss

A court must not, in a proceeding to which this Part applies, award as personal injury damages for non-economic loss an amount that exceeds the amount (if any) permitted under this Division.

87M Maximum amount of damages for non-economic loss

(1) The ***maximum amount of damages for non-economic loss*** is:

(a) during the year in which this Part commences—$250,000; or

(b) during a later year—the amount worked out (to the nearest multiple of $10) as follows:

$$\text{Previous maximum amount} \times \frac{\text{Current September CPI number}}{\text{Previous September CPI number}}$$

where:

current September CPI number is the index number for the quarter ending on 30 September in the year immediately preceding that later year.

previous maximum amount is the maximum amount of damages for non-economic loss during the year immediately preceding that later year.

previous September CPI number is the index number for the quarter ending on the 30 September immediately preceding the 30 September referred to in the definition of ***current September CPI number***.

(2) If an amount worked out under paragraph (1)(b) is a multiple of $5 (but not a multiple of $10), round the amount up to the nearest multiple of $10.

(3) This section does not affect the operation of section 86AA.

87N Index numbers

(1) The ***index number*** for a quarter is the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter.

(2) Subject to subsection (3), if, at any time before or after the commencement of this Act:

(a) the Australian Statistician has published or publishes an index number in respect of a quarter; and

(b) that index number is in substitution for an index number previously published by the Australian Statistician in respect of that quarter;

disregard the publication of the later index number for the purposes of this section.

(3) If, at any time, the Australian Statistician has changed or changes the reference base for the Consumer Price Index, then, in applying this section after the change took place or takes place, have regard only to index numbers published in terms of the new reference base.

(4) In this section:

Australian Statistician means the Australian Statistician referred to in subsection 5(2) of the *Australian Bureau of Statistics Act 1975*.

87P Most extreme cases

(1) The court must not award as personal injury damages for non-economic loss the maximum amount of damages for non-economic loss except in a most extreme case.

(2) A ***most extreme case*** is a case in which the plaintiff suffers non-economic loss of the gravest conceivable kind.

87Q Cases of 33% or more (but not 100%) of a most extreme case

(1) If the non-economic loss the plaintiff suffers is at least 33%, but less than 100%, of a most extreme case, the court must not award as personal injury damages for non-economic loss an amount that exceeds the applicable percentage of the maximum amount of damages for non-economic loss.

(2) The ***applicable percentage*** is the extent of the non-economic loss the plaintiff suffers, expressed as a percentage of a most extreme case.

87R Cases of 15% or more (but less than 33%) of a most extreme case

If the non-economic loss the plaintiff suffers is at least 15%, but less than 33%, of a most extreme case, the court must not award as personal injury damages for non-economic loss an amount that exceeds the amount set out in the following table:

Cases of 15% or more (but less than 33%) of a most extreme case

Item	Severity of the non-economic loss (as a proportion of a most extreme case)	Damages for non-economic loss (as a proportion of the maximum amount of damages for non-economic loss)
1	15%	1%
2	16%	1.5%
3	17%	2%
4	18%	2.5%
5	19%	3%
6	20%	3.5%
7	21%	4%
8	22%	4.5%
9	23%	5%
10	24%	5.5%
11	25%	6.5%
12	26%	8%
13	27%	10%
14	28%	14%
15	29%	18%
16	30%	23%
17	31%	26%
18	32%	30%

87S Cases of less than 15% of a most extreme case

If the non-economic loss the plaintiff suffers is less than 15% of a most extreme case, the court must not award personal injury damages for non-economic loss.

87T Referring to earlier decisions on non-economic loss

(1) In determining personal injury damages for non-economic loss, the court may refer to earlier decisions of the court or of other courts for the purpose of establishing the appropriate award in the proceeding.

(2) For that purpose, the parties to the proceeding or their counsel may bring the court's attention to awards of personal injury damages for non-economic loss in those earlier decisions.

(3) This section does not affect the rules for determination of other damages or compensation.

Division 4—Limits on personal injury damages for loss of earning capacity

87U Personal injury damages for loss of earning capacity

In determining, in a proceeding to which this Part applies, personal injury damages for:

(a) past economic loss due to loss of earnings or the deprivation or impairment of earning capacity; or

(b) future economic loss due to the deprivation or impairment of earning capacity; or

(c) the loss of expectation of financial support;

a court must disregard the amount by which the plaintiff's gross weekly earnings during any quarter would (but for the personal injury or death in question) have exceeded:

(d) if, at the time the award was made, the amount of average weekly earnings for the quarter was ascertainable—an amount that is twice the amount of average weekly earnings for the quarter; or

(e) if:

(i) at the time the award was made, the amount of average weekly earnings for the quarter was not ascertainable; or

(ii) the award was made during, or before the start of, the quarter;

an amount that is twice the amount of average weekly earnings for the quarter that, at the time the award was made, was the most recent quarter for which the amount of average weekly earnings was ascertainable.

87V Average weekly earnings

(1) ***Average weekly earnings***, for a quarter, means the amount:

(a) published by the Australian Statistician as the average weekly earnings for all employees (total earnings, seasonally adjusted) for the reference period in that quarter; or

(b) if the Australian Statistician fails or ceases to publish the amount referred to in paragraph (a)—the amount determined in the manner specified in the regulations.

(2) Regulations made for the purposes of paragraph (1)(b) may specify matters by reference to which an amount is to be determined.

(3) In this section:

reference period, in a quarter, is the period described by the Australian Statistician as the pay period ending on or before a specified day that is the third Friday of the middle month of that quarter.

Division 5—Limits on personal injury damages for gratuitous attendant care services

87W Personal injury damages for gratuitous attendant care services for plaintiff

(1) A court must not, in a proceeding to which this Part applies, award personal injury damages for gratuitous attendant care services for the plaintiff, except in accordance with this section.

(2) The court must be satisfied that:

(a) there is (or was) a reasonable need for the services to be provided; and

(b) the need has arisen (or arose) solely because of personal injury to which the personal injury damages relate; and

(c) the services would not be (or would not have been) provided to the plaintiff but for the injury; and

(d) the services are provided (or are to be provided) for at least 6 hours per week; and

(e) the services are provided (or are to be provided) over a period of at least 6 months.

(3) If the services were provided during a quarter for which, at the time the award was made, the amount of average weekly earnings was ascertainable, the court must not award as personal injury damages for the services:

(a) if the services were provided for at least 40 hours per week—an amount per week that exceeds average weekly earnings for that quarter; or

(b) if the services were provided for less than 40 hours per week—an amount per hour that exceeds $^1/_{40}$ of average weekly earnings for that quarter.

(4) If the services:

(a) were provided during a quarter for which, at the time the award was made, the amount of average weekly earnings was not ascertainable; or

(b) are to be provided after the time the award was made;

the court must not award as personal injury damages for the services:

(c) if the services were provided for at least 40 hours per week—an amount per week that exceeds average weekly earnings for the quarter that, at the time the award was made, was the most recent quarter for which the amount of average weekly earnings was ascertainable; or

(d) if the services were provided for less than 40 hours per week—an amount per hour that exceeds $^1/_{40}$ of average weekly earnings for that quarter.

(5) ***Gratuitous attendant care services*** are services that one person provides to another person:

(a) that:

(i) are of a domestic nature; or

(ii) relate to nursing; or

(iii) aim to alleviate the consequences of a personal injury; and

(b) for which the other person has not paid or is not liable to pay.

87X Personal injury damages for loss of plaintiff's capacity to provide gratuitous attendant care services

(1) A court must not, in a proceeding to which this Part applies, award personal injury damages for loss of the plaintiff's capacity to provide gratuitous attendant care services to other persons, except in accordance with this section.

(2) The court must be satisfied that:

(a) prior to his or her loss of capacity to provide the services, the plaintiff had provided the services:

(i) for at least 6 hours per week; and

(ii) over a period of at least 6 months; and

(b) the other person would have been entitled, if the plaintiff had died as a result of the contravention of this Act to which the award relates, to recover damages under a law of a State or Territory for loss of the plaintiff's services.

(3) If the plaintiff would have provided the services during a quarter for which, at the time the award was made, the amount of average weekly earnings was ascertainable, the court must not award as personal injury damages for the services:

(a) if the services would have been provided for at least 40 hours per week—an amount per week that exceeds average weekly earnings for that quarter; and

(b) if the services would have been provided for less than 40 hours per week—an amount per hour that exceeds $^{1}/_{40}$ of average weekly earnings for that quarter.

(4) If the plaintiff:

(a) would have provided the services during a quarter for which, at the time the award was made, the amount of average weekly earnings was not ascertainable; or

(b) would have provided the services after the time the award was made;

the court must not award as personal injury damages for the services:

(c) if the services were provided for at least 40 hours per week—an amount per week that exceeds average weekly earnings for the quarter that, at the time the award was made, was the most recent quarter for which the amount of average weekly earnings was ascertainable; or

(d) if the services were provided for less than 40 hours per week—an amount per hour that exceeds $^{1}/_{40}$ of average weekly earnings for that quarter.

Division 6—Other limits on personal injury damages

87Y Damages for future economic loss—discount rate

(1) If an award of personal injury damages in a proceeding to which this Part applies is to include any component, assessed as a lump sum, for future economic loss of any kind, the present value of that future economic loss is to be determined by applying:

(a) a discount rate of the percentage prescribed by the regulations; or

(b) if no percentage is prescribed—a discount rate of 5%.

(2) A regulation made for the purposes of paragraph (1)(a) does not take effect before the end of the period of 6 months starting:

(a) if the regulation is laid before each House of the Parliament under paragraph 48(1)(c) of the *Acts Interpretation Act 1901* on the same day—starting on that day; or

(b) if it is laid before each House of the Parliament under that paragraph on different days—starting on the later of those days.

(3) Except as provided by this section, this section does not affect any other law relating to the discounting of sums awarded as damages or compensation.

87Z Damages for loss of superannuation entitlements

A court must not, in a proceeding to which this Part applies, award personal injury damages for economic loss due to the loss of employer superannuation contributions an amount that exceeds the following amount:

Superannuation percentage × Damages for earnings loss

where:

damages for earnings loss are the personal injury damages payable (in accordance with this Part) for:

(a) any past economic loss due to loss of earnings, or the deprivation or impairment of earning capacity, on which the entitlement to those contributions is based; and

(b) any future economic loss due to the deprivation or impairment of earning capacity on which the entitlement to those contributions would be based.

superannuation percentage is the highest employer's charge percentage for a quarter under section 19 of the *Superannuation Guarantee (Administration) Act 1992*.

87ZA Interest on damages

(1) A court must not, in a proceeding to which this Part applies, order the payment of interest on personal injury damages for:

(a) non-economic loss; or

(b) gratuitous attendant care services for the plaintiff; or

(c) loss of the plaintiff's capacity to provide gratuitous attendant care services to other persons.

(2) If, in a proceeding to which this Part applies, a court is satisfied that interest is payable on personal injury damages of another kind, the rate of interest to be used in working out the interest is:

(a) the rate of interest prescribed by the regulations; or

(b) if no rate is prescribed—the 10-year benchmark bond rate on the day on which the court determines the personal injury damages.

(3) This section does not affect the payment of interest on a debt under a judgment or order of a court.

(4) In this section:

10-year benchmark bond rate, on a day, means:

(a) if the day occurs on or after 1 March in a particular year and before 1 September in that year—the Commonwealth Government 10-year benchmark bond rate:

(i) as published by the Reserve Bank of Australia in the Reserve Bank of Australia Bulletin (however described); and

(ii) applying on the first business day of January in that year; or

(b) otherwise—the Commonwealth Government 10-year benchmark bond rate, as so published, applying on the first business day of July in the preceding year.

business day means a day other than a Saturday, a Sunday or a public or bank holiday in any State, the Australian Capital Territory or the Northern Territory.

87ZB Exemplary and aggravated damages

(1) A court must not, in a proceeding to which this Part applies, award exemplary damages or aggravated damages in respect of death or personal injury.

(2) This section does not affect whether a court has power to award exemplary damages or aggravated damages:

(a) otherwise than in respect of death or personal injury; or

(b) in a proceeding other than a proceeding to which this Part applies.

Division 7—Structured settlements

87ZC Court may make orders under section 87 for structured settlements

(1) In a proceeding to which this Part applies, a court may, on the application of the parties, make an order under section 87 approving a structured settlement, or the terms of a structured settlement, even though the payment of damages is not in the form of a lump sum award of damages.

(2) This section does not limit the powers of a court to make an order under section 87 in a proceeding that is not a proceeding to which this Part applies.

(3) In this section:

structured settlement means an agreement that provides for the payment of all or part of an award of damages in the form of periodic payments funded by an annuity or other agreed means.

Part VII—Authorisations, notifications and clearances in respect of restrictive trade practices

Division 1—Authorisations (other than section 50 merger authorisations)

87ZD Definitions

(1) In this Division:

authorisation means an authorisation under this Division.

industry code of practice means a code regulating the conduct of participants in an industry towards other participants in the industry or towards consumers in the industry.

minor variation, in relation to an authorization, is a single variation that does not involve a material change in the effect of the authorization.

(2) A reference in this Division to a proposal of the Commission is a reference to a notice of the Commission:

(a) so far as the revocation of an authorization is concerned—under subsection 91B(3); and

(b) so far as the revocation of an authorization and the substitution of another—under subsection 91C(3).

88 Power of Commission to grant authorisations

(1A) Subject to this Part, the Commission may, upon application by or on behalf of a corporation, grant an authorisation to the corporation:

(a) to make a contract or arrangement, or arrive at an understanding, if a provision of the proposed contract, arrangement or understanding would be, or might be, a cartel provision; or

(b) to give effect to a provision of a contract, arrangement or understanding if the provision is, or may be, a cartel provision;

and, while such an authorisation remains in force:

(c) in the case of an authorisation to make a contract or arrangement, or to arrive at an understanding—sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK do not prevent the corporation from making the contract or arrangement, or arriving at the understanding, in accordance with the authorisation; or

(d) in the case of an authorisation to give effect to a provision of a contract, arrangement or understanding—sections 44ZZRG and 44ZZRK do not prevent the corporation from giving effect to the provision in accordance with the authorisation.

(1) Subject to this Part, the Commission may, upon application by or on behalf of a corporation, grant an authorization to the corporation:

(a) to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision or would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45; or

(b) to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision or has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45;

and, while such an authorization remains in force:

(c) in the case of an authorization to make a contract or arrangement or to arrive at an understanding—subsection 45(2) does not prevent the corporation from making the contract or arrangement or arriving at the understanding in accordance with the authorization and giving effect in accordance with the authorization to any provision of the contract or arrangement so made or of the understanding so arrived at;

(d) in the case of an authorization to give effect to a provision of a contract:

(i) the provision is not unenforceable by reason of subsection 45(1); and

(ii) subsection 45(2) does not prevent the corporation from giving effect to the provision in accordance with the authorization; or

(e) in the case of an authorization to give effect to a provision of an arrangement or understanding—subsection 45(2) does not prevent the corporation from giving effect to the provision in accordance with the authorization.

(5) Subject to this Part, the Commission may, upon application by or on behalf of a person, grant an authorization to the person:

(a) to require the giving of, or to give, a covenant where the proposed covenant would have the purpose, or would have or might have the effect, of substantially lessening competition in a market referred to in paragraph 45B(2)(a); or

(b) to enforce the terms of a covenant;

and, while such an authorization remains in force:

(c) in the case of an authorization to require the giving of, or to give, a covenant:

(i) the covenant is not unenforceable by reason of subsection 45B(1); and

(ii) subsection 45B(2) does not apply in relation to the covenant; or

(d) in the case of an authorization to enforce the terms of a covenant:

(i) the covenant is not unenforceable by reason of subsection 45B(1); and

(ii) paragraphs 45B(2)(b) and (c) do not apply in relation to the covenant.

(6) An authorization granted by the Commission to a person under any of the preceding provisions of this section to:

(a) make a contract or arrangement or arrive at an understanding;

(b) give effect to a provision of a contract, arrangement or understanding;

(c) require the giving of, or give, a covenant; or

(d) enforce the terms of a covenant;

has effect as if it were also an authorization in the same terms to every other person named or referred to in the application for the authorization as a party to the contract, arrangement or understanding or as a proposed party to the proposed contract, arrangement or understanding, or as a person who is or would be bound by, or entitled to the benefit of, the covenant or the proposed covenant, as the case may be.

(7) Subject to this Part, the Commission may, upon application by or on behalf of a person, grant an authorization to the person, and to any other person acting in concert with the first-mentioned person, to engage in conduct to which section 45D, 45DA or 45DB would or might apply and, while such an authorization remains in force, that section does not apply in relation to the engaging in that conduct by the applicant and by any person acting in concert with the applicant.

(7A) Subject to this Part, the Commission may, on application by or on behalf of a person, grant an authorisation to the person to engage in conduct to which section 45E or 45EA would or might apply. While the authorisation remains in force, that section does not apply in relation to the person engaging in that conduct.

(8) Subject to this Part, the Commission may, upon application by or on behalf of a corporation, grant an authorization to the corporation to engage in conduct that

constitutes or may constitute the practice of exclusive dealing and, while such an authorization remains in force, section 47 does not prevent the corporation from engaging in that conduct in accordance with the authorization.

(8AA) If:

(a) the Commission grants an authorization to a corporation to engage in particular conduct under subsection (8); and

(b) the particular conduct referred to in the authorization is conduct expressly required or permitted under a contract, an arrangement, an understanding or an industry code of practice;

then:

(c) the authorization has effect as if it were also an authorization in the same terms to every other person named or referred to in the application for the authorization as a party or proposed party to the contract, arrangement, understanding or code; and

(d) the authorization may be expressed so as to apply to or in relation to another person who becomes a party to the contract, arrangement, understanding or code at a time after the authorization is granted.

(8AB) For the purposes of subsection (8AA), a reference in that subsection to a contract, an arrangement, an understanding or an industry code of practice includes a reference to a proposed contract, a proposed arrangement, a proposed understanding or a proposed industry code of practice (as the case requires).

(8A) Subject to this Part, the Commission may, upon application by or on behalf of a person, grant an authorisation to the person to engage in conduct that constitutes (or may constitute) the practice of resale price maintenance. While the authorisation remains in force, section 48 does not prevent the person from engaging in that conduct in accordance with the authorisation.

(8B) Subject to this Part, the Commission may, upon application by or on behalf of a corporation, grant it an authorisation:

(a) to make a dual listed company arrangement; or

(b) to give effect to a provision of a dual listed company arrangement;

and, while such an authorisation remains in force:

(c) for an authorisation to make a dual listed company arrangement—section 49 does not prevent the corporation from:

(i) making the arrangement in accordance with the authorisation; and

(ii) giving effect, in accordance with the authorisation, to any provision of the arrangement so made; and

(d) for an authorisation to give effect to a provision of a dual listed company arrangement—section 49 does not prevent the corporation from giving effect to the provision in accordance with the authorisation.

(8C) An authorisation granted by the Commission to a corporation under subsection (8B) has effect as if it were also an authorisation in the same terms to the other corporation named or referred to in the application for the authorisation as a party to the arrangement or proposed arrangement.

(8D) Subject to subsection 49(2), the Commission does not have power to grant an authorisation to a corporation to make a dual listed company arrangement if the arrangement has been made before the Commission makes a determination in respect of the application.

(9) Subject to this Part, the Commission may, upon application by or on behalf of a person, grant an authorisation to the person to acquire a controlling interest in a body corporate (within the meaning of section 50A) and, while such an authorisation remains in force,

section 50A does not, to the extent specified in the authorisation, apply in relation to the acquisition of that controlling interest.

(10) An authorization to a corporation under subsection (1A) or (1) may be expressed so as to apply to or in relation to another person who:

(a) in the case of an authorization to make a contract or arrangement or arrive at an understanding—becomes a party to the proposed contract or arrangement at a time after it is made or becomes a party to the proposed understanding at a time after it is arrived at; or

(b) in the case of an authorization to give effect to a provision of a contract, arrangement or understanding—becomes a party to the contract, arrangement or understanding at a time after the authorization is granted.

(11) An authorization under subsection (5) may be expressed so as to apply to or in relation to another person who:

(a) in the case of an authorization to require the giving of, or to give, a covenant—becomes bound by, or entitled to the benefit of, the proposed covenant at a time after the covenant is given; or

(b) in the case of an authorization to enforce the terms of a covenant—becomes bound by, or entitled to the benefit of, the covenant at a time after the authorization is granted.

(12) The Commission does not have power to grant an authorization to a corporation to make a contract or arrangement, to arrive at an understanding or to require the giving of, or to give, a covenant if the contract or arrangement has been made, the understanding has been arrived at or the covenant has been given before the Commission makes a determination in respect of the application.

(13) An application made to the Commission under this section for an authorization in relation to a particular contract or proposed contract (including an application mentioned in subsection (8AA)) may be expressed to be made also in relation to another contract or proposed contract that is or will be, or in relation to two or more other contracts or proposed contracts that are or will be, in similar terms to the first-mentioned contract or proposed contract and, where an application is so expressed, the Commission may grant a single authorization in respect of all the contracts or proposed contracts or may grant separate authorizations in respect of any one or more of the contracts or proposed contracts.

(14) Where an application made to the Commission under this section for an authorization in relation to a particular contract or proposed contract is expressed in accordance with subsection (13) to be made also in relation to another contract or contracts or proposed contract or proposed contracts:

(a) the application shall set out:

(i) the names of the parties to each other contract; and

(ii) the names of the parties to each other proposed contract where those names are known to the applicant at the time when the application is made; and

(b) if an authorization is granted in respect of a proposed contract the names of the parties to which were not so known to the applicant, the authorization shall, by force of this subsection, be deemed to be expressed to be subject to a condition that any party to the contract will, when so required by the Commission, furnish to the Commission the names of all the parties to the contract.

(15) In subsections (13) and (14):

(a) ***contract*** includes an arrangement, understanding, industry code of practice or covenant and ***proposed contract*** has a corresponding meaning; and

(b) the reference to the parties to a contract or proposed contract shall, for the purposes of the application of those subsections in relation to a covenant or proposed covenant by reason of paragraph (a) of this subsection, be read as a reference to the persons who are or will be, or but for subsection 45B(1) would be, respectively bound by, or entitled to the benefit of, the covenant or proposed covenant.

(16) A corporation that has made an application to the Commission for an authorisation, or a person other than a corporation who has made an application to the Commission for an authorisation under subsection (9), may at any time, by notice in writing to the Commission, withdraw the application.

89 Procedure for applications and the keeping of a register

(1) To be valid, an application for an authorisation, a minor variation of an authorisation, a revocation of an authorisation, or a revocation of an authorisation and the substitution of another authorisation, must:

(a) be in a form prescribed by the regulations and contain the information required by the form; and

(b) be accompanied by any other information or documents prescribed by the regulations; and

(c) be accompanied by the fee (if any) prescribed by the regulations.

(1A) If the Commission receives a purported application that it considers is not a valid application, it must, within 5 business days of receiving the purported application, give the person who made the purported application a written notice:

(a) stating that the person has not made a valid application; and

(b) giving reasons why the purported application does not comply with this Division.

(1B) For the purposes of subsection (1A), ***business day*** means a day that is not a Saturday, a Sunday or a public holiday in the Australian Capital Territory.

(2) If the Commission receives an application referred to in subsection (1), the Commission must cause notice of the receipt of that application to be made public in such manner as it thinks fit.

(3) The Commission must keep a register of:

(a) applications for authorizations; and

(b) applications for minor variations of authorizations; and

(c) applications for, or the Commission's proposals for, the revocation of authorizations; and

(d) applications for, or the Commission's proposals for, the revocation of authorizations and the substitution of other authorizations;

including applications that have been withdrawn or proposals that have been abandoned.

(4) Subject to this section, the register kept under subsection (3) shall include:

(a) any document furnished to the Commission in relation to an application or proposal referred to in subsection (3);

(aa) any draft determination, and any summary of reasons, by the Commission that is furnished to a person under section 90A, or under that section as applied by section 91C;

(ab) any record of a conference made in accordance with subsection 90A(8), or with that subsection as applied by section 91C, and any certificate in relation to a conference given under subsection 90A(9), or under that subsection as so applied;

(b) particulars of any oral submission made to the Commission in relation to such an application or proposal; and

(c) the determination of the Commission on such an application or proposal and the statement of the reasons given by the Commission for that determination.

(5) Where a person furnishes a document to the Commission in relation to an application or proposal referred to in subsection (3) or makes an oral submission to the Commission in relation to such an application or proposal, he or she may, at the time when the document is furnished or the submission is made, request that the document or a part of the document, or that particulars of the submission or of part of the submission, be excluded from the register kept under subsection (3) by reason of the confidential nature of any of the matters contained in the document or submission.

(5A) Where such a request is made:

(a) if the document or the part of the document, or the submission or the part of the submission, to which the request relates contains particulars of:

(i) a secret formula or process;

(ii) the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or

(iii) the current costs of manufacturing, producing or marketing goods or services;

the Commission shall exclude the document or the part of the document, or particulars of the submission or of the part of the submission, as the case may be, from the register kept under subsection (3); and

(b) in any other case—the Commission may, if it is satisfied that it is desirable to do so by reason of the confidential nature of the matters contained in the document or the part of the document, or in the submission or the part of the submission, exclude the document or the part of the document, or particulars of the submission or of the part of the submission, as the case may be, from that register.

(5B) If the Commission refuses a request to exclude a document or a part of a document from the register kept under subsection (3), the Commission shall, if the person who furnished the document to the Commission so requires, return the document or part of the document to him or her and, in that case, paragraph (4)(a) does not apply in relation to the document or part of the document.

(5C) If the Commission refuses a request to exclude particulars of an oral submission or of part of an oral submission from the register kept under subsection (3), the person who made the submission may inform the Commission that he or she withdraws the submission or that part of the submission and, in that case, paragraph (4)(b) does not apply in relation to the submission or that part of the submission, as the case may be.

(5D) Where the Commission is satisfied that it is desirable to do so for any reason other than the confidential nature of matters contained in a document or submission, the Commission may exclude a document or part of a document referred to in paragraph (4)(a) or particulars referred to in paragraph (4)(b) from the register kept under subsection (3).

(5E) If a person requests, in accordance with subsection (5) that a document or a part of a document, or that particulars of a submission or of part of a submission, be excluded from the register kept under subsection (3), the document or part of the document, or particulars of the submission or of the part of the submission, shall not be included in that register until the Commission has made a determination in relation to the request.

(6) A document shall not be included in the register kept under subsection (3) if a direction in relation to that document was in force under paragraph 22(1)(b) of the *Trade Practices Act 1974* immediately before the commencement of the *Trade Practices Amendment Act 1977*.

90 Determination of applications for authorisations

(1) The Commission shall, in respect of an application for an authorization:

(a) make a determination in writing granting such authorization as it considers appropriate; or

(b) make a determination in writing dismissing the application.

(2) The Commission shall take into account any submissions in relation to the application made to it by the applicant, by the Commonwealth, by a State or by any other person.

Note: Alternatively, the Commission may rely on consultations undertaken by the AEMC: see section 90B.

(4) The Commission shall state in writing its reasons for a determination made by it.

(5) Before making a determination in respect of an application for an authorization the Commission shall comply with the requirements of section 90A.

Note: Alternatively, the Commission may rely on consultations undertaken by the AEMC: see section 90B.

(5A) The Commission must not make a determination granting an authorisation under subsection 88(1A) in respect of a provision of a proposed contract, arrangement or understanding that would be, or might be, a cartel provision, unless the Commission is satisfied in all the circumstances:

(a) that the provision would result, or be likely to result, in a benefit to the public; and

(b) that the benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if:

(i) the proposed contract or arrangement were made, or the proposed understanding were arrived at; and

(ii) the provision were given effect to.

(5B) The Commission must not make a determination granting an authorisation under subsection 88(1A) in respect of a provision of a contract, arrangement or understanding that is or may be a cartel provision, unless the Commission is satisfied in all the circumstances:

(a) that the provision has resulted, or is likely to result, in a benefit to the public; and

(b) that the benefit outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted, or is likely to result, from giving effect to the provision.

(6) The Commission shall not make a determination granting an authorization under subsection 88(1), (5) or (8) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a proposed contract, arrangement or understanding, in respect of a proposed covenant, or in respect of proposed conduct (other than conduct to which subsection 47(6) or (7) applies), unless it is satisfied in all the circumstances that the provision of the proposed contract, arrangement or understanding, the proposed covenant, or the proposed conduct, as the case may be, would result, or be likely to result, in a benefit to the public and that that benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if:

(a) the proposed contract or arrangement were made, or the proposed understanding were arrived at, and the provision concerned were given effect to;

(b) the proposed covenant were given, and were complied with; or

(c) the proposed conduct were engaged in;

as the case may be.

(7) The Commission shall not make a determination granting an authorization under subsection 88(1) or (5) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a contract, arrangement or understanding or, in respect of a covenant, unless it is satisfied in all the circumstances that the provision of the contract, arrangement or understanding, or the covenant, as the case may be, has resulted, or is likely to result, in a benefit to the public and that that benefit outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted, or is likely to result, from giving effect to the provision or complying with the covenant.

(8) The Commission shall not:

(a) make a determination granting:

(i) an authorization under subsection 88(1) in respect of a provision of a proposed contract, arrangement or understanding that is or may be an exclusionary provision; or

(ii) an authorization under subsection 88(7) or (7A) in respect of proposed conduct; or

(iii) an authorization under subsection 88(8) in respect of proposed conduct to which subsection 47(6) or (7) applies; or

(iv) an authorisation under subsection 88(8A) for proposed conduct to which section 48 applies;

unless it is satisfied in all the circumstances that the proposed provision or the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed contract or arrangement should be allowed to be made, the proposed understanding should be allowed to be arrived at, or the proposed conduct should be allowed to take place, as the case may be; or

(b) make a determination granting an authorization under subsection 88(1) in respect of a provision of a contract, arrangement or understanding that is or may be an exclusionary provision unless it is satisfied in all the circumstances that the provision has resulted, or is likely to result, in such a benefit to the public that the contract, arrangement or understanding should be allowed to be given effect to.

(8A) The Commission must not make a determination granting an authorisation under subsection 88(8B) to make a dual listed company arrangement unless it is satisfied in all the circumstances that the making of the arrangement would result, or be likely to result, in such a benefit to the public (see subsection (9A)) that the arrangement should be allowed to be made.

(8B) The Commission must not make a determination granting an authorisation under subsection 88(8B) to give effect to a provision of a dual listed company arrangement unless it is satisfied in all the circumstances that the giving effect to the provision would result, or be likely to result, in such a benefit to the public (see subsection (9A)) that the provision should be allowed to be given effect to.

(9) The Commission shall not make a determination granting an authorization under subsection 88(9) in respect of the acquisition of a controlling interest in a body corporate within the meaning of section 50A unless it is satisfied in all the circumstances that the proposed acquisition would result, or be likely to result, in such a benefit to the public (see subsection (9A)) that the acquisition should be allowed to take place.

(9A) In determining what amounts to a benefit to the public for the purposes of subsections (8A), (8B) and (9):

(a) the Commission must regard the following as benefits to the public (in addition to any other benefits to the public that may exist apart from this paragraph):

(i) a significant increase in the real value of exports;

(ii) a significant substitution of domestic products for imported goods; and

(b) without limiting the matters that may be taken into account, the Commission must take into account all other relevant matters that relate to the international competitiveness of any Australian industry.

(10) If the Commission does not determine an application for an authorisation (other than an application for an authorisation under subsection 88(9)) within the relevant period, then it is taken to have granted the application at the end of that period.

(10A) For the purposes of subsection (10), the ***relevant period*** is the period of 6 months beginning on the day the Commission received the application. However, if, before the end of that 6 month period:

(a) the Commission has prepared a draft determination under subsection 90A(1) in relation to the application; and

(b) the Commission determines in writing that that period is extended by a specified period of not more than 6 months; and

(c) the applicant agrees to that period being so extended;

the ***relevant period*** is that period as so extended.

(11) Subject to subsections (12) and (13), if the Commission does not determine an application for an authorisation under subsection 88(9) within:

(a) 30 days from the day on which the application is received by the Commission; or

(b) if the Commission, before the end of that period of 30 days, gives to the applicant a notice in writing requesting the applicant to give to the Commission additional information relevant to the determination of the application—the period consisting of 30 days from the day on which the application is received by the Commission increased by the number of days in the period commencing on the day on which the notice is given to the applicant and ending on the day on which the applicant gives to the Commission such of the additional information as the applicant is able to provide;

the Commission shall be deemed to have granted, at the end of that period, the authorisation applied for.

(11A) The Commission may, within the 30 day period mentioned in subsection (11), notify the applicant in writing that the Commission considers that the period should be extended to 45 days due to the complexity of the issues involved. If the Commission so notifies the applicant, the references in subsection (11) to 30 days are to be treated as references to 45 days.

(12) If the applicant for an authorization informs the Commission in writing before the expiration of the period referred to in subsection (11) (in this subsection and in subsection (13) referred to as the ***base period***) that the applicant agrees to the Commission taking a specified longer period for the determination of the application, a reference to that longer period shall be deemed for the purposes of that application to be substituted in subsection (11) for the reference in that subsection to the base period.

(13) For the purposes of any application of subsection (12), a reference in that subsection to the base period shall, if a reference to another period is deemed by any other application or applications of that subsection to have been substituted in subsection (11) for the reference in subsection (11) to the base period, be construed as a reference to that other period.

(14) If a person to whom a notice has been sent under subsection 90A(2) in relation to a draft determination in respect of an application for an authorization notifies the Commission in accordance with subsection 90A(6) that he or she wishes the Commission to hold a conference in relation to the draft determination, the relevant period (worked out under subsection (10A) of this section) shall be deemed to be increased by a period equal to the period commencing on the day on which the first notification in relation to the draft

determination was received by the Commission and ending on the seventh day after the day specified in the certificate given by a member of the Commission in pursuance of subsection 90A(9) as the day on which the conference terminated.

(15) Where a party to a joint venture makes at the one time two or more applications for authorizations (other than an application for an authorisation under subsection 88(9)), being applications each of which deals with a matter relating to the joint venture:

(a) the Commission shall not make a determination in respect of any one of those applications unless it also makes a determination or determinations at the same time in respect of the other application or other applications; and

(b) if the Commission does not make a determination in respect of any one of the applications within the relevant period (worked out under subsection (10A)) in relation to that application, the Commission shall be deemed to have granted, at the expiration of that period, all the authorizations applied for.

90A Commission to afford opportunity for conference before determining application for authorisation

(1) Before determining an application for an authorization (other than an application for an authorisation under subsection 88(9)), the Commission shall prepare a draft determination in relation to the application.

(2) The Commission shall, by notice in writing sent to the applicant and to each other interested person, invite the applicant or other person to notify the Commission, within 14 days after a date fixed by the Commission being not earlier than the day on which the notice is sent, whether the applicant or other person wishes the Commission to hold a conference in relation to the draft determination.

(3) If:

(a) the draft determination provides for the granting of the application unconditionally; and

(b) no person has made a written submission to the Commission opposing the application;

each notice by the Commission under subsection (2) shall inform the person to whom the notice is sent that the draft determination so provides.

(4) If:

(a) the draft determination does not provide for the granting of the application or provides for the granting of the application subject to conditions; or

(b) the draft determination provides for the granting of the application unconditionally but a written submission has, or written submissions have, been made to the Commission opposing the application;

the Commission shall send with each notice under subsection (2) a copy of the draft determination and:

(c) in a case to which paragraph (a) applies—a summary of the reasons why the Commission is not satisfied that the application should be granted or why it is not satisfied that the application should be granted unconditionally; or

(d) in a case to which paragraph (b) applies—a summary of the reasons why it is satisfied that the application should be granted unconditionally.

(5) If each of the persons to whom a notice was sent under subsection (2):

(a) notifies the Commission within the period of 14 days mentioned in that subsection that he or she does not wish the Commission to hold a conference in relation to the draft determination; or

(b) does not notify the Commission within that period that he or she wishes the Commission to hold such a conference;

the Commission may make the determination at any time after the expiration of that period.

(6) If any of the persons to whom a notice was sent under subsection (2) notifies the Commission in writing within the period of 14 days mentioned in that subsection that he or she wishes the Commission to hold a conference in relation to the draft determination, the Commission shall appoint a date (being not later than 30 days after the expiration of that period), time and place for the holding of the conference and give notice of the date, time and place so appointed to each of the persons to whom a notice was sent under subsection (2).

(7) At the conference:

(a) the Commission shall be represented by a member or members of the Commission (being a member or members who participated in the preparation of the draft determination) nominated by the Chairperson; and

(b) each person to whom a notice was sent under subsection (2) and any other interested person whose presence at the conference is considered by the Commission to be appropriate is entitled to attend and participate personally or, in the case of a body corporate, may be represented by a person who, or by persons each of whom, is a director, officer or employee of the body corporate; and

(c) a person participating in the conference in accordance with paragraph (a) or (b) is entitled to have another person or other persons present to assist him or her but a person who so assists another person at the conference is not entitled to participate in the discussion; and

(e) no other person is entitled to be present.

(8) A member of the Commission participating in the conference shall make such record of the discussions as is sufficient to set out the matters raised by the persons participating in the conference.

(9) The member of the Commission who represents the Commission at the conference, or, if the Commission is represented by more than one member of the Commission, one of those members appointed by the Chairperson:

(a) may exclude from the conference any person who uses insulting language at the conference, creates, or takes part in creating or continuing, a disturbance at the conference or repeatedly interrupts the conference;

(b) may terminate the conference when he or she is of the opinion that a reasonable opportunity has been given for the expression of the views of persons participating in the conference (other than persons excluded from the conference under paragraph (a)); and

(c) shall give a certificate certifying the day on which the first notification under subsection (6) in relation to the draft determination was received by the Commission and the day on which the conference terminated;

and any such certificate shall be received in all courts as evidence of the matters certified.

(10) A document purporting to be a certificate referred to in subsection (9) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

(11) The Commission shall take account of all matters raised at the conference and may at any time after the termination of the conference make a determination in respect of the application.

(12) For the purposes of this section, ***interested person*** means a person who has notified the Commission in writing that he or she, or a specified unincorporated association of which

he or she is a member, claims to have an interest in the application, being an interest that, in the opinion of the Commission, is real and substantial.

(13) Where the Commission is of the opinion that two or more applications for authorizations that are made by the same person, or by persons being bodies corporate that are related to each other, involve the same or substantially similar issues, the Commission may treat the applications as if they constitute a single application and may prepare one draft determination in relation to the applications and hold one conference in relation to that draft determination.

90B Commission may rely on consultations undertaken by the AEMC

(1) This section applies if:

(a) an application under section 88, 91A, 91B or 91C is made in relation to the National Electricity Rules or a provision of the Rules; and

(b) the AEMC has done the following:

(i) published the Rules or the provision and invited people to make submissions to it on the Rules or the provision;

(ii) specified the effect of subsection (2) when it published the Rules or the provision;

(iii) considered any submissions that were received within the time limit specified by it when it published the Rules or the provision.

(2) In making a determination under section 90, 91A, 91B or 91C:

(a) the Commission may rely on the process mentioned in paragraph (1)(b), instead of undertaking the process mentioned in section 90A, subsection 91A(2), 91B(2) or 91C(2) or (5); and

(b) the Commission may take into account:

(i) any submissions mentioned in subparagraph (1)(b)(iii); and

(ii) any submissions, in respect of the application, made by the AEMC; and

(c) despite subsection 90(2), the Commission may disregard any submissions, in relation to the application, made by the Commonwealth, by a State, or by any other person (other than the AEMC).

(3) In this section:

National Electricity Rules means:

(a) the National Electricity Rules, as in force from time to time, made under the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia; or

(b) those Rules as they apply as a law of another State; or

(c) those Rules as they apply as a law of a Territory; or

(d) those Rules as they apply as a law of the Commonwealth.

91 Grant and variation of authorisations

(1) An authorization may be expressed to be in force for a period specified in the authorization and, if so expressed, remains in force for that period only.

(1A) An authorisation, other than an authorisation deemed to have been granted under subsection 90(10) or (11), comes into force on the day specified for the purpose in the authorisation, not being a day earlier than, and an authorisation deemed to have been granted under subsection 90(10) or (11) comes into force on:

(a) where paragraph (b) or (c) does not apply—the end of the period in which an application may be made to the Tribunal for a review of the determination by the Commission of the application for the authorisation;

(b) if such an application is made to the Tribunal and the application is not withdrawn—the day on which the Tribunal makes a determination on the review;

(c) if such an application is made to the Tribunal and the application is withdrawn—the day on which the application is withdrawn.

(1B) A minor variation of an authorization comes into force on a day specified by the Commission in the determination making the variation, not being a day earlier than:

(a) if neither paragraph (b) nor (c) applies—the end of the period in which an application may be made to the Tribunal for a review of the determination of the Commission in respect of the application for the minor variation; or

(b) if such an application is made to the Tribunal and the application is not withdrawn—the day on which the Tribunal makes a determination on the review; or

(c) if such an application is made to the Tribunal and the application is withdrawn—the day on which the application is withdrawn.

(1C) If an authorization (the ***prior authorization***) is revoked and another authorization is made in substitution for it, that other authorization comes into force on the day specified for the purpose in that other authorization, not being a day earlier than:

(a) if neither paragraph (b) nor (c) applies—the end of the period in which an application may be made to the Tribunal for a review of an application, or the Commission's proposal, for the revocation of the prior authorization and the substitution of that other authorization; or

(b) if such an application is made to the Tribunal and the application is not withdrawn—the day on which the Tribunal makes a determination on the review; or

(c) if such an application is made to the Tribunal and the application is withdrawn—the day on which the application is withdrawn.

(2) If the Commission considers that it is appropriate to do so:

(a) for the purpose of enabling due consideration to be given to:

(i) an application for an authorization; or

(ii) an application for a minor variation of an authorization; or

(iii) an application for the revocation of an authorization and the substitution of a new one; or

(b) pending the expiration of the time allowed for the making of an application to the Tribunal for review of a determination by the Commission of an application referred to in paragraph (a) and, if such an application for a review is made, pending the making of a determination by the Tribunal on the review; or

(c) for any other reason;

the Commission may at any time:

(d) in the case of an application for an authorization—grant an authorization that is expressed to be an interim authorization; and

(e) in the case of an application for a minor variation of an authorization—grant an authorization that is expressed to be an interim authorization dealing only with the matter the subject of the application for a variation; and

(f) in the case of an application for the revocation of an authorization and the substitution of another—suspend the operation of the authorization sought to be revoked and grant an authorization that is expressed to be an interim authorization in substitution for the authorization suspended.

(2AA) An authorization granted under paragraph 91(2)(d), (e) or (f) and expressed to be an interim authorization comes into force on such a date, not being a date before the grant of the interim authorization, as is specified by the Commission in the interim authorization.

(2AB) The Commission may, at any time, revoke an authorization that is expressed to be an interim authorization and, where that interim authorization is in substitution for an authorization the operation of which has been suspended, the revocation of the interim authorization has the effect of reviving the operation of the suspended authorization.

(2A) Subsections 90(4) to (9), inclusive, do not apply in relation to an authorization that is expressed to be an interim authorization.

(3) An authorization may be expressed to be subject to such conditions as are specified in the authorization.

91A Minor variations of authorizations

(1) A person to whom an authorization was granted, or another person on behalf of such a person, may apply to the Commission for a minor variation of the authorization.

(2) On receipt of an application, the Commission must, if it is satisfied that the variation sought in the application is a minor variation, by notice in writing given to any persons who appear to the Commission to be interested:

(a) indicate the nature of the variation applied for; and

(b) invite submissions in respect of the variation within a period specified by the Commission.

Note: Alternatively, the Commission may rely on consultations undertaken by the AEMC: see section 90B.

(3) After considering the application and any submissions received within the period specified, the Commission may make a determination in writing varying the authorization or dismissing the application.

(4) The Commission must not make a determination varying an authorization to which, if it were a new authorization, subsection 90(5A), (5B), (6) or (7) would apply, unless the Commission is satisfied that, in all the circumstances, the variation would not result, or would be likely not to result, in a reduction in the extent to which the benefit to the public of the authorization outweighs any detriment to the public caused by the authorization.

(5) The Commission must not make a determination varying an authorization to which, if it were a new authorization, subsection 90(8), (8A), (8B) or (9) would apply, unless the Commission is satisfied that, in all the circumstances, the variation would not result, or would be likely not to result, in a reduction in the benefit to the public that arose from the original authorization.

(6) Nothing in this section prevents a person from applying for 2 or more variations in the same application.

(7) If:

(a) a person applies for 2 or more variations:

(i) at the same time; or

(ii) in such close succession that the variations could conveniently be dealt with by the Commission at the same time; and

(b) the Commission is satisfied that the combined effect of those variations, if all were granted, would not involve a material change in the effect of the authorization;

the Commission may deal with all of those variations together as if they were a single minor variation.

(8) An application for a minor variation may be withdrawn by notice in writing to the Commission at any time.

91B Revocation of an authorization

(1) A person to whom an authorization was granted, or another person on behalf of such a person, may apply to the Commission for a revocation of the authorization.

(2) On receipt of such an application, the Commission must, by notice in writing given to any persons who appear to the Commission to be interested:

(a) indicate that the revocation of the authorization has been applied for; and

(b) indicate the basis on which the revocation has been applied for; and

(c) invite submissions in respect of the revocation within a period specified by the Commission.

Note: Alternatively, the Commission may rely on consultations undertaken by the AEMC: see section 90B.

(3) If, at any time after granting an authorization, it appears to the Commission that:

(a) the authorization was granted on the basis of evidence or information that was false or misleading in a material particular; or

(b) a condition to which the authorization was expressed to be subject has not been complied with; or

(c) there has been a material change of circumstances since the authorization was granted;

the Commission may, by notice in writing given to any persons who appear to the Commission to be interested:

(d) inform those persons that it is considering the revocation of the authorization; and

(e) indicate the basis on which the revocation is being proposed; and

(f) invite submissions in respect of the revocation within a period specified by the Commission.

(4) After considering any submissions invited under subsection (2) or (3) that are received within the period specified by the Commission under that subsection, the Commission may make a determination in writing:

(a) revoking the authorization; or

(b) deciding not to revoke the authorization.

(5) If an objection to the revocation is included in any submission

(a) that was invited under subsection (2) or (3); and

(b) that is received within the period specified by the Commission under that subsection;

the Commission must not make a determination revoking the authorization unless the Commission is satisfied that it would, if the authorization had not already been granted, be prevented under subsection 90(5A), (5B), (6), (7), (8), (8A), (8B) or (9) from making a determination granting the authorization in respect of which the revocation is sought.

(6) An application for revocation may be withdrawn by notice in writing to the Commission at any time.

(7) The Commission may disregard any objection that, in its opinion, is either vexatious or frivolous.

91C Revocation of an authorization and substitution of a replacement

(1) A person to whom an authorization was granted, or another person on behalf of such a person, may apply to the Commission for a revocation of the authorization and the substitution of a new authorization for the one revoked.

(2) On receipt of such an application, the Commission must, by notice in writing given to any persons who appear to the Commission to be interested:

(a) indicate that the revocation of the authorization, and the substitution of another authorization for it, has been applied for; and

(b) indicate the basis upon which the revocation and substitution has been applied for and the nature of the substituted authorization so applied for; and

(c) invite submissions in respect of the revocation and substitution within a period specified by the Commission.

Note: Alternatively, the Commission may rely on consultations undertaken by the AEMC: see section 90B.

(3) If, at any time after granting an authorization, it appears to the Commission that:

(a) the authorization was granted on the basis of evidence or information that was false or misleading in a material particular; or

(b) a condition to which the authorization was expressed to be subject has not been complied with; or

(c) there has been a material change of circumstances since the authorization was granted;

the Commission may, by notice in writing given to any persons who appear to be interested:

(d) inform those persons that it is considering the revocation of the authorization and the substitution of a new authorization; and

(e) indicate the basis on which the revocation and substitution is being proposed and the nature of the substituted authorization proposed; and

(f) invite submissions in respect of the proposed action within a period specified by the Commission.

(4) After considering any submissions invited under subsection (2) or (3) in relation to an authorization that are received within the period specified by the Commission under that subsection and after compliance with the requirements of section 90A in accordance with subsection (5), the Commission may make a determination in writing:

(a) revoking the authorization and granting another such authorization that it considers appropriate, in substitution for it; or

(b) deciding not to revoke the authorization.

(5) Before making a determination under subsection (4) in relation to an application, or a proposal, for the revocation of an authorization and the substitution of another, the Commission must comply with the requirements of section 90A.

Note: Alternatively, the Commission may rely on consultations undertaken by the AEMC: see section 90B.

(6) For the purposes of complying with section 90A in accordance with subsection (5), section 90A has effect:

(a) as if the reference in subsection (1) to an application for an authorization (other than an application for an authorization under subsection 88(9)) were a reference to an application, or to a proposal, for the revocation of an authorization (other than an authorization granted on an application granted under subsection 88(9)) and the substitution of another authorization; and

(b) as if references in other provisions of that section to an application, or to an application for an authorization, were references either to an application, or to a proposal, for the revocation of an authorization and the substitution of another; and

(c) as if subsection 90A(2) had provided, in its operation in relation to a proposal for the revocation of an authorization and the substitution of another, that:

(i) the reference to the applicant and to each other interested person were a reference only to each interested person; and

(ii) each reference to the applicant or other person were a reference only to the other person.

(7) The Commission must not make a determination revoking an authorization and substituting another authorization unless the Commission is satisfied that it would not be prevented under subsection 90(5A), (5B), (6), (7), (8), (8A), (8B) or (9) from making a determination granting the substituted authorization, if it were a new authorization sought under section 88.

(8) An application for the revocation of an authorization and the substitution of another authorization may be withdrawn by notice in writing to the Commission at any time.

Division 2—Notifications

Subdivision A—Exclusive dealing

93 Notification of exclusive dealing

(1) Subject to subsection (2), a corporation that engages, or proposes to engage, in conduct of a kind referred to in subsection 47(2), (3), (4), (5), (6), (7), (8) or (9) may give to the Commission a notice setting out particulars of the conduct or proposed conduct.

(1A) To be valid, a notice under subsection (1) must:

(a) be in a form prescribed by the regulations and contain the information required by the form; and

(b) be accompanied by any other information or documents prescribed by the regulations; and

(c) be accompanied by the fee (if any) prescribed by the regulations.

(2) A corporation may not give a notice for conduct or proposed conduct if:

(a) the corporation applied for an authorisation for the conduct or proposed conduct; and

(b) the Commission or the Trade Practices Commission made a determination dismissing the application; and

(c) either:

(i) the Tribunal or the Trade Practices Tribunal made a determination on an application for a review of a determination described in paragraph (b); or

(ii) the time for making such an application for review has ended without the making of an application.

(2A) In subsection (2):

Trade Practices Commission means the Trade Practices Commission established by section 6A of this Act as in force immediately before this subsection commenced.

Trade Practices Tribunal means the Trade Practices Tribunal continued in existence by section 30 of this Act as in force immediately before this subsection commenced.

(2B) If the Commission receives a purported notice under subsection (1) that it considers is not a valid notice, it must, within 5 business days of receiving the purported notice, give the person who made the purported notice a written notice:

(a) stating that the person has not given a valid notice; and

(b) giving reasons why the purported notice does not comply with this Division.

Definition

(2C) In subsection (2B):

business day means a day that is not a Saturday, a Sunday or a public holiday in the Australian Capital Territory.

(3) If the Commission is satisfied that the engaging by a corporation in conduct or proposed conduct of a kind described in subsection 47(2), (3), (4) or (5) or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c) and referred to in a notice given by the corporation to the Commission under subsection (1) has or would have the purpose or has or is likely to have, or would have or be likely to have, the effect of substantially lessening competition within the meaning of section 47 and that in all the circumstances:

(a) the conduct has not resulted or is not likely to result, or the proposed conduct would not result or be likely to result, in a benefit to the public; or

(b) any benefit to the public that has resulted or is likely to result from the conduct, or would result or be likely to result from the proposed conduct, would not outweigh the detriment to the public constituted by any lessening of competition that has resulted or is likely to result from the conduct or would result or be likely to result from the proposed conduct;

the Commission may at any time give notice in writing to the corporation stating that the Commission is so satisfied and accompanied by a statement setting out its reasons for being so satisfied.

(3A) If:

(a) a corporation has notified the Commission under subsection (1) of conduct or proposed conduct described in subsection 47(6) or (7) or paragraph 47(8)(c) or (9)(d); and

(b) the Commission is satisfied that the likely benefit to the public from the conduct or proposed conduct will not outweigh the likely detriment to the public from the conduct or proposed conduct;

the Commission may give the corporation a written notice stating that the Commission is so satisfied.

(3B) The Commission must also give the corporation a written statement of its reasons for giving notice when the Commission gives the notice.

(4) Before giving a notice under subsection (3) or (3A) the Commission shall comply with the requirements of section 93A.

(5) In satisfying itself for the purposes of subsection (3) or (3A) in relation to any conduct or proposed conduct referred to in a notice given to the Commission by a corporation under subsection (1), the Commission shall seek such relevant information as it considers reasonable and appropriate and may make a decision on the basis of any information so obtained and any other information furnished to it by the corporation or any other person or otherwise in its possession.

(6) A corporation that has given a notice to the Commission under this section in relation to any conduct or proposed conduct may, at any time before the Commission has given to the corporation a notice under subsection (3) or (3A) in relation to the conduct or proposed conduct, by notice in writing to the Commission, withdraw the first-mentioned notice.

(7) Where a corporation has given notice to the Commission under subsection (1):

(a) in the case of a notice given before the expiration of the period of 3 months commencing on the date of commencement of the *Trade Practices Amendment Act 1977*, the engaging by the corporation in the conduct referred to in the notice on or after that date and before the giving of the notice shall not be taken, for the purposes of section 47, to have had the effect of substantially lessening competition within the meaning of that section; and

(b) in any case, the engaging by the corporation in the conduct referred to in the notice after the giving of the notice shall not be taken, for the purposes of section 47, to have the purpose, or to have or be likely to have the effect, of substantially lessening competition within the meaning of that section unless:

(i) the Commission has given notice to the corporation under subsection (3) of this section in relation to the conduct and the conduct takes place more than 30 days (or such longer period as the Commission by writing permits) after the day on which the Commission gave the notice; or

(ii) the notice has been, or is deemed to have been, withdrawn and the conduct takes place after the day on which the notice was, or is deemed to have been, withdrawn.

(7A) A notice under subsection (1) describing conduct or proposed conduct referred to in subsection 47(6) or (7) or paragraph 47(8)(c) or (9)(d) comes into force:

(a) at the end of a prescribed period that started on the day when the corporation gave the Commission the notice; or

(b) if the Commission gives notice to the corporation under subsection 93A(2) during that period—when the Commission decides not to give the corporation a notice under subsection (3A) of this section.

(7B) A notice under subsection (1) describing conduct or proposed conduct referred to in subsection 47(6) or (7) or paragraph 47(8)(c) or (9)(d) does not come into force:

(a) if the notice is withdrawn, or deemed to be withdrawn, before it would come into force under subsection (7A); or

(b) if the Commission:

(i) gives notice to the corporation under subsection 93A(2) during the period described in paragraph (7A)(a); and

(ii) gives notice to the corporation under subsection (3A).

(7C) A notice under subsection (1) describing conduct referred to in subsection 47(6) or (7) or paragraph 47(8)(c) or (9)(d) ceases to be in force:

(a) when the notice is withdrawn or deemed to be withdrawn; or

(b) if the Commission gives the corporation a notice under subsection (3A)—on the 31st day after the Commission gave the notice under subsection (3A) or on a later day specified in writing by the Commission.

(8) Where:

(a) a corporation gives a notice to the Commission under subsection (1) in relation to any conduct or proposed conduct;

(b) before or after the notice is given the corporation makes an application to the Commission for an authorization to engage in that conduct;

(c) the Commission:

(i) makes a determination dismissing the application; or

(ii) makes a determination granting an authorization in respect of the application; and

(d) the Tribunal makes a determination on an application for a review of the determination of the Commission or the time for making such an application for review expires without an application for review having been made;

the notice shall thereupon be deemed to be withdrawn.

(9) If an application is made to the Tribunal for a review of the giving of a notice by the Commission under subsection (3) or (3A), a reference in subsection (7) or paragraph (7C)(b) to the day on which the Commission gave the notice shall be read as a reference to:

(a) if the application is withdrawn—the day on which the application is withdrawn;

(b) if the Tribunal, on the application of the Commission or of any other person who the Tribunal is satisfied has an interest in the subject matter of the review, declares that the application for the review is not being proceeded with by the applicant with due diligence—the day on which the Tribunal makes the declaration; or

(c) in any other case—the day on which the Tribunal makes a determination on the review.

(10) Where:

(a) a corporation has given a notice to the Commission under subsection (1) in relation to conduct or proposed conduct and the Commission has given notice to the corporation in writing under subsection (3) or (3A) in relation to the conduct or the proposed conduct; or

(b) a notice given by a corporation to the Commission under subsection (1) in relation to conduct or proposed conduct is withdrawn or deemed to be withdrawn;

the corporation is not entitled to give a further notice under subsection (1) to the Commission in relation to the same conduct or proposed conduct or in relation to conduct or proposed conduct to the like effect.

Subdivision B—Collective bargaining

93AA Definitions

In this Subdivision:

collective bargaining notice means a notice under subsection 93AB(1A) or (1).

conference notice means a notice under subsection 93A(2).

contract means a contract, arrangement or understanding.

objection notice means a notice under subsection 93AC(1) or (2).

93AB Notification of collective bargaining —*per se and competition provisions*

Notice to Commission—cartel provisions

(1A) A corporation that:

(a) has made, or proposes to make, a contract (the ***initial contract***) that contains a cartel provision that:

(i) has the purpose; or

(ii) has or is likely to have the effect;

mentioned in subsection 44ZZRD(2); or

(b) has made, or proposes to make, a contract (the ***initial contract***) that contains a cartel provision that has the purpose mentioned in a paragraph of subsection 44ZZRD(3) other than paragraph (c); or

(c) proposes to give effect to a provision of a contract (the ***initial contract***) where the provision is a cartel provision that:

(i) has the purpose; or

(ii) has or is likely to have the effect;

mentioned in subsection 44ZZRD(2); or

(d) proposes to give effect to a provision of a contract (the ***initial contract***) where the provision is a cartel provision that has the purpose mentioned in a paragraph of subsection 44ZZRD(3) other than paragraph (c);

may give the Commission a notice (the ***collective bargaining notice***) setting out particulars of the contract or proposed contract, but only if the 3 requirements set out in subsections (2), (3) and (4) are satisfied.

Note 1: Subsection (6) deals with the form etc. of a collective bargaining notice.

Note 2: Section 93AD sets out when a collective bargaining notice comes into force.

Notice to Commission

(1) A corporation that:

(a) has made, or proposes to make, a contract (the ***initial contract***) containing a provision of the kind referred to in paragraph 45(2)(a); or

(b) proposes to give effect to a provision of a contract (the ***initial contract***) where the provision is of the kind referred to in paragraph 45(2)(b);

may give the Commission a notice (the ***collective bargaining notice***) setting out particulars of the contract or proposed contract, but only if the 3 requirements set out in subsections (2), (3) and (4) are satisfied.

Note 1: Subsection (6) deals with the form etc. of a collective bargaining notice.

Note 2: Section 93AD sets out when a collective bargaining notice comes into force.

First—making of initial contract

(2) First, the corporation must have made, or propose to make, the initial contract with 1 or more persons (the ***contracting parties***) about:

(a) the supply of particular goods or services to; or

(b) the acquisition of particular goods or services from;

another person (the ***target***) by the corporation and the contracting parties.

Second—making of contracts with target

(3) Second, the corporation must reasonably expect that it will make 1 or more contracts with the target about:

(a) the supply of 1 or more of those goods or services to; or

(b) the acquisition of 1 or more of those goods or services from;

the target by the corporation.

Third—price of contracts with target

(4) Third, the corporation must reasonably expect that:

(a) in the case where the corporation reasonably expects to make only 1 contract with the target—the price for the supply or acquisition of those goods or services under that contract; or

(b) in the case where the corporation reasonably expects to make 2 or more contracts with the target—the sum of the prices for the supply or acquisition of those goods or services under those contracts;

will not exceed $3,000,000, or such other amount as is prescribed by the regulations, in any 12 month period. The regulations may prescribe different amounts in relation to different industries.

Timing of reasonable expectation

(5) The corporation must have the reasonable expectation referred to in subsections (3) and (4):

(a) at the time of giving the collective bargaining notice; and

(b) if the initial contract has been made—at the time it was made.

Form of notice etc.

(6) To be valid, a collective bargaining notice must:

(a) be in a form prescribed by the regulations and contain the information required by the form; and
(b) be accompanied by any other information or documents prescribed by the regulations; and
(c) be accompanied by the fee (if any) prescribed by the regulations.

Notice given by, or on behalf of, contracting persons

(7) A collective bargaining notice may be expressed to be given on behalf of one or more of the contracting parties, but only if those parties could have given the notice on their own behalf. If the notice is so expressed, then it is also taken to have been given by those parties.

When a notice may not be given

(8) A corporation may not give a collective bargaining notice in relation to a contract or proposed contract if:
(a) it has applied for an authorisation in relation to the contract or proposed contract; and
(b) the Commission has made a determination dismissing the application; and
(c) either:
(i) the Tribunal has made a determination on an application for a review of the Commission's determination; or
(ii) the time for making such an application for review has ended without the making of an application.

Notice is invalid if given by union etc. on behalf of the corporation

(9) A notice given by a corporation under subsection (1) is not a valid collective bargaining notice if it is given, on behalf of the corporation, by:
(a) a trade union; or
(b) an officer of a trade union; or
(c) a person acting on the direction of a trade union.

Invalid collective bargaining notice

(10) If the Commission receives a purported collective bargaining notice that it considers is not a valid collective bargaining notice, it must, within 5 business days of receiving the purported notice, give the person who made the purported notice a written notice:
(a) stating that the person has not given a valid collective bargaining notice; and
(b) giving reasons why the purported collective bargaining notice does not comply with this Division.

(10A) The Commission must, as soon as practicable after receiving a valid collective bargaining notice, give a copy of the notice to the target.

Purpose/effect of a provision

(10B) Subsections 44ZZRD(6), (7), (8) and (10) apply for the purposes of paragraphs (1A)(a) and (c) in a corresponding way to the way in which they apply for the purposes of Division 1 of Part IV.

Purpose of a provision

(10C) Subsections 44ZZRD(7), (9) and (11) apply for the purposes of paragraphs (1A)(b) and (d) in a corresponding way to the way in which they apply for the purposes of Division 1 of Part IV.

Definition

(11) In this section:

business day means a day that is not a Saturday, a Sunday or a public holiday in the Australian Capital Territory.

trade union has the meaning given by subsection 4(1) of the *Workplace Relations Act 1996*.

93AC Commission's objection notice

Commission's objection notice— cartel provisions or per se provisions

(1) If a corporation gives the Commission:

(aa) a collective bargaining notice under subsection 93AB(1A) in relation to a contract, or proposed contract, containing a cartel provision of the kind referred to in that subsection;

(a) a collective bargaining notice under subsection 93AB(1) in relation to a contract, or proposed contract, containing a provision of the kind referred to in subparagraph 45(2)(a)(i) or (b)(i) (exclusionary provisions);

then the Commission may, if it is satisfied that any benefit to the public that has resulted or is likely to result or would result or be likely to result from the provision does not or would not outweigh the detriment to the public that has resulted or is likely to result or would result or be likely to result from the provision, give the corporation a written notice (the ***objection notice***) stating that it is so satisfied.

Commission's objection notice—competition provisions

(2) If a corporation gives the Commission a collective bargaining notice under subsection 93AB(1) in relation to a contract, or proposed contract, containing a provision of the kind referred to in subparagraph 45(2)(a)(ii) or (b)(ii), then the Commission may, if it is satisfied that:

(a) the provision has or would have the purpose, or has or is likely to have or would have or be likely to have the effect, of substantially lessening competition (within the meaning of section 45); and

(b) in all the circumstances, either:

(i) the provision has not resulted or is not likely to result, or would not result or be likely to result, in a benefit to the public; or

(ii) any benefit to the public that has resulted or is likely to result, or would result or be likely to result, from the provision does not or would not outweigh the detriment to the public constituted by any lessening of competition that has resulted or is likely to result, or would result or be likely to result, from the provision;

give the corporation a written notice (the ***objection notice***) stating that it is so satisfied.

Reasons for objection notice

(3) The Commission must, at the time it gives a corporation an objection notice, give the corporation a written statement of its reasons for giving the notice.

Conference before objection notice

(4) The Commission must comply with section 93A (conferences about draft objection notices) before giving an objection notice.

Commission to seek additional information

(5) For the purposes of deciding whether or not to give an objection notice:
  (a) the Commission must seek such relevant information as it considers reasonable and appropriate; and
  (b) the Commission may make a decision on the basis of:
    (i) any information so obtained; or
    (ii) any other information given to it by the corporation or any other person; or
    (iii) any other information in its possession.

93AD When collective bargaining notice comes into force and ceases to be in force

When collective bargaining notice comes into force

(1) A collective bargaining notice comes into force:
  (a) at the end of the period which is 14 days or such longer period as is prescribed by the regulations, starting on the day the corporation gave the Commission the notice; or
  (b) if the Commission gives the corporation a conference notice during the period referred to in paragraph (a) and then decides not to give the corporation an objection notice—when the Commission makes that decision.

(2) However, a collective bargaining notice does not come into force if:
  (a) it is withdrawn, or taken to be withdrawn, before it would come into force under subsection (1); or
  (b) the Commission gives the corporation a conference notice during the period referred to in paragraph (1)(a) and then gives the corporation an objection notice.

Note: Section 93AE deals with the withdrawal of a collective bargaining notice.

When collective bargaining notice ceases to be in force

(3) A collective bargaining notice ceases to be in force at the earliest of the following times:
  (a) when it is withdrawn or taken to be withdrawn;
  (b) if the Commission gives the corporation an objection notice—on the 31st day after the relevant day or on a later day specified in writing by the Commission;
  (c) at the end of the period of 3 years beginning on the day the corporation gave the collective bargaining notice.

Note: Section 93AE deals with the withdrawal of a collective bargaining notice.

(4) For the purposes of subsection (3), the ***relevant day*** is worked out in accordance with this table:

Relevant day		
	In this situation:	**the *relevant day* is:**
1	If an application is not made to the Tribunal for a review of the Commission's decision to give the objection notice	the day the Commission gave the notice.
2	If an application is made to the Tribunal for a review of the Commission's decision to give the objection notice	(a) if the review application is withdrawn—the day of the withdrawal; or (b) if, on the application of the Commission or any other person who the Tribunal is satisfied has an interest in the subject matter of the review, the Tribunal declares that the applicant is not proceeding with the review application with due diligence—the day of the declaration; or (c) in any other case—the day on which the Tribunal makes a determination on the review.

93AE Withdrawal of collective bargaining notice

Withdrawal by corporation

(1) A corporation may, by written notice given to the Commission, withdraw a collective bargaining notice it has given the Commission.

(2) The corporation may do so at any time before the Commission gives it an objection notice in relation to the collective bargaining notice.

Deemed withdrawal

(3) If:

(a) a corporation gives the Commission a collective bargaining notice in relation to a contract or proposed contract; and

(b) before or after the corporation gave the notice, it applies to the Commission for an authorisation for that contract or proposed contract; and

(c) the Commission makes a determination either dismissing the application or granting an authorisation in respect of the application; and

(d) either:

(i) the Tribunal makes a determination on an application for a review of the Commission's determination; or

(ii) the time for making such an application for review ends without the making of an application;

then the collective bargaining notice is taken to be withdrawn.

93AEA Only 1 collective bargaining notice under subsection 93AB(1A) may be given

If:

(a) a corporation gives the Commission a collective bargaining notice under subsection 93AB(1A) in relation to a contract or proposed contract; and

(b) either:

(i) the Commission gives the corporation an objection notice in relation to the contract or proposed contract; or

(ii) the collective bargaining notice is taken to be withdrawn under subsection 93AE(3);

then a further collective bargaining notice under subsection 93AB(1A) cannot be given by any person in relation to the same contract or proposed contract or in relation to a contract or proposed contract to the like effect.

93AF Only 1 collective bargaining notice under subsection 93AB(1) may be given

If:

(a) a corporation gives the Commission a collective bargaining notice under subsection 93AB(1) in relation to a contract or proposed contract; and

(b) either:

(i) the Commission gives the corporation an objection notice in relation to the contract or proposed contract; or

(ii) the collective bargaining notice is taken to be withdrawn under subsection 93AE(3);

then the corporation may not give the Commission a further collective bargaining notice under subsection 93AB(1) in relation to the same contract or proposed contract or in relation to a contract or proposed contract to the like effect.

Subdivision C—Conferences

93A Commission to afford opportunity for conference before giving notice

(1) Before giving a notice under subsection 93(3) or (3A) or 93AC(1) or (2) in relation to any conduct or proposed conduct, the Commission shall prepare a draft notice in relation to that conduct or proposed conduct.

(2) The Commission shall, by notice in writing sent to the corporation to the conduct or proposed conduct of which the draft notice relates and to each other interested person, invite the corporation or other person to notify the Commission, within 14 days after a date fixed by the Commission being not earlier than the day on which the notice is sent, whether the corporation or other person wishes the Commission to hold a conference in relation to the draft notice.

(3) The Commission shall send with each notice under subsection (2) a copy of the draft notice and a summary of the reasons why it proposes to give the notice under subsection 93(3) or (3A) or 93AC(1) or (2).

(4) If each of the persons to whom a notice was sent under subsection (2):

(a) notifies the Commission in writing within the period of 14 days mentioned in that subsection that the person does not wish the Commission to hold a conference in relation to the draft notice; or

(b) does not notify the Commission within that period that he or she wishes the Commission to hold such a conference;

the Commission must decide after the end of that period whether or not to give the notice under subsection 93(3) or (3A) or 93AC(1) or (2).

(5) If any of the persons to whom a notice was sent under subsection (2) notifies the Commission in writing within the period of 14 days mentioned in that subsection that he or she wishes the Commission to hold a conference in relation to the draft notice, the Commission shall appoint a date (being not later than 30 days after the expiration of that

period), time and place for the holding of the conference and give notice of the date, time and place so appointed to each of the persons to whom a notice was sent under subsection (2).

(6) At the conference:

(a) the Commission shall be represented by a member or members of the Commission (being a member or members who participated in the preparation of the draft notice) nominated by the Chairperson; and

(b) each person to whom a notice was sent under subsection (2) and any other interested person whose presence at the conference is considered by the Commission to be appropriate is entitled to attend and participate personally or, in the case of a body corporate, may be represented by a person who, or by persons each of whom, is a director, officer or employee of the body corporate; and

(c) a person participating in the conference in accordance with paragraph (a) or (b) is entitled to have another person or other persons present to assist him or her but a person who so assists another person at the conference is not entitled to participate in the discussion; and

(e) no other person is entitled to be present.

(7) A member of the Commission participating in the conference shall make such record of the discussions as is sufficient to set out the matters raised by the persons participating in the conference.

(8) The member of the Commission who represents the Commission at the conference, or, if the Commission is represented by more than one member of the Commission, one of those members appointed by the Chairperson:

(a) may exclude from the conference any person who uses insulting language at the conference, creates, or takes part in creating or continuing, a disturbance at the conference or repeatedly interrupts the conference;

(b) may terminate the conference when he or she is of the opinion that a reasonable opportunity has been given for the expression of the views of persons participating in the conference (other than persons excluded from the conference under paragraph (a)); and

(c) shall give a certificate certifying the day on which the first notification under subsection (5) in relation to the draft notice was received by the Commission and the day on which the conference terminated;

and any such certificate shall be received in all courts as evidence of the matters certified.

(9) A document purporting to be a certificate referred to in subsection (8) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

(10) The Commission must take account of all matters raised at the conference.

(10A) After the conference, the Commission must decide whether or not to give a notice under subsection 93(3) or (3A) or 93AC(1) or (2).

(11) For the purposes of this section, ***interested person*** means a person who has notified the Commission in writing that he or she, or a specified unincorporated association of which he or she is a member, claims to have an interest in the matter, being an interest that, in the opinion of the Commission, is real and substantial.

(12) Where the Commission is of the opinion that two or more notices given to the Commission under subsection 93(1) or 93AB(1A) or (1) by the same person, or by persons being bodies corporate that are related to each other, deal with substantially similar conduct or proposed conduct, the Commission may treat the notices as if they constituted a single notice and may prepare one draft notice in relation to the notices so given to the Commission and hold one conference in relation to that draft notice.

Subdivision D—Register of notifications

95 Register of notifications

(1) The Commission shall keep a register containing:

(aa) notices relating to voluntary industry codes given to the Commission pursuant to regulations made under section 51AE (including notices that have been withdrawn pursuant to those regulations); and

(a) draft notices, and summaries of reasons, by the Commission furnished to any person under section 93A; and

(b) records of conferences made in accordance with subsection 93A(7) and certificates in relation to conferences given under subsection 93A(8); and

(c) notices (including notices that have been withdrawn) given to the Commission under section 93 or 93AB; and

(d) documents furnished to the Commission in relation to such notices; and

(e) particulars of any oral submissions made to the Commission in relation to such notices; and

(f) particulars of notices given by the Commission to corporations in relation to notices given by corporations under section 93 or 93AB; and

(g) particulars of any permits given by the Commission under subparagraph 93(7)(b)(i); and

(ga) details of the specification of any day by the Commission under paragraph 93(7C)(b); and

(gb) details of the specification of any day by the Commission under paragraph 93AD(3)(b); and

(h) records of proceedings at conferences held under section 65J or 65M; and

(j) particulars of recommendations made to the Minister by the Commission under section 65K or 65N.

(2) Where a person furnishes a document to the Commission:

(a) in relation to a notice given to the Commission under section 93 or 93AB; or

(b) in relation to a conference held under section 65J or 65M;

or makes an oral submission to the Commission in relation to the notice or the conference, he or she may, at the time when the document is furnished or the submission is made, request that the document or a part of the document, or that particulars of the submission or of part of the submission, be excluded from the register kept under subsection (1) by reason of the confidential nature of any of the matters contained in the document or submission.

(3) Where such a request is made:

(a) if the document or part of the document, or the submission or part of the submission, to which the request relates contains particulars of:

(i) a secret formula or process;

(ii) the cash consideration offered for the acquisition of shares in the capital of a body corporate or of assets of a person; or

(iii) the current costs of manufacturing, producing or marketing goods or services;

the Commission shall exclude the document or the part of the document, or particulars of the submission or of the part of the submission, as the case may be, from the register kept under subsection (1); and

(b) in any other case—the Commission may, if it is satisfied that it is desirable to do so by reason of the confidential nature of matters contained in the document or the part of the document, or in the submission or the part of the submission, exclude

the document or the part of the document, or particulars of the submission or of the part of the submission, as the case may be, from that register.

(4) If the Commission refuses a request to exclude a document or a part of a document from the register kept under subsection (1), the Commission shall, if the person who furnished the document to the Commission so requires, return the document or part of the document to him or her and, in that case, paragraph (1)(d) does not apply in relation to the document or part of the document.

(5) Subsection (4) does not apply in relation to a document that was produced to the Minister or the Commission in pursuance of a notice under section 65Q or 155.

(6) If the Commission refuses a request to exclude particulars of an oral submission or of part of an oral submission from the register kept under subsection (1), the person who made the submission may inform the Commission that he or she withdraws the submission or that part of the submission and, in that case, paragraph (1)(e) does not apply in relation to the submission or that part of the submission, as the case may be.

(7) Where the Commission is satisfied that it is desirable to do so for any reason other than the confidential nature of matters contained in a document or submission, the Commission may exclude a document or part of a document referred to in paragraph (1)(d) or particulars referred to in paragraph (1)(e) from the register kept under subsection (1).

(8) If a person requests in accordance with subsection (2) that a document or part of a document, or that particulars of a submission or of part of a submission, be excluded from the register kept under subsection (1), the document or the part of the document, or particulars of the submission or of the part of the submission, shall not be included in that register until the Commission has made a determination in relation to the request.

Division 3—Merger clearances and authorisations

Subdivision A—Preliminary

95AA Simplified outline of this Division

This Division is about merger clearances and merger authorisations.

It relates to section 50: that section prohibits a person acquiring shares in the capital of a body corporate or assets of another person if the acquisition would have, or be likely to have, the effect of substantially lessening competition in a market. If a person has a clearance or authorisation for the acquisition, section 50 will not prevent the person from making the acquisition.

The main differences between merger clearances and authorisations are:

- different bodies decide whether they should be granted;
- different timeframes apply for when the body must make its decision;
- they have different tests that need to be satisfied for them to be granted;
- merits review is not available for decisions on authorisations.

For merger clearances (see Subdivision B):

- the Commission grants them;
- it must make its decision whether to grant within 40 business days (which can be extended if the applicant agrees or the Commission so decides), and if it does not, the application is taken to be refused;
- it cannot grant the clearance unless it is satisfied that the acquisition would not have the effect, or be likely to have the effect, of substantially lessening competition in a market;
- if it refuses to grant a clearance, or grants a clearance subject to conditions, then the person who applied for the clearance may apply to the Tribunal under Division 3 of Part IX for review of the Commission's decision.

For merger authorisations (see Subdivision C):

- the Tribunal grants them;
- it must make its decision whether to grant within 3 months (which can be extended to 6 months in special circumstances), and if it does not, the application is taken to be refused;
- it cannot grant the authorisation unless it is satisfied that the acquisition would result, or be likely to result, in such a benefit to the public that the acquisition should be allowed to take place.

Subdivision D contains a prohibition on providing false or misleading information to the Commission or Tribunal under this Division or Division 3 of Part IX.

95AB Definitions

In this Division:

authorisation means an authorisation granted under this Division.

business day means a day that is not a Saturday, a Sunday, or a public holiday in the Australian Capital Territory.

clearance means a clearance granted under this Division.

merger authorisation register means the register kept under section 95AZ.

merger clearance register means the register kept under section 95AH.

minor variation, in relation to a clearance or an authorisation, is a single variation that does not involve a material change in the effect of the clearance or authorisation.

Subdivision B—Merger clearances

95AC Commission may grant clearance for a merger

(1) The Commission may grant a clearance to a person:

(a) to acquire shares in the capital of a body corporate; or

(b) to acquire assets of another person.

Note: Section 95AN prohibits the Commission from granting a clearance for an acquisition unless the Commission is satisfied that the acquisition would not have the effect, or be likely to have the effect, of substantially lessening competition.

(2) If the Commission does so, then section 50 does not prevent the person from acquiring the shares or assets in accordance with the clearance.

Note: The acquisition will only be protected from the operation of section 50 if it takes place in accordance with the clearance. If it does not, then section 50 will apply to the acquisition. If the acquisition contravenes section 50, then the remedies in Part VI will apply (see, for example, penalties under section 76 and divestiture under section 81).

(3) Without limiting subsection (2), an acquisition will not be in accordance with a clearance if any conditions of the clearance are not complied with (whether the conditions are to be complied with before, during or after the acquisition).

95AD Application for clearance

A person who wants a clearance to acquire shares or assets must apply to the Commission for it.

95AE Requirements for valid clearance application

(1) To be valid, the application must:

(a) be in a form prescribed by the regulations and contain the information required by the form; and

(b) be accompanied by such other information or documents as are prescribed by the regulations; and

(c) be accompanied by the fee (if any) prescribed by the regulations.

(2) The regulations may prescribe that the application form contain a requirement that the applicant give an undertaking under section 87B that the applicant will not make the acquisition while the application is being considered by the Commission.

95AF Commission to notify if clearance application is invalid

If the Commission receives a purported application that it considers is not a valid application, it must, within 5 business days of receiving the purported application, give the person who made the purported application a written notice:

(a) stating that the person has not made a valid application; and

(b) giving reasons why the purported application does not comply with this Division.

95AG Application to be published on the Internet

After receiving an application for a clearance, the Commission must:

(a) subject to section 95AI (confidentiality), put a copy of the application, and accompanying information or documents, on its website; and

(b) by notice on its website, invite submissions in respect of the application within the period specified by it.

95AH Merger clearance register

(1) The Commission must keep a register (the ***merger clearance register***) of:

(a) applications for clearances; and

(b) applications for minor variations of clearances; and

(c) applications for, or the Commission's proposals under section 95AS for, the revocation of clearances or for the revocation of clearances and the substitution of other clearances;

including applications that have been withdrawn or proposals that have been abandoned.

(2) The register must include:

(a) any document given to the Commission in relation to an application or proposal referred to in subsection (1); and

(b) particulars of any oral submission made to the Commission in relation to such an application or proposal; and

(c) the determination of the Commission on such an application or proposal and the statement of the reasons given by the Commission for that determination;

unless section 95AI (confidentiality) prevents the inclusion.

95AI Confidentiality claims etc.

Requests for confidential treatment

(1) If a person gives information to the Commission in relation to an application or proposal referred to in subsection 95AH(1), the person may, at the time of giving the information, request that the information be excluded from the merger clearance register and the Commission's website because of its confidential nature.

Confidentiality claims to be determined first

(2) If such a request is made, the Commission must exclude the information from the register and its website until it has made a determination on the request.

When Commission must exclude information—request made

(3) If such a request is made, the Commission must exclude the information from the register and its website if the information contains particulars of:

(a) a secret formula or process; or

(b) the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or

(c) the current costs of manufacturing, producing or marketing goods or services.

When Commission may exclude information—request made

(4) If such a request is made, the Commission may, if it is satisfied that it is desirable to do so because of the confidential nature of the information, exclude the information from the register and its website.

If request refused, document may be withdrawn

(5) If the Commission refuses such a request and the information is contained in a document, the Commission must, if the person who gave the document to it so requires, return the document or part of the document to the person. In that case, it must exclude the document or the part of the document (as the case requires) from the register and its website.

If request refused, oral submission may be withdrawn

(6) If the Commission refuses such a request and the information was given by way of oral submission, the person who made the submission may withdraw all or part of the submission. In that case, the Commission must exclude the submission or part of the submission (as the case requires) from the register and its website.

When Commission may exclude information—no request made

(7) The Commission may exclude information from the register and its website if it is satisfied that it is desirable to do so for any reason other than the confidential nature of the information.

95AJ Commission may seek additional information from applicant

The Commission may give the applicant a written notice requesting the applicant to give the Commission, within a specified period, additional information relevant to making its determination on the application.

95AK Commission may seek further information and consult others

(1) The Commission may give a person a written notice requesting the person to give the Commission, within a specified period, particular information relevant to making its determination on the application.

(2) The Commission may consult with such persons as it considers reasonable and appropriate for the purposes of making its determination on the application.

95AL Applicant may withdraw application

The applicant may, by notice in writing to the Commission, withdraw the application at any time.

95AM Commission to make determination on application

(1) The Commission must make a determination in writing:

(a) granting the clearance; or

(b) refusing to grant the clearance.

Note: The Commission must make its determination within the time limit set out in section 95AO. If it does not, then it is taken to have refused to grant the clearance.

(2) In making its determination, the Commission must take into account:

(a) any submissions in relation to the application made to it by the applicant, the Commonwealth, a State, a Territory or any other person that are received within the period specified under paragraph 95AG(b); and

(b) any information received under section 95AJ within the period specified in the relevant notice under that section; and

(c) any information received under subsection 95AK(1) within the period specified in the relevant notice under that subsection; and

(d) any information obtained from consultations under subsection 95AK(2).

(2A) In making its determination, the Commission may disregard:

(a) any submissions in relation to the application made to it by the applicant, the Commonwealth, a State, a Territory or any other person that are received after the period specified under paragraph 95AG(b); and

(b) any information received under section 95AJ after the period specified in the relevant notice under that section; and

(c) any information received under subsection 95AK(1) after the period specified in the relevant notice under that subsection.

(3) The Commission must notify the applicant in writing of its determination and give written reasons for it.

95AN When clearance must not be granted

(1) The Commission must not grant a clearance in relation to a proposed acquisition of shares or assets unless it is satisfied that the acquisition would not have the effect, or be likely to have the effect, of substantially lessening competition (within the meaning of section 50).

(2) To avoid doubt, a clearance cannot be granted for an acquisition that has occurred.

95AO Time limits for determining application

(1) If the Commission has not made a determination on the application within the period that begins on the day the application was given to the Commission and ends on the 40th business day after that day, the Commission is, subject to subsection (3), taken to have made a determination refusing to grant the clearance.

(2) The applicant may, before the end of the period referred to in subsection (1) (including any period that is taken to be substituted for that period by any other application or applications of this subsection), agree to the Commission taking a specified longer period to make its determination. If the applicant does, the longer period is taken to be substituted for the period referred to in subsection (1).

(3) However, if before the end of the period referred to in subsection (1) (including any period that is taken to be substituted for that period by any other application or applications of subsection (2)), the Commission decides that the matter cannot be dealt with properly within that period, either because of its complexity or because of other special circumstances, which must be notified in writing by the Commission to the applicant, the period is extended by a further 20 business days and the longer period is taken to be substituted for the period referred to in subsection (1) (or any other period that is taken to be substituted for that period by any other application or applications of subsection (2)).

95AP Clearance subject to conditions

(1) The Commission may grant a clearance subject to such conditions as are specified in the clearance.

Note 1: Under subsection 95AS(5), the Commission may revoke a clearance if a condition of the clearance has not been complied with.

Note 2: If an acquisition takes place without complying with a condition of the clearance (whether the condition is to be complied with before, during or after the acquisition), the acquisition will not be in accordance with the clearance and so might contravene section 50 (see subsections 95AC(2) and (3)). If the acquisition contravenes section 50, then the remedies in Part VI will apply (see, for example, penalties under section 76 and divestiture under section 81).

(2) Without limiting subsection (1), the Commission may grant a clearance subject to the condition that the person to whom the clearance is granted must make, and comply with, an undertaking to the Commission under section 87B.

95AQ When clearance is in force

(1) A clearance that is not subject to conditions comes into force on the day on which the determination granting the clearance is made.

(2) A clearance that is subject to conditions comes into force:

(a) if an application is made to the Tribunal for a review of the Commission's determination and the application is not withdrawn—on the day on which the Tribunal makes a determination on the review; or

(b) if an application is made to the Tribunal for a review of the Commission's determination and the application is withdrawn—on the day on which the application is withdrawn; or

(c) if the person to whom the clearance was given gives a notice in writing to the Commission stating that the person will not make an application to the Tribunal for review—on the day on which the notice is given; or

(d) in any other case—at the end of the period in which an application may be made to the Tribunal for review of the determination.

(3) A clearance may be expressed to be in force for a period specified in the clearance and, if so expressed, remains in force for that period only.

95AR Minor variations of clearances

Application for variation

(1) A person to whom a clearance was granted may apply to the Commission for a minor variation of the clearance.

Requirements for valid application

(2) To be valid, the application must:

(a) be in a form prescribed by the regulations and contain the information required by the form; and

(b) be accompanied by such other information or documents as are prescribed by the regulations; and

(c) be accompanied by the fee (if any) prescribed by the regulations.

(2A) The regulations may prescribe that the application form contain a requirement that the applicant give an undertaking under section 87B that the applicant will not make the acquisition while the application is being considered by the Commission.

Commission to notify if application is invalid

(3) If the Commission receives a purported application that it considers is not a valid application, it must, within 5 business days of receiving the purported application, give the person who made the purported application a written notice:
  (a) stating that the person has not made a valid application; and
  (b) giving reasons why the purported application does not comply with this Division.

Application to be published on the Internet

(4) The Commission must, if it is satisfied that the variation sought in the application is a minor variation:
  (a) subject to section 95AI (confidentiality), put a copy of the application on its website; and
  (b) by notice on its website, invite submissions in respect of the application within a period specified by it.

Commission must make a determination on the application

(5) The Commission must make a determination in writing:
  (a) varying the clearance; or
  (b) refusing to vary the clearance.

The Commission must notify the applicant in writing of its determination and give written reasons for it.

(5A) In making its determination, the Commission must take into account:
  (a) any submissions received within the period specified under subsection (4); and
  (b) any information received under section 95AJ within the period specified in the relevant notice under that section (as that section applies because of subsection (11) of this section); and
  (c) any information received under subsection 95AK(1) within the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (11) of this section); and
  (d) any information obtained from consultations under subsection 95AK(2) (as that subsection applies because of subsection (11) of this section).

(5B) In making its determination, the Commission may disregard:
  (a) any submissions received after the period specified under subsection (4); and
  (b) any information received under section 95AJ after the period specified in the relevant notice under that section (as that section applies because of subsection (11) of this section); and
  (c) any information received under subsection 95AK(1) after the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (11) of this section).

When variation must not be granted

(6) The Commission must not make a determination varying a clearance unless it is satisfied that the acquisition to which the clearance (as varied) would apply would not have the effect, or be likely to have the effect, of substantially lessening competition (within the meaning of section 50).

Determination varying clearance may also vary clearance conditions

(6A) A determination varying a clearance may also vary the conditions (if any) of the clearance to take account of the variation of the clearance.

Time limits for determining application

(7) If the Commission has not made a determination on the application within the period that begins on the day the application was given to the Commission and ends on the 40th business day after that day, the Commission is, subject to subsection (8A), taken to have made a determination refusing to vary the clearance.

(8) The applicant may, before the end of the period referred to in subsection (7) (including any period that is taken to be substituted for that period by any other application or applications of this subsection), agree to the Commission taking a specified longer period to make its determination. If the applicant does, the longer period is taken to be substituted for the period referred to in subsection (7).

(8A) However, if before the end of the period referred to in subsection (7) (including any period that is taken to be substituted for that period by any other application or applications of subsection (8)), the Commission decides that the matter cannot be dealt with properly within that period, either because of its complexity or because of other special circumstances, which must be notified in writing by the Commission to the applicant, the period is extended by a further 20 business days and the longer period is taken to be substituted for the period referred to in subsection (7) (or any other period that is taken to be substituted for that period by any other application or applications of subsection (8)).

2 or more variations at the same time

(9) If:

(a) a person applies for 2 or more variations:

(i) at the same time; or

(ii) in such close succession that the variations could conveniently be dealt with by the Commission at the same time; and

(b) the Commission is satisfied that the combined effect of those variations, if all were granted, would not involve a material change in the effect of the clearance;

the Commission may deal with all of those variations together as if they were a single minor variation.

Applicant may withdraw application

(10) The applicant may, by notice in writing to the Commission, withdraw the application at any time.

Powers of Commission

(11) The following sections apply in relation to an application for a minor variation of a clearance in the same way as they apply in relation to an application for a clearance:

(a) section 95AJ (Commission may seek additional information from applicant);

(b) section 95AK (Commission may seek further information and consult others).

95AS Revocation of clearance or revocation of clearance and substitution of a new clearance

Application for revocation etc.

(1) The Commission may revoke a clearance, or revoke a clearance and substitute a new clearance, if the person to whom the clearance was granted applies to the Commission for this to occur.

Requirements for valid application

(2) To be valid, the application must:

(a) be in a form prescribed by the regulations and contain the information required by the form; and

(b) be accompanied by such other information or documents as are prescribed by the regulations; and

(c) be accompanied by the fee (if any) prescribed by the regulations.

(2A) The regulations may prescribe that the application form contain a requirement that the applicant give an undertaking under section 87B that the applicant will not make the acquisition while the application is being considered by the Commission.

Commission to notify if application is invalid

(3) If the Commission receives a purported application that it considers is not a valid application, it must, within 5 business days of receiving the purported application, give the person who made the purported application a written notice:

(a) stating that the person has not made a valid application; and

(b) giving reasons why the purported application does not comply with this Division.

Application to be published on the Internet

(4) The Commission must:

(a) subject to section 95AI (confidentiality), put a copy of the application on its website; and

(b) by notice on its website, invite submissions in respect of the application within a period specified by it.

Commission's power to revoke etc. where no application

(5) The Commission may also revoke a clearance, or revoke a clearance and substitute a new clearance, if it is satisfied that:

(a) the clearance was granted on the basis of information that was false or misleading in a material particular; or

(b) a condition of the clearance has not been complied with; or

(c) there has been a material change of circumstances since the clearance was granted.

Commission to give notice

(6) If the Commission is considering making a determination under subsection (5), it must give a notice to the person to whom the clearance was granted and put a notice on its website:

(a) stating that it is considering making the determination; and

(b) indicating the basis on which the determination is being proposed; and

(c) inviting submissions in respect of the determination within the period specified by it.

Commission must make a determination

(7) The Commission must make a determination in writing:

(a) revoking the clearance, or revoking the clearance and substituting a new clearance for the one revoked; or

(b) refusing to revoke the clearance.

The Commission must notify, in writing, the person to whom the clearance was granted of its determination and give written reasons for it.

(7A) In making its determination, the Commission must take into account:

(a) any submissions invited under subsection (4) or (6) that are received within the period specified under that subsection; and

(b) any information received under section 95AJ within the period specified in the relevant notice under that section (as that section applies because of subsection (13) of this section); and

(c) any information received under subsection 95AK(1) within the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (13) of this section); and

(d) any information obtained from consultations under subsection 95AK(2) (as that subsection applies because of subsection (13) of this section).

(7B) In making its determination, the Commission may disregard:

(a) any submissions invited under subsection (4) or (6) that are received after the period specified under that subsection; and

(b) any information received under section 95AJ after the period specified in the relevant notice under that section (as that section applies because of subsection (13) of this section); and

(c) any information received under subsection 95AK(1) after the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (13) of this section).

When revocation etc. must not be granted

(8) If an objection (other than an objection that, in the Commission's opinion, is vexatious or frivolous) to a revocation of a clearance is made in a submission:

(a) that was invited under subsection (4) or (6); and

(b) that is received within the period specified;

the Commission must not make a determination revoking the clearance unless it is satisfied that it would, if the clearance had not already been granted, be prevented under section 95AN from granting the clearance.

(9) The Commission must not make a determination revoking a clearance and substituting another clearance unless it is satisfied that it would not be prevented under section 95AN from granting the substituted clearance, if it were a new clearance sought under section 95AD.

Time limits for determining application

(10) If the Commission has not made a determination on an application made under subsection (1) within the period that begins on the day the application was given to the Commission and ends on the 40th business day after that day, the Commission is, subject to subsection (11A), taken to have made a determination refusing to revoke the clearance.

(11) The applicant may, before the end of the period referred to in subsection (10) (including any period that is taken to be substituted for that period by any other application or applications of this subsection), agree to the Commission taking a specified longer period to make its determination. If the applicant does, the longer period is taken to be substituted for the period referred to in subsection (10).

(11A) However, if before the end of the period referred to in subsection (10) (including any period that is taken to be substituted for that period by any other application or applications of subsection (11)), the Commission decides that the matter cannot be dealt with properly within that period, either because of its complexity or because of other special circumstances, which must be notified in writing by the Commission to the

applicant, the period is extended by a further 20 business days and the longer period is taken to be substituted for the period referred to in subsection (10) (or any other period that is taken to be substituted for that period by any other application or applications of subsection (11)).

Withdrawal of application

(12) The applicant may, by notice in writing to the Commission, withdraw the application at any time.

Powers of Commission

(13) The following sections apply in relation to an application for a revocation, or a revocation and substitution, of a clearance in the same way as they apply in relation to an application for a clearance:

(a) section 95AJ (Commission may seek additional information from applicant);

(b) section 95AK (Commission may seek further information and consult others).

Substituted clearances

(14) The following sections apply in relation to a clearance substituted under this section in the same way as they apply in relation to a clearance granted under section 95AM:

(a) section 95AP (Clearance subject to conditions);

(b) section 95AQ (When clearance is in force).

Subdivision C—Merger authorisations

95AT Tribunal may grant authorisation for a merger

(1) The Tribunal may grant an authorisation to a person:

(a) to acquire shares in the capital of a body corporate; or

(b) to acquire assets of another person.

Note 1: Section 95AZH prohibits the Tribunal from granting an authorisation for an acquisition unless the Tribunal is satisfied the acquisition would result, or be likely to result, in such a benefit to the public that the acquisition should be allowed to take place.

Note 2: Division 2 of Part IX contains provisions about procedure and evidence that relate to proceedings before the Tribunal.

(2) If the Tribunal does so, then section 50 does not prevent the person from acquiring the shares or assets in accordance with the authorisation.

Note: The acquisition will only be protected from the operation of section 50 if it takes place in accordance with the authorisation. If it does not, then section 50 will apply to the acquisition. If the acquisition contravenes section 50, then the remedies in Part VI will apply (see, for example, penalties under section 76 and divestiture under section 81).

(3) Without limiting subsection (2), an acquisition will not be in accordance with an authorisation if any conditions of the authorisation are not complied with (whether the conditions are to be complied with before, during or after the acquisition).

95AU Application for authorisation

A person who wants an authorisation to acquire shares or assets must apply to the Tribunal for it.

95AV Requirements for valid authorisation application

(1) To be valid, the application must:

(a) be in a form prescribed by the regulations and contain the information required by the form; and

(b) be accompanied by such other information or documents as are prescribed by the regulations; and

(c) be accompanied by the fee (if any) prescribed by the regulations.

(2) The regulations may prescribe that the application form contain a requirement that the applicant give an undertaking under section 87B that the applicant will not make the acquisition while the application is being considered by the Tribunal.

95AW Tribunal to notify if authorisation application is invalid

If the Tribunal receives a purported application that it considers is not a valid application, it must, within 5 business days of receiving the purported application, give the person who made the purported application a written notice:

(a) stating that the person has not made a valid application; and

(b) giving reasons why the purported application does not comply with this Division.

95AX Tribunal to notify Commission of authorisation application

The Tribunal must, within 3 business days of receiving an application for an authorisation, give a copy of it to the Commission.

95AY Application to be published on the Internet

After receiving a copy of an application for an authorisation, the Commission must:

(a) subject to section 95AZA (confidentiality), put a copy of the application, and accompanying information or documents, on its website; and

(b) by notice on its website, invite submissions in respect of the application to be made to the Tribunal within a period specified by the Tribunal.

95AZ Merger authorisation register

(1) The Tribunal must keep a register (the ***merger authorisation register***) of:

(a) applications for authorisations; and

(b) applications for minor variations of authorisations; and

(c) applications for the revocation of authorisations or for the revocation of authorisations and the substitution of other authorisations;

including applications that have been withdrawn.

(2) The register must include:

(a) any document given to the Tribunal in relation to an application referred to in subsection (1); and

(b) particulars of any oral submission made to the Tribunal in relation to such an application; and

(c) the determination of the Tribunal on such an application and the statement of the reasons given by the Tribunal for that determination;

unless section 95AZA (confidentiality) prevents the inclusion.

95AZA Confidentiality claims etc.

Requests for confidential treatment

(1) If a person gives information to the Tribunal in relation to an application or proposal referred to in subsection 95AZ(1), the person may, at the time of giving the information,

request that the information be excluded from the merger authorisation register and the Commission's website because of its confidential nature.

Confidentiality claims to be determined first

(2) If such a request is made, the information must be excluded from the register and the Commission's website until the Tribunal has made a determination on the request.

When Tribunal must exclude information—request made

(3) If such a request is made, the Tribunal must exclude the information from the register and the Commission's website if the information contains particulars of:

(a) a secret formula or process; or

(b) the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or

(c) the current costs of manufacturing, producing or marketing goods or services.

When Tribunal may exclude information—request made

(4) If such a request is made, the Tribunal may, if it is satisfied that it is desirable to do so because of the confidential nature of the information, exclude the information from the register and the Commission's website.

If request refused, document may be withdrawn

(5) If the Tribunal refuses such a request and the information is contained in a document, the Tribunal must, if the person who gave the document to it so requires, return the document or part of the document to the person. In that case, it must exclude the document or the part of the document (as the case requires) from the register and the Commission's website.

If request refused, oral submission may be withdrawn

(6) If the Tribunal refuses such a request and the information was given by way of oral submission, the person who made the submission may withdraw all or part of the submission. In that case, the Tribunal must exclude the submission or part of the submission (as the case requires) from the register and the Commission's website.

When Tribunal may exclude information—no request made

(7) The Tribunal may exclude information from the register and the Commission's website if it is satisfied that it is desirable to do so for any reason other than the confidential nature of the information.

95AZC Tribunal may seek additional information from applicant

The Tribunal may give the applicant a written notice requesting the applicant to give the Tribunal, within a specified period, additional information relevant to making its determination on the application.

95AZD Tribunal may seek further information and consult others etc.

(1) The Tribunal may give a person a written notice requesting the person to give the Tribunal, within a specified period, particular information relevant to making its determination on the application.

(2) The Tribunal may consult with such persons as it considers reasonable and appropriate for the purposes of making its determination on the application.

(3) The Tribunal may disclose information excluded from the merger authorisation register under subsection 95AZA(3), (4) or (7) to such persons and on such terms as it considers reasonable and appropriate for the purposes of making its determination on the application.

95AZE Applicant may withdraw application

The applicant may, by notice in writing to the Tribunal, withdraw the application at any time.

95AZEA Tribunal must require Commission to give report

(1) For the purposes of determining the application, the member of the Tribunal presiding on the application must require the Commission to give a report to the Tribunal. The report must be:
  (a) in relation to the matters specified by that member; and
  (b) given within the period specified by that member.

(2) The Commission may also include in the report any matter it considers relevant to the application.

95AZF Commission to assist Tribunal

(1) For the purposes of determining the application:
  (a) the Commission may call a witness to appear before the Tribunal and to give evidence in relation to the application; and
  (b) the Commission may report on statements of fact put before the Tribunal in relation to the application; and
  (c) the Commission may examine or cross-examine any witnesses appearing before the Tribunal in relation to the application; and

  Note: The Commission may be represented by a lawyer: see paragraph 110(d).

  (d) the Commission may make submissions to the Tribunal on any issue the Commission considers relevant to the application.

(2) For the purposes of determining the application, the member of the Tribunal presiding on the application may require the Commission to give such information, make such reports and provide such other assistance to the Tribunal, as the member specifies.

95AZFA Commission may make enquiries

The Commission may, for the purposes of section 95AZEA or 95AZF, make such enquiries as it considers reasonable and appropriate.

95AZG Tribunal to make determination on application

(1) The Tribunal must make a determination in writing:
  (a) granting the authorisation; or
  (b) refusing to grant the authorisation.

Note: The Tribunal must make its determination within the time limit set out in section 95AZI. If it does not, then it is taken to have refused to grant the authorisation.

(2) In making its determination, the Tribunal must take into account:
  (a) any submissions in relation to the application made to it by the applicant, the Commonwealth, a State, a Territory or any other person that are received within the period specified under paragraph 95AY(b); and

(b) any information received under section 95AZC within the period specified in the relevant notice under that section; and

(c) any information received under subsection 95AZD(1) within the period specified in the relevant notice under that subsection; and

(d) any information obtained from consultations under subsection 95AZD(2); and

(e) the report given to it under section 95AZEA; and

(f) any thing done as mentioned in section 95AZF.

(2A) In making its determination, the Tribunal may disregard:

(a) any submissions in relation to the application made to it by the applicant, the Commonwealth, a State, a Territory or any other person that are received after the period specified under paragraph 95AY(b); and

(b) any information received under section 95AZC after the period specified in the relevant notice under that section; and

(c) any information received under subsection 95AZD(1) after the period specified in the relevant notice under that subsection.

(3) The Tribunal must notify the applicant in writing of its determination and give written reasons for it.

95AZH When authorisation must not be granted

(1) The Tribunal must not grant an authorisation in relation to a proposed acquisition of shares or assets unless it is satisfied in all the circumstances that the proposed acquisition would result, or be likely to result, in such a benefit to the public that the acquisition should be allowed to occur.

(2) In determining what amounts to a benefit to the public for the purposes of subsection (1):

(a) the Tribunal must regard the following as benefits to the public (in addition to any other benefits to the public that may exist apart from this paragraph):

(i) a significant increase in the real value of exports;

(ii) a significant substitution of domestic products for imported goods; and

(b) without limiting the matters that may be taken into account, the Tribunal must take into account all other relevant matters that relate to the international competitiveness of any Australian industry.

(3) To avoid doubt, an authorisation cannot be granted for an acquisition that has occurred.

95AZI Time limits for determining application

(1) If the Tribunal has not made a determination on the application within the relevant period, the Tribunal is taken to have refused to grant the authorisation.

(2) The ***relevant period*** is the period of 3 months beginning on the day the application was given to the Tribunal. However, if before the end of that 3 month period the Tribunal determines in writing that:

(a) the matter cannot be dealt with properly within that period, either because of its complexity or because of other special circumstances; and

(b) that period is extended by a specified period of not more than 3 months;

the ***relevant period*** is that period as so extended.

(3) If the Tribunal makes a determination under subsection (2), it must notify the applicant in writing of its determination before the end of that 3 month period.

95AZJ Authorisation subject to conditions

(1) The Tribunal may grant an authorisation subject to such conditions as are specified in the authorisation.

Note 1: Under subsection 95AZM(6), the Commission may apply to the Tribunal to revoke an authorisation if a condition of the authorisation has not been complied with.

Note 2: If an acquisition takes place without complying with a condition of the authorisation (whether the condition is to be complied with before, during or after the acquisition), the acquisition will not be in accordance with the authorisation and so might contravene section 50 (see subsections 95AT(2) and (3)). If the acquisition contravenes section 50, then the remedies in Part VI will apply (see, for example, penalties under section 76 and divestiture under section 81).

(2) Without limiting subsection (1), the Tribunal may grant an authorisation subject to the condition that the person to whom the authorisation is granted must make, and comply with, an undertaking to the Commission under section 87B.

95AZK When authorisation is in force

(1) An authorisation comes into force on the day on which the determination granting the authorisation is made.

(2) An authorisation may be expressed to be in force for a period specified in the authorisation and, if so expressed, remains in force for that period only.

95AZL Minor variations of authorisations

Application for variation

(1) The person to whom an authorisation was granted may apply to the Tribunal for a minor variation of the authorisation.

Requirements for valid application

(2) To be valid, the application must:

(a) be in a form prescribed by the regulations and contain the information required by the form; and

(b) be accompanied by such other information or documents as are prescribed by the regulations; and

(c) be accompanied by the fee (if any) prescribed by the regulations.

(2A) The regulations may prescribe that the application form contain a requirement that the applicant give an undertaking under section 87B that the applicant will not make the acquisition while the application is being considered by the Tribunal.

Tribunal to notify if application is invalid

(3) If the Tribunal receives a purported application that it considers is not a valid application, it must, within 5 business days of receiving the purported application, give the person who made the purported application a written notice:

(a) stating that the person has not made a valid application; and

(b) giving reasons why the purported application does not comply with this Division.

Tribunal to give the Commission a copy of the application

(4) The Tribunal must, if it is satisfied that the variation sought in the application is a minor variation, give a copy of it to the Commission within 3 business days of receiving it.

Application to be published on the Internet

(5) After receiving a copy of the application, the Commission must:

(a) subject to section 95AZA (confidentiality), put a copy of the application on its website; and

(b) by notice on its website, invite submissions in respect of the application to be made to the Tribunal within a period specified by the Tribunal.

Tribunal must make a determination on the application

(6) The Tribunal must make a determination in writing:

(a) varying the authorisation; or

(b) refusing to vary the authorisation.

The Tribunal must notify the applicant in writing of its determination and give written reasons for it.

(6A) In making its determination, the Tribunal must take into account:

(a) any submissions received within the period specified under subsection (5); and

(b) any information received under section 95AZC within the period specified in the relevant notice under that section (as that section applies because of subsection (13) of this section); and

(c) any information received under subsection 95AZD(1) within the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (13) of this section); and

(d) any information obtained from consultations under subsection 95AZD(2) (as that subsection applies because of subsection (13) of this section); and

(e) the report given to it under section 95AZEA (as that section applies because of subsection (13) of this section); and

(f) any thing done as mentioned in section 95AZF (as that section applies because of subsection (13) of this section).

(6B) In making its determination, the Tribunal may disregard:

(a) any submissions received after the period specified under subsection (5); and

(b) any information received under section 95AZC after the period specified in the relevant notice under that section (as that section applies because of subsection (13) of this section); and

(c) any information received under subsection 95AZD(1) after the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (13) of this section).

When variation must not be granted

(7) The Tribunal must not make a determination varying an authorisation unless the Tribunal is satisfied that, in all the circumstances, the variation would not result, or would be likely not to result, in a reduction in the benefit to the public that arose from the original authorisation.

Determination varying authorisation may also vary authorisation conditions

(7A) A determination varying an authorisation may also vary the conditions (if any) of the authorisation to take account of the variation of the authorisation.

Time limits for determining application

(8) If the Tribunal has not made a determination on the application within the relevant period, the Tribunal is taken to have refused to vary the authorisation.

(9) For the purposes of subsection (8), the ***relevant period*** is the period of 3 months beginning on the day the application was given to the Tribunal. However, if before the end of that 3 month period the Tribunal determines in writing that:

(a) the matter cannot be dealt with properly within that period, either because of its complexity or because of other special circumstances; and

(b) that period is extended by a specified period of not more than 3 months;

the ***relevant period*** is that period as so extended.

(10) If the Tribunal makes a determination under subsection (9), it must notify the applicant in writing of its determination before the end of that 3 month period.

2 or more variations at the same time

(11) If:

(a) a person applies for 2 or more variations:

(i) at the same time; or

(ii) in such close succession that the variations could conveniently be dealt with by the Tribunal at the same time; and

(b) the Tribunal is satisfied that the combined effect of those variations, if all were granted, would not involve a material change in the effect of the authorisation;

the Tribunal may deal with all of those variations together as if they were a single minor variation.

Applicant may withdraw application

(12) The applicant may, by notice in writing to the Tribunal, withdraw the application at any time.

Powers and procedures of the Tribunal

(13) The following sections apply in relation to an application for a minor variation of an authorisation in the same way as they apply in relation to an application for an authorisation:

(b) section 95AZC (Tribunal may seek additional information from applicant);

(c) section 95AZD (Tribunal may seek further information and consult others etc.);

(ca) section 95AZEA (Tribunal must require Commission to give report);

(d) section 95AZF (Commission to assist Tribunal);

(e) section 95AZFA (Commission may make enquiries).

95AZM Revocation of authorisation or revocation of authorisation and substitution of a new authorisation

Application for revocation

(1) The Tribunal may revoke an authorisation, or revoke an authorisation and substitute a new authorisation, if the person to whom the authorisation was granted applies to the Tribunal for this to occur.

Requirements for valid application

(2) To be valid, the application must:

(a) be in a form prescribed by the regulations and contain the information required by the form; and

(b) be accompanied by such other information or documents as are prescribed by the regulations; and

(c) be accompanied by the fee (if any) prescribed by the regulations.

(2A) The regulations may prescribe that the application form contain a requirement that the applicant give an undertaking under section 87B that the applicant will not make the acquisition while the application is being considered by the Tribunal.

Tribunal to notify if application is invalid

(3) If the Tribunal receives a purported application that it considers is not a valid application, it must, within 5 business days of receiving the purported application, give the person who made the purported application a written notice:

(a) stating that the person has not made a valid application; and

(b) giving reasons why the purported application does not comply with this Division.

Tribunal to give the Commission a copy of the application

(4) The Tribunal must give a copy of the application to the Commission within 3 business days of receiving it.

Application to be published on the Internet

(5) After receiving a copy of the application, the Commission must:

(a) subject to section 95AZA (confidentiality), put a copy of the application on its website; and

(b) by notice on its website, invite submissions in respect of the application to be made to the Tribunal within a period specified by the Tribunal.

Commission may apply for revocation

(6) The Commission may apply to the Tribunal for an authorisation to be revoked, or for an authorisation to be revoked and a new authorisation substituted for it, if the Commission is satisfied that:

(a) the authorisation was granted on the basis of information that was false or misleading in a material particular; or

(b) a condition of the authorisation has not been complied with; or

(c) there has been a material change of circumstances since the authorisation was granted.

Tribunal to give notice

(7) If the Tribunal is considering making a determination under subsection (6), the Tribunal must give a notice to the person to whom the authorisation was granted and cause a notice to be put on the Commission's website:

(a) stating that it is considering making the determination; and

(b) indicating the basis on which the determination is being proposed; and

(c) inviting submissions in respect of the determination within a period specified by the Tribunal.

Tribunal must make a determination

(8) The Tribunal must make a determination in writing:

(a) revoking the authorisation, or revoking the authorisation and substituting a new authorisation; or

(b) refusing to revoke the authorisation.

The Tribunal must notify, in writing, the person to whom the authorisation was granted of its determination and give written reasons for it.

(8A) In making its determination, the Tribunal must take into account:

(a) any submissions invited under subsection (5) or (7) that are received within the period specified under that subsection; and

(b) any information received under section 95AZC within the period specified in the relevant notice under that section (as that section applies because of subsection (15) of this section); and

(c) any information received under subsection 95AZD(1) within the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (15) of this section); and

(d) any information obtained from consultations under subsection 95AZD(2) (as that subsection applies because of subsection (15) of this section); and

(e) the report given to it under section 95AZEA (as that section applies because of subsection (15) of this section); and

(f) any thing done as mentioned in section 95AZF (as that section applies because of subsection (15) of this section).

(8B) In making its determination, the Tribunal may disregard:

(a) any submissions invited under subsection (5) or (7) that are received after the period specified under that subsection; and

(b) any information received under section 95AZC after the period specified in the relevant notice under that section (as that section applies because of subsection (15) of this section); and

(c) any information received under subsection 95AZD(1) after the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (15) of this section).

When revocation etc. must not be granted

(9) If an objection (other than an objection that, in the Tribunal's opinion, is vexatious or frivolous) to a revocation of an authorisation is made in a submission:

(a) that was invited under subsection (5) or (7); and

(b) that is received within the period specified;

the Tribunal must not make a determination revoking the authorisation unless the Tribunal is satisfied that it would, if the authorisation had not already been granted, be prevented under section 95AZH from granting the authorisation.

(10) The Tribunal must not make a determination revoking an authorisation and substituting another authorisation unless it is satisfied that it would not be prevented under section 95AZH from making a determination granting the substituted authorisation, if it were a new authorisation sought under section 95AU.

Time limits for determining application

(11) If the Tribunal has not made a determination on an application under subsection (1) or (6) within the relevant period, the Tribunal is taken to have refused to revoke the authorisation.

(12) For the purposes of subsection (11), the ***relevant period*** is the period of 3 months beginning on the day the application was given to the Tribunal. However, if before the end of that 3 month period the Tribunal determines in writing that:

(a) the matter cannot be dealt with properly within that period, either because of its complexity or because of other special circumstances; and

(b) that period is extended by a specified period of not more than 3 months;

the ***relevant period*** is that period as so extended.

(13) If the Tribunal makes a determination under subsection (12), it must notify the applicant in writing of its determination before the end of that 3 month period.

Withdrawal of application

(14) The applicant may withdraw an application under subsection (1), and the Commission may withdraw an application under subsection (6), by notice in writing to the Tribunal at any time.

Powers and procedures of the Tribunal

(15) The following sections apply in relation to an application for a revocation, or a revocation and substitution, of an authorisation in the same way as they apply in relation to an application for an authorisation:

(b) section 95AZC (Tribunal may seek additional information from applicant);

(c) section 95AZD (Tribunal may seek further information and consult others etc.);

(ca) section 95AZEA (Tribunal must require Commission to give report);

(d) section 95AZF (Commission to assist Tribunal);

(e) section 95AZFA (Commission may make enquiries).

Substituted authorisations

(16) The following sections apply in relation to an authorisation substituted under this section in the same way as they apply in relation to an authorisation granted under section 95AZG:

(a) section 95AZJ (Authorisation subject to conditions);

(b) section 95AZK (When authorisation is in force).

Subdivision D—Miscellaneous

95AZN Providing false or misleading information

(1) A person must not give information to the Commission or Tribunal under this Division or Division 3 of Part IX if the person is negligent as to whether the information is false or misleading in a material particular.

Note: Under section 76, the Court may order a person who contravenes this section to pay a pecuniary penalty. See also sections 80AC, 81A and 86C for other related remedies.

(2) For the purposes of subsection (1), proof that the person knew, or was reckless as to whether, the information was false or misleading in a material particular is taken to be proof that the person was negligent as to whether the information was false or misleading in a material particular.

Part VIIA—Prices surveillance

Division 1—Preliminary

95A Interpretation

(1) In this Part, unless the contrary intention appears:

applicable period, in relation to a locality notice, has the meaning given by section 95ZB.

body means any organisation or body, whether incorporated or unincorporated, and includes a group of 2 or more individuals.

business notice means a notice under subsection 95L(3).

Commonwealth authority means:

(a) the Commonwealth; or

(b) an authority, institution or other body (other than a society, association or incorporated company) established for a public purpose by or under a law of the Commonwealth; or

(c) a society, association or incorporated company in which the Commonwealth, or an authority, institution or other body of the kind referred to in paragraph (b), has a controlling interest.

declared person, in relation to goods or services of a particular description, means a person in relation to whom a declaration under subsection 95X(2) in relation to goods or services of that description is in force.

exempt supply, in relation to goods or services of a particular description, means a supply of goods or services of that description in relation to which a declaration under section 95B is in force.

external inquiry means an inquiry by a body other than the Commission.

goods includes:

(a) ships, aircraft and other vehicles; and

(b) animals, including fish; and

(c) minerals, trees and crops, whether on, under or attached to land or not; and

(d) water; and

(e) gas and electricity.

inquiry means an inquiry held in accordance with this Part into a matter or matters relating to prices for the supply of goods or services.

inquiry body means:

(a) in relation to an inquiry to be held, or being held, by the Commission—the Commission; or

(b) in relation to an inquiry to be held, or being held, by a body other than the Commission—the other body.

inquiry Chair means:

(a) in relation to an inquiry to be held, or being held, by the Commission—the member of the Commission presiding at the inquiry; or

(b) in relation to an inquiry to be held, or being held, by a body other than the Commission—the person presiding at the inquiry.

inquiry notice means a notice under section 95H.

law of the Commonwealth does not include:

(a) the *Northern Territory (Self-Government) Act 1978*; or

(b) the *Norfolk Island Act 1979*; or

(c) a law made under, or continued in force by, an Act referred to in paragraph (a) or (b).

locality notice means a notice under subsection 95Z(5).

member of the staff of the Commission means a person referred to in subsection 27(1) or a person engaged under section 27A.

notified goods or services means goods or services of a particular description in relation to which a declaration under subsection 95X(1) is in force.

person includes a Commonwealth authority and a State or Territory authority.

price includes:

(a) a charge of any description; and

(b) in relation to goods or services—any pecuniary benefit, whether direct or indirect, received or to be received by a person for or in connection with the supply by the person of the goods or services.

response notice means a notice under subparagraph 95Z(6)(c)(i).

services includes any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges or facilities that are, or are to be, provided, granted or conferred in trade or commerce, and includes, but is not limited to, the rights, benefits, privileges or facilities that are, or are to be, provided, granted or conferred under:

(a) a contract for or in relation to:

(i) the performance of work (including work of a professional nature), whether with or without the supply of goods; or

(ii) the provision of, or the use or enjoyment of facilities for, amusement, entertainment, recreation or instruction; or

(iii) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction; or

(b) a contract of insurance; or

(c) a contract between a banker and a customer of the banker entered into in the course of the carrying on by the banker of the business of banking; or

(d) any contract for or in relation to the lending of moneys;

but does not include rights or benefits being the supply of goods or the performance of work under a contract of service.

State or Territory authority means:

(a) a State, the Australian Capital Territory or the Northern Territory; or

(b) an authority, institution or other body (except a society, association or incorporated company) established for a public purpose by or under a law of a State, the Australian Capital Territory or the Northern Territory; or

(c) a society, association or incorporated company in which a State, the Australian Capital Territory or the Northern Territory, or an authority, institution or other body of the kind referred to in paragraph (b), has a controlling interest.

supply includes:

(a) in relation to goods—supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and

(b) in relation to services—provide, grant or confer.

(2) In this Part, unless the contrary intention appears:

(a) a reference to the supply of goods or services includes a reference to agreeing to supply goods or services; and

(b) a reference to the supply of goods includes a reference to the supply of goods together with other property or services, or both; and

(c) a reference to the supply of services includes a reference to the supply of services together with property or other services, or both; and

(d) a reference to the supply of goods does not include a reference to:

(i) a supply for use outside Australia; or

(ii) a supply for which a price is not charged; or

(iii) any other supply prescribed by the regulations; and

(e) a reference to the supply of services does not include a reference to:

(i) a supply outside Australia; or

(ii) a supply for which a price is not charged; or

(iii) any other supply prescribed by the regulations.

(3) For the purposes of this Part, a supply by way of retail sale is taken not to be a supply on terms and conditions that are the same as, or substantially similar to, the terms and conditions of a supply by way of wholesale sale.

95B Exempt supplies

(1) The Minister, or the Commission with the approval of the Minister, may by notice published in the *Gazette* declare a supply of goods or services of a specified description, that is a supply in a specified manner, of a specified kind or in specified circumstances, to be an exempt supply for the purposes of this Part.

(2) The Minister, or the Commission with the approval of the Minister, may by notice published in the *Gazette* vary or revoke a declaration under subsection (1).

95C Application of Part

(1) This Part applies in relation to the supply of goods or services:

(a) by a Commonwealth authority; or

(b) by a foreign corporation; or

(c) by a trading corporation in the course of, or for the purposes of, its trading operations; or

(d) by a financial corporation in the course of, or for the purposes of, its business operations; or

(e) by a body corporate incorporated in a Territory (other than the Northern Territory or Norfolk Island); or

(f) in an internal Territory (other than the Northern Territory), the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands; or

(g) in the course of, or in connection with, trade or commerce:

(i) among the States; or

(ii) between a State and an internal Territory; or

(iii) between a State and the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands; or

(iv) between an internal Territory and the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands; or

(v) between the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands; or

(vi) between 2 internal Territories;

and not otherwise.

(2) However, this Part does not apply in relation to the supply of goods or services by:

(a) an authority, institution or other body (except a society, association or incorporated company) established for a public purpose by or under a law of Norfolk Island; or

(b) a society, association or incorporated company in which a controlling interest is held by Norfolk Island, or an authority, institution or other body covered by paragraph (a).

95D Crown to be bound

(1) This Part binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.

(2) Nothing in this Part makes the Crown liable to be prosecuted for an offence.

(3) The protection in subsection (2) does not apply to an incorporated Commonwealth authority or an incorporated State or Territory authority.

95E Object of this Part

The object of this Part is to have prices surveillance applied only in those markets where, in the view of the Minister, competitive pressures are not sufficient to achieve efficient prices and protect consumers.

95F Simplified overview of this Part

(1) This Part deals with 3 main things.

Price inquiries

(2) First, it provides for the Commission or another body to hold price inquiries in relation to the supply of goods or services.

(3) These inquiries may relate to the supply of goods or services by a particular person. If so, the person's ability to increase the prices of those goods or services during a particular period is restricted. However, there is a way for the person to increase prices during that period.

Price notifications

(4) Second, this Part allows the Minister or the Commission to declare goods or services to be notified goods or services and to declare a person to be a declared person in relation to such goods or services.

(5) If this happens, the person's ability to increase the prices of such goods or services during a particular period is restricted. However, there is a way for the person to increase prices during that period.

Price monitoring

(6) Third, this Part allows the Minister to direct the Commission to undertake price monitoring.

(7) This may be in relation to supplies of goods or services in a particular industry or in relation to supplies of goods or services by particular persons.

Division 2—Commission's functions under this Part

95G Commission's functions under this Part

(1) The Commission's functions under this Part are set out in this section.

Price inquiries

(2) The Commission is to hold such inquiries as it is required to hold under section 95H.

(3) The Commission may, with the Minister's approval under section 95H, hold such other inquiries as it thinks fit.

(4) The Commission is to give the Minister a report on the results of each inquiry it holds.

Price notifications

(5) The Commission is to consider locality notices and to take, in relation to such notices, such action in accordance with this Part as it considers appropriate.

Price monitoring

(6) The Commission is to monitor prices, costs and profits in any industry or business that the Minister directs it to monitor and is to give the Minister a report on the results of such monitoring.

General

(7) In exercising its powers and performing its functions under this Part, the Commission must, subject to any directions given under section 95ZH, have particular regard to the following:

(a) the need to maintain investment and employment, including the influence of profitability on investment and employment;

(b) the need to discourage a person who is in a position to substantially influence a market for goods or services from taking advantage of that power in setting prices;

(c) the need to discourage cost increases arising from increases in wages and changes in conditions of employment inconsistent with principles established by relevant industrial tribunals.

Division 3—Price inquiries

Subdivision A—Holding of inquiries

95H Price inquiries

Inquiries by Commission

(1) The Minister may, by notice in writing given to the Chairperson, require the Commission to hold an inquiry into a specified matter or specified matters.

(2) The Minister may, by notice in writing given to the Chairperson, approve the Commission holding an inquiry into a specified matter or specified matters.

Inquiries by other bodies

(3) The Minister may, by notice in writing, request a body other than the Commission to hold an inquiry into a specified matter or specified matters.

(4) The other body must, if it agrees to hold the inquiry, appoint a person to preside at the inquiry. The appointment must be in writing.

(5) However, if the other body is a group of 2 or more individuals, the Minister must, by writing, appoint one of those individuals to preside at the inquiry.

(5A) The Minister must, as soon as practicable after confirmation that the other body will hold the inquiry, table a statement in each House of the Parliament:

(a) specifying that the body will hold the inquiry; and

(b) giving the Minister's reasons for requesting the body, rather than the Commission, to hold the inquiry.

No inquiry in relation to exempt supply

(6) A notice under this section must not authorise the holding of an inquiry into a supply of goods or services of a particular description that is an exempt supply in relation to goods or services of that description.

No inquiry in relation to a State or Territory authority

(7) A notice under this section must not authorise the holding of an inquiry into the supply by a State or Territory authority of goods or services.

95J Content of inquiry notices

Description of goods or services

(1) An inquiry notice must specify the description of the goods or services in relation to which the inquiry is to be held.

Supply of goods or services by particular persons

(2) An inquiry notice must also specify whether the inquiry is to be held in relation to the supply of goods or services of that description by a particular person or persons.

(3) If such an inquiry is to be held, the notice may also specify that person or persons. If it does not, the inquiry body must, by writing, determine that person or persons.

(4) The inquiry Chair must give the Minister notice in writing of the determination.

No inquiry in relation to a State or Territory authority

(5) The inquiry body must not determine a State or Territory authority as a person in relation to whom an inquiry will be held.

Ministerial directions

(6) The Minister may, in an inquiry notice, give such directions as he or she thinks fit as to the holding of the inquiry and the matters to be taken into consideration in the inquiry.

(7) The inquiry body must comply with any such directions.

95K Period for completing inquiry

Inquiry period

(1) An inquiry notice must specify the period within which the inquiry is to be completed and a report on the inquiry is to be given to the Minister.

(2) The inquiry body must complete the inquiry and give the report to the Minister within that period.

Extensions

(3) The Minister may, before the end of the completion period, extend or further extend that period by notice in writing given to the inquiry Chair.

Example: A notice under subsection (1) specifies that an inquiry is to be completed and a report given by 1 August.

On 30 July the Minister gives a notice under subsection (3) extending the deadline to 8 August.

On 6 August the Minister gives another notice under subsection (3) further extending the deadline to 12 August.

(4) If the Minister does so, the inquiry body must complete the inquiry and give its report within the completion period as so extended or further extended.

(5) In this section:

completion period means the period within which the inquiry body is required by this section to complete an inquiry and to give its report on the inquiry.

95L Notice of holding of inquiry

General notice

(1) An inquiry body must, as soon as practicable, give notice of an inquiry it is to hold.

(2) The notice must be given in each State, the Australian Capital Territory and the Northern Territory by advertisement published in the *Gazette* and in a newspaper circulating in that State or Territory.

Notice to particular person or persons

(3) If the inquiry is to be held in relation to the supply of goods or services by a particular person or persons, the inquiry body must, as soon as practicable, give the person, or each of the persons, a notice in writing.

Content of notice

(4) A notice under this section must:

(a) state that the inquiry body is to hold the inquiry; and
(b) specify the matter or matters in relation to which the inquiry is to be held; and
(c) specify the time and place at which the inquiry is to start; and
(d) in the case of a notice under subsection (3)—set out the effect of section 95N; and
(e) specify any other matter prescribed by the regulations.

95M Notice of extension of period for completing inquiry

If:
(a) an inquiry is being held in relation to the supply of goods or services of a particular description by a particular person or persons; and
(b) the Minister extends, or further extends, the period within which the inquiry is required to be completed and a report on the inquiry given to the Minister;

the inquiry body must, as soon as possible, give the person, or each of the persons, a notice in writing giving details of the extension or further extension.

95N Price restrictions

(1) This section applies if an inquiry body gives a person a business notice stating that it is to hold an inquiry in relation to the supply by the person of goods or services of a particular description.

Offence: previous local supply

(2) The person is guilty of an offence if:
(a) before the applicable day in relation to the business notice, the person supplies (the ***current supply***) goods or services of that description in a locality on particular terms and conditions; and
(b) the person has supplied goods or services of that description in that locality on the same or substantially similar terms and conditions in the period of 12 months before the current supply; and
(c) the current supply is at a price that exceeds the highest price at which the person has supplied goods or services of that description in that locality on the same or substantially similar terms and conditions in that period; and
(d) in a case where a notice has been given to the person under subsection (5)—the current supply is not in accordance with the notice.

Penalty: 100 penalty units.

Offence: no previous local supply

(3) The person is guilty of an offence if:
(a) before the applicable day in relation to the business notice, the person supplies (the ***current supply***) goods or services of that description in a locality on particular terms and conditions; and
(b) the person has not supplied goods or services of that description in that locality on the same or substantially similar terms and conditions in the period of 12 months before the current supply, but has supplied goods or services of that description elsewhere in Australia on the same or substantially similar terms and conditions in that period; and
(c) the current supply is at a price that exceeds the highest price at which the person has supplied goods or services of that description in Australia on the same or substantially similar terms and conditions in that period; and
(d) in a case where a notice has been given to the person under subsection (5)—the current supply is not in accordance with the notice.

Penalty: 100 penalty units.

Offence: no previous supply in Australia

(4) The person is guilty of an offence if:

(a) before the applicable day in relation to the business notice, the person supplies (the ***current supply***) goods or services of that description in a locality on particular terms and conditions; and

(b) the person has not supplied goods or services of that description in Australia on the same or substantially similar terms and conditions in the period of 12 months before the current supply; and

(c) in a case where a notice has been given to the person under subsection (5)—the current supply is not in accordance with the notice.

Penalty: 100 penalty units.

Approval to increase prices

(5) The Commission may give the person a notice in writing stating that the person is permitted, during the period:

(a) beginning on a specified day; and

(b) ending at the beginning of the applicable day in relation to the business notice;

to supply goods or services of a specified description in a specified locality on specified terms and conditions at a price not exceeding a specified price.

(6) The Commission may give a notice under subsection (5) on its own initiative or on the application of the person.

Consultation

(7) In an external inquiry, the Commission must consult the body holding the inquiry before giving a notice under subsection (5).

Definition

(8) In this section:

applicable day, in relation to a business notice, means the 14th day after whichever is the earlier of the following days:

(a) the day on which the person given the notice receives a copy of the report by the inquiry body on the inquiry to which the notice relates;

(b) the last day of the period within which the inquiry body is required to complete the inquiry to which the notice relates and to give the Minister a report on the inquiry.

Subdivision B—Reports on inquiries

95P Copies of report to be made available

Inquiry into supply of goods or services by particular persons

(1) For an inquiry held in relation to the supply of goods or services by a particular person or persons, the inquiry body must send the person, or each of the persons, a copy of the report on the inquiry on the day on which it gives the Minister the report.

(2) A copy of a report sent to a person must be accompanied by a notice in writing setting out the effect of section 95Q.

All inquiries

(3) For any inquiry, the inquiry body must, unless the Minister directs otherwise, make copies of the report on the inquiry available for public inspection as soon as practicable after the period of 28 days beginning on the day on which it gives the Minister the report.

95Q Notification of proposed prices after receipt of report

(1) This section applies if a person receives a copy of a report on an inquiry held in relation to the supply by the person of goods or services of a particular description.

Price notification

(2) The person must, within 14 days after receiving the copy, give the Commission a notice in writing specifying the price or prices at which the person is supplying, or proposing to supply, goods or services of that description.

Offence

(3) A person is guilty of an offence if the person contravenes subsection (2).

Penalty: 10 penalty units.

Public notification

(4) The Commission must, within 14 days after it receives the notice under subsection (2), make publicly available details of the price or prices specified in the notice.

Subdivision C—Procedure at inquiries

95R Public inquiries etc.

Public inquiries

(1) An inquiry body must hold an inquiry in public, unless the Minister directs otherwise.

Taking of evidence

(2) The inquiry body may take evidence in private at an inquiry held in public if:
  (a) a witness objects to giving, in public, evidence that the inquiry body is satisfied is of a confidential nature; and
  (b) the inquiry body considers that it is desirable to do so.

(3) The inquiry body may permit a person appearing as a witness at the inquiry to give evidence by giving, and verifying by oath or affirmation, a written statement.

(4) If a statement is so given in an inquiry held in public, the inquiry body must make available to the public in such manner as it thinks fit the contents of the statement other than any matter:
  (a) that the person who gave the evidence objects to being made public; and
  (b) the evidence of which the body is satisfied would have been taken in private if that evidence had been given orally and the person had objected to giving it in public.

Written submissions

(5) The inquiry body may require or permit a person desiring to make a submission to the body to make the submission in writing.

(6) If a submission is so made in an inquiry held in public, the inquiry body must make available to the public in such manner as it thinks fit the contents of the submission.

Procedure

(7) The procedure to be followed at an inquiry is within the discretion of the inquiry Chair. The inquiry body is not bound by the rules of evidence.

(8) Subsection (7) operates:
  (a) subject to this Part; and
  (b) in any case—subject to any direction given to the inquiry body by the Minister; and
  (c) in an inquiry held by the Commission and at which the inquiry Chair is not the Chairperson—subject to any direction given to the inquiry Chair by the Chairperson.

Note: See also section 95ZN (about confidentiality of information).

95S Taking of evidence on oath or affirmation

Evidence on oath or affirmation

(1) An inquiry body may take evidence at an inquiry on oath or affirmation.

(2) An oath or affirmation may be administered by:
  (a) in an inquiry by the Commission—a member of the Commission; or
  (b) in an external inquiry—the person presiding at the inquiry.

Summons

(3) The inquiry Chair may, by writing signed by him or her, summon a person to appear at an inquiry to give evidence and to produce such documents (if any) as are specified in the summons.

(4) In an inquiry by the Commission, the power conferred on the inquiry Chair by subsection (3) may, at his or her discretion, be exercised on the application of another person.

95T Failure of witness to attend

(1) A person is guilty of an offence if:
  (a) the person is given a summons to appear as a witness at an inquiry; and
  (b) the person fails to attend as required by the summons or fails to appear and report himself or herself from day to day; and
  (c) the person has not been excused, or released from further attendance, by:
    (i) in an inquiry by the Commission—a member of the Commission; or
    (ii) in an external inquiry—the person presiding at the inquiry.

Penalty: 10 penalty units.

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

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

95U Refusal to be sworn or to answer question

(1) A person appearing as a witness at an inquiry must not:
  (a) refuse or fail to swear an oath or to make an affirmation if required to do so by:

(i) in an inquiry by the Commission—a member of the Commission; or

(ii) in an external inquiry—the person presiding at the inquiry; or

(b) refuse or fail to answer a question that he or she is required to answer by the inquiry Chair; or

(c) refuse or fail to produce a document that he or she was required to produce by a summons under this Part given to him or her.

Penalty: 10 penalty units.

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

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

(3) It is a reasonable excuse for the purposes of subsection (2) for a person to refuse or fail to answer a question on the ground that the answer might tend to incriminate the person or to expose the person to a penalty.

(4) It is a reasonable excuse for the purposes of subsection (2) for a person to refuse or fail to produce a document on the ground that the production of the document might tend to incriminate the person or to expose the person to a penalty.

(5) Subsections (3) and (4) do not limit what is a reasonable excuse for the purposes of subsection (2).

95V Protection of witnesses

Subject to this Part, a person summoned to attend or appearing as a witness at an inquiry has the same protection, and is, in addition to the penalties provided by this Part, subject to the same liabilities, in any civil or criminal proceedings as a witness in proceedings in the High Court.

95W Allowances to witnesses

(1) A witness summoned under this Part to appear at an inquiry is entitled to be paid such allowances for his or her travelling, and such other expenses, as are prescribed by the regulations.

(2) The witness is entitled to be paid by:

(a) if the witness was summoned by the inquiry Chair—the Commonwealth; or

(b) if the witness was summoned on the application of a person—that person.

(3) The regulations may provide for those allowances and expenses by reference to a scale of expenses for witnesses who attend before a court specified in the regulations.

Division 4—Price notifications

95X Declarations by Minister or Commission

Notified goods or services

(1) The Minister, or the Commission with the approval of the Minister, may by notice published in the *Gazette* declare goods or services of a specified description to be notified goods or services for the purposes of this Part.

Declared persons

(2) The Minister, or the Commission with the approval of the Minister, may by notice published in the *Gazette* declare a person to be, in relation to goods or services of a specified description, a declared person for the purposes of this Part.

(3) The Commission must give the person notice in writing of a declaration under subsection (2). The notice must set out the effect of section 95Z.

(4) A declaration under subsection (2) must specify the time when it is to cease to have effect. Such a declaration ceases to have effect at the time specified, unless it is revoked sooner.

Variation or revocation

(5) The Minister, or the Commission with the approval of the Minister, may by notice published in the *Gazette* vary or revoke a declaration under this section.

95Y Declarations in relation to State or Territory authorities

(1) The Minister must not make or approve a declaration of a State or Territory authority under section 95X unless:

(a) the appropriate Minister of the State or Territory concerned has agreed to the declaration being made; or

(b) the Council has, on the request (the ***current request***) of an Australian government, recommended the declaration and the Minister has consulted the appropriate Minister of the State or Territory concerned.

Role of Council

(2) The Council must not recommend a declaration of a State or Territory authority in relation to goods or services unless it is satisfied that:

(a) at least one Australian government has notified the State or Territory concerned that the government is not satisfied that there is effective supervision of the prices charged by the authority for the supply of those goods or services; and

(b) there is not such effective supervision; and

(c) the supply of those goods or services by the authority has a significant direct or indirect impact on qualifying trade or commerce.

(3) The Council must also not recommend a declaration of a State or Territory authority in relation to goods or services if:

(a) in the 5 year period before it received the current request, it was satisfied (when considering a previous request) that there was effective supervision of prices charged by the authority for the supply of those goods or services; and

(b) it is satisfied that there has not been a substantial change in the mechanism for that supervision since it was satisfied as mentioned in paragraph (a).

(4) In deciding whether there is effective supervision of prices charged by a State or Territory authority, if the State or Territory concerned is a party to the Competition Principles Agreement, the Council must apply the relevant principles set out in the agreement.

Definitions

(5) In this section:

Australian government means the Commonwealth, a State, the Australian Capital Territory or the Northern Territory.

qualifying trade or commerce means trade or commerce described in paragraph 95C(1)(g) or trade and commerce between Australia and another place.

95Z Price restrictions

Offence: previous local supply

(1) A person is guilty of an offence if:

(a) the person is a declared person in relation to notified goods or services; and

(b) the person supplies (the ***current supply***) goods or services of that description in a locality on particular terms and conditions (the ***actual terms***) at a particular price (the ***actual price***); and

(c) the person has supplied goods or services of that description in that locality on the same or substantially similar terms and conditions in the period of 12 months before the current supply; and

(d) the actual price exceeds the highest price at which the person has supplied goods or services of that description in that locality on the same or substantially similar terms and conditions in that period; and

(e) the current supply is not an exempt supply.

Penalty: 100 penalty units.

Note: Subsection (4) contains a defence to this offence.

Offence: no previous local supply

(2) A person is guilty of an offence if:

(a) the person is a declared person in relation to notified goods or services; and

(b) the person supplies (the ***current supply***) goods or services of that description in a locality on particular terms and conditions (the ***actual terms***) at a particular price (the ***actual price***); and

(c) the person has not supplied goods or services of that description in that locality on the same or substantially similar terms and conditions in the period of 12 months before the current supply, but has supplied goods or services of that description elsewhere in Australia on the same or substantially similar terms and conditions in that period; and

(d) the actual price exceeds the highest price at which the person has supplied goods or services of that description in Australia on the same or substantially similar terms and conditions in that period; and

(e) the current supply is not an exempt supply.

Penalty: 100 penalty units.

Note: Subsection (4) contains a defence to this offence.

Offence: no previous supply in Australia

(3) A person is guilty of an offence if:

(a) the person is a declared person in relation to notified goods or services; and

(b) the person supplies (the ***current supply***) goods or services of that description in a locality on particular terms and conditions (the ***actual terms***) at a particular price (the ***actual price***); and

(c) the person has not supplied goods or services of that description in Australia on the same or substantially similar terms and conditions in the period of 12 months before the current supply; and

(d) the current supply is not an exempt supply.

Penalty: 100 penalty units.

Note: Subsection (4) contains a defence to this offence.

Defence

(4) Subsection (1), (2) or (3) does not apply if the following 4 requirements are satisfied.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

Locality notice

(5) The first requirement is that the person has given the Commission a notice (a ***locality notice***) in writing stating that the person proposes to supply goods or services of that description in that locality on specified terms and conditions (the ***proposed terms***) at a specified price (the ***proposed price***).

Note: The person may give further notices modifying the locality notice: see section 95ZA.

Response to locality notice

(6) The second requirement is that:

(a) the applicable period in relation to the locality notice has ended; or

(b) the Commission has given the person a notice in writing stating that it has no objection to the person supplying goods or services of that description in that locality on the proposed terms at the proposed price; or

(c) both of the following apply:

(i) the Commission has given the person a notice (the ***response notice***) in writing stating that it would have no objection to the person supplying goods or services of that description in that locality on the proposed terms at a specified price (the ***approved price***) that is less than the proposed price;

(ii) the person has, not later than 7 days after being given the response notice, given the Commission a notice in writing stating that the person proposes to supply goods or services of that description in that locality on the proposed terms at a price not exceeding the approved price.

Actual terms

(7) The third requirement is that the actual terms are the same as, or substantially similar to, the proposed terms.

Actual price

(8) The fourth requirement is that the actual price does not exceed:

(a) if paragraph (6)(a) or (b) applies—the proposed price; or

(b) if paragraph (6)(c) applies—the approved price.

95ZA Later notices modifying a locality notice

(1) If a person gives the Commission a locality notice, the person may give the Commission one or more further notices in writing stating that the locality notice is to have effect as if there were substituted for the proposed price another specified price.

(2) A price specified in a notice under subsection (1) must be:
  (a) less than the proposed price; and
  (b) less than the price specified in any previous notice under that subsection in relation to the locality notice.

(3) If a notice is given under subsection (1), the locality notice has effect accordingly.

(4) In this section:

proposed price has the meaning given by subsection 95Z(5).

95ZB Applicable period in relation to a locality notice

(1) The ***applicable period*** in relation to a locality notice is the period (the ***price-freeze period***) of 21 days starting on the day on which the notice was given.

(2) However, the Commission may, with the consent of the person who gave the locality notice, determine, before the end of the price-freeze period, that the applicable period in relation to the notice for the purposes of this section is a specified longer period.

(3) If the Commission so determines, that longer period is taken to become the ***applicable period*** in relation to the locality notice.

(4) Also, if the Commission has given a response notice, the period that is the ***applicable period*** (worked out under subsections (1) to (3)) in relation to the locality notice is taken to be increased by a period of 14 days.

Example: On 1 May the person gives the Commission a locality notice.

Under subsection (1), the applicable period ends on 21 May.

On 9 May the Commission, with the consent of the person, determines, under subsection (2), that the applicable period ends on 31 May.

If the Commission also gives the person a response notice, under subsection (4), the applicable period instead of ending on 31 May ends on 14 June.

95ZC Register of price notifications

Keeping of register

(1) The Commission must keep, at such place as it thinks fit, a register for the purposes of this section.

Information on the register

(2) If a person has given the Commission a locality notice, the Commission must, as soon as practicable after the end of the applicable period in relation to the notice, include in the register:
  (a) a copy of the notice, on which has been endorsed, or to which has been attached, a statement indicating the outcome of the Commission's consideration of the notice (including any action taken by it in relation to the notice and the outcome of any such action); and
  (b) a copy of each notice given under this Part to, or by, the Commission in relation to the locality notice; and

(c) a statement of the reasons for the outcome of the Commission's consideration of the locality notice.

Gazette notice

(3) The Commission must, within 3 months after the end of the applicable period in relation to the locality notice, cause to be published in the *Gazette* a notice:

(a) stating that the Commission received the locality notice and specifying the date it received the notice; and

(b) setting out such particulars (if any) relating to the outcome of the Commission's consideration of the locality notice as it considers appropriate.

Exclusion of confidential information

(4) A person who gives the Commission a document in relation to a locality notice, or who makes an oral submission to the Commission in relation to such a notice, may ask it to exclude from a document to be placed in the register any information:

(a) that was in the document given by the person or in the submission made by the person; and

(b) that the person claims is confidential.

(5) The Commission may exclude the information if it is satisfied that the claim is justified and is not of the opinion that disclosure of the information is necessary in the public interest.

(6) An application may be made to the Administrative Appeals Tribunal for the review of a decision under subsection (5) to refuse to exclude the information.

Inspection of register

(7) A person may, at any time during ordinary office hours in the place where the register is kept, inspect or make copies of, or take extracts from, the register.

Validity of acts done

(8) The validity of an act done by the Commission in relation to a locality notice is not affected by a failure of the Commission to comply with this section.

95ZD Delegation by Commission

(1) The Commission may, by writing, delegate to a member of the Commission:

(a) the Commission's price notification powers in relation to specified locality notices; and

(b) the Commission's power under section 95ZJ relating to a notice given by the member exercising (as a delegate) the Commission's price notification powers.

(2) In this section:

price notification powers means the Commission's powers under paragraph 95Z(6)(b) or (c).

Division 5—Price monitoring

95ZE Directions to monitor prices, costs and profits of an industry

(1) The Minister may give the Commission a written direction:

(a) to monitor prices, costs and profits relating to the supply of goods or services by persons in a specified industry; and

(b) to give the Minister a report on the monitoring at a specified time or at specified intervals within a specified period.

Commercial confidentiality

(2) The Commission must, in preparing such a report, have regard to the need for commercial confidentiality.

Public inspection

(3) The Commission must make copies of the report available for public inspection as soon as practicable after it gives the Minister the report.

95ZF Directions to monitor prices, costs and profits of a business

(1) The Minister may give the Commission a written direction:

(a) to monitor prices, costs and profits relating to the supply of goods or services by a specified person; and

(b) to give the Minister a report on the monitoring at a specified time or at specified intervals within a specified period.

Commercial confidentiality

(2) The Commission must, in preparing such a report, have regard to the need for commercial confidentiality.

Commission to send person a copy of the report

(3) The Commission must send the person a copy of the report on the day it gives the Minister the report.

Public inspection

(4) The Commission must also make copies of the report available for public inspection as soon as practicable after the person has received a copy of the report.

95ZG Exceptions to price monitoring

Exempt supplies

(1) The Minister must not direct the Commission under this Division to monitor prices, costs and profits relating to a supply of goods or services of a particular description that is an exempt supply in relation to goods or services of that description.

State or Territory authorities

(2) The Minister must not direct the Commission under this Division to monitor prices, costs and profits of a State or Territory authority that supplies goods or services unless the State or Territory concerned has agreed to the direction being given.

Division 6—Other provisions

95ZH Ministerial directions

Commission

(1) The Minister may, by notice in writing give to the Chairperson, direct the Commission to give special consideration to a specified matter or matters in exercising its powers and performing its functions under this Part.

(2) The Commission must comply with any such directions.

Other bodies

(3) The Minister may, by notice in writing given to the person presiding at an external inquiry, direct the body holding the inquiry to give special consideration to a specified matter or matters in holding the inquiry.

(4) The body must comply with any such directions.

95ZI Inquiries by an unincorporated body or a group of 2 or more individuals

(1) This section applies to inquiries by an unincorporated body or a group of 2 or more individuals.

(2) The regulations may make provision for and in relation to the manner in which the unincorporated body or group of individuals is to:

(a) give a notice, report or other document to a person under this Part; or

(b) do any other thing under this Part.

95ZJ Withdrawal of notices

Commission

(1) The Commission may give a person a notice (the ***withdrawal notice***) in writing withdrawing a notice it previously gave the person under this Part (other than this section).

(2) If the Commission does so, this Part has effect, from the time at which the withdrawal notice is given to the person, as if the other notice had not been given to the person.

Other bodies

(3) The body holding an external inquiry may give a person a notice (the ***withdrawal notice***) in writing withdrawing a notice it previously gave the person under this Part (other than this section).

(4) If the body does so, this Part has effect, from the time at which the withdrawal notice is given to the person, as if the other notice had not been given to the person.

95ZK Power to obtain information or documents

Notice by Commission

(1) If the Chairperson has reason to believe that a person is capable of giving information or producing documents relevant to:

(a) the Commission considering the matters contained in a locality notice that the person has given it; or

(b) an inquiry that is being held in relation to the person; or

(c) a supply of goods or services by the person that is of a kind in relation to which the Commission is carrying out an inquiry; or

(d) a supply of goods or services by the person that is of a kind in relation to which the Commission is monitoring under section 95ZE or 95ZF;

the Chairperson may, by notice in writing signed by him or her and given to the person, require the person to do one or more of the following:

(e) give the Commission, by writing signed by the person or his or her agent or, in the case of a Commonwealth authority or a body corporate, by a competent officer of the authority or body, within the specified period and in the specified manner, specified information relating to the affairs of the person;

(f) produce to the Commission, within the specified period and in the specified manner, specified documents relating to the affairs of the person;

(g) if the person is a body corporate and the notice relates to the matter in paragraph (d)—give the Commission, together with the information or documents concerned, a declaration in a form approved by the Chairperson and signed by:

(i) the Chief Executive Officer (however described) of the body corporate; or

(ii) a person nominated by the Chief Executive Officer;

stating that the information or documents are true and correct.

Notice by other bodies

(2) If:

(a) an external inquiry is being held in relation to a person; and

(b) the inquiry Chair has reason to believe that the person is capable of giving information or producing documents relevant to the inquiry;

the inquiry Chair may, by notice in writing signed by him or her and given to the person, require the person:

(c) to give the body, by writing signed by the person or his or her agent or, in the case of a Commonwealth authority or a body corporate, by a competent officer of the authority or body, within the specified period and in the specified manner, specified information relating to the affairs of the person; or

(d) to produce to the body, within the specified period and in the specified manner, specified documents relating to the affairs of the person.

Period specified in notice

(3) A period specified in a notice under subsection (1) or (2) must end at least 14 days after the notice was given.

Offence: refusal or failure to comply with notice

(4) A person is guilty of an offence if the person refuses or fails to comply with a notice given to the person under this section.

Penalty: 20 penalty units.

(5) Subsection (4) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

(6) It is a reasonable excuse for the purposes of subsection (4) for an individual to refuse or fail to give information or produce a document on the ground that the information or production of the document might tend to incriminate the individual or to expose the individual to a penalty.

(7) Subsection (6) does not limit what is a reasonable excuse for the purposes of subsection (5).

Offence: false or misleading declarations

(8) A person must not, in a declaration made for the purposes of paragraph (1)(g), make a statement if the person knows, or is reckless as to whether, the statement is false or misleading.

Penalty: 20 penalty units.

Making information or documents publicly available

(9) If:

(a) a notice is given to a person under this section relating to an inquiry that is being held in public in relation to the person; and

(b) the person gives the information concerned or produces the documents concerned to the inquiry body in connection with the inquiry;

the inquiry body must make the information or documents available to the public in such manner as it thinks fit.

Note: See also section 95ZN (about confidentiality of information).

95ZL Inspection of documents etc.

Members or staff members

(1) A member of the Commission, or a member of the staff of the Commission, may inspect documents:

(a) given to the Commission for the purposes of the exercise of its powers or the performance of its functions under this Part; or

(b) produced at an inquiry.

(2) A member of the Commission, or a member of the staff of the Commission, may also make copies of, or take extracts from, those documents.

Associate members

(3) An associate member of the Commission may inspect documents:

(a) given to the Commission for the purposes of the exercise of its powers or the performance of its functions under this Part in relation to an inquiry for the purposes of which the Chairperson has directed that the associate member be taken to be a member of the Commission; or

(b) produced at that inquiry.

(4) An associate member of the Commission may also make copies of, or take extracts from, those documents.

External inquiries

(5) In an external inquiry, the person presiding at the inquiry, or a person providing assistance in the inquiry to the body holding the inquiry, may:

(a) inspect documents given to the body for the purposes of the inquiry; and

(b) make copies of, or take extracts from, those documents.

95ZM Retention of documents

(1) The Commission, or a body other than the Commission, may retain a document given or produced to it as mentioned in section 95ZL. It may retain the document for such reasonable period as it thinks fit.

(2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Commission or other body, as the case may be, to be a true copy.

(3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.

(4) Until a certified copy is supplied, the Commission or other body, as the case may be, must, at such times and places as it thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

95ZN Confidential information

(1) This section applies if a person claims that disclosure of the following information would damage the competitive position of the person:

(a) information made available, or to be made available, by or on behalf of the person (whether in oral evidence or in a written statement, submission or other document) at the hearing of an inquiry by the Commission or another body;

(b) information given, or contained in a document produced, by the person under section 95ZK to the Commission or another body.

Commission or other body to take confidentiality steps

(2) If the Commission or other body, as the case may be:

(a) is satisfied that the claim is justified; and

(b) is not of the opinion that disclosure of the information is necessary in the public interest;

it must take all reasonable steps to ensure that the information is not disclosed, without the consent of the person, in the proceedings or by it, to a person other than:

(c) in relation to the Commission:

(i) a member of the Commission or an associate member of the Commission; or

(ii) a member of the staff of the Commission who receives the information in the course of his or her duties; or

(d) in relation to the other body:

(i) the person presiding at the inquiry concerned; or

(ii) a person providing assistance in the inquiry to the other body.

Interpretation

(3) This section has effect despite anything in sections 95R and 95ZK.

95ZO Immunity

Members or associate members of the Commission

(1) A member of the Commission, or an associate member of the Commission, has, in the performance of his or her functions or the exercise of his or her powers under this Part as a member or associate member, the same protection and immunity as a Justice of the High Court.

Person presiding at an external inquiry

(2) In an external inquiry, the person presiding at the inquiry has, in the performance of his or her functions or the exercise of his or her powers under this Part in that capacity, the same protection and immunity as a Justice of the High Court.

95ZP Secrecy: members or staff members of the Commission etc.

Offence

(1) An entrusted person is guilty of an offence if:

(a) the person:

(i) makes a copy or other record of any protected information or of all or part of any protected document; or

(ii) discloses any protected information to another person or to a court; or

(iii) produces all or part of a protected document to another person or to a court; and

(b) in doing so, the person is not acting in the course of performing or exercising functions, powers or duties under or in relation to this Act.

Penalty: Imprisonment for 2 years.

Courts

(2) An entrusted person cannot be required to:

(a) disclose any protected information to a court; or

(b) produce all or part of a protected document to a court;

unless that disclosure or production is necessary for the purpose of carrying into effect the provisions of this Act.

Definitions

(3) In this section:

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

entrusted person means a person who is or was:

(a) a member of the Commission or an associate member of the Commission; or

(b) a member of the staff of the Commission; or

(c) appointed or engaged under the *Public Service Act 1999.*

produce includes permit access to.

protected document means a document that:

(a) is given to or otherwise acquired by the Commission for the purposes of this Part; and

(b) has not been made available to the public by the Commission under this Part.

protected information means information that:

(a) is disclosed to, or obtained by, an entrusted person for the purposes of this Part or as permitted by the repealed Part; and

(b) has not been made available to the public under this Part by the Commission and is not contained in oral evidence given in public at the hearing of an inquiry.

repealed Part means Part V of the *Prices Surveillance Act 1983,* as continued in operation by Schedule 2 to the *Trade Practices Legislation Amendment Act 2003.*

95ZQ Secrecy: persons involved in inquiries by bodies other than the Commission

Offence

(1) An external person is guilty of an offence if:

(a) the person:

(i) makes a copy or other record of any protected information or of all or part of any protected document; or

(ii) discloses any protected information to another person or to a court; or

(iii) produces all or part of a protected document to another person or to a court; and

(b) in doing so, the person is not acting in the course of performing or exercising functions, powers or duties under or in relation to this Act.

Penalty: Imprisonment for 2 years.

Courts

(2) An external person cannot be required to:

(a) disclose any protected information to a court; or

(b) produce all or part of a protected document to a court;

unless that disclosure or production is necessary for the purpose of carrying into effect the provisions of this Act.

Definitions

(3) In this section:

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

external person means a person who is or was:

(a) the person presiding at an external inquiry; or

(b) a person providing assistance in such an inquiry to the body holding the inquiry.

produce includes permit access to.

protected document means a document that:

(a) is given to or otherwise acquired by the body holding the external inquiry concerned for the purposes of that inquiry; and

(b) has not been made available to the public by that body under this Part.

protected information means information that:

(a) is disclosed to, or obtained by, an external person for the purposes of the inquiry concerned; and

(b) has not been made available to the public under this Part by the body holding that inquiry and is not contained in oral evidence given in public at the hearing of that inquiry.

Part VIII—Resale price maintenance

96 Acts constituting engaging in resale price maintenance

(1) Subject to this Part, a corporation (in this section called ***the supplier***) engages in the practice of resale price maintenance if that corporation does an act referred to in any of the paragraphs of subsection (3).

(2) Subject to this Part, a person (not being a corporation and also in this section called ***the supplier***) engages in the practice of resale price maintenance if that person does an act referred to in any of the paragraphs of subsection (3) where the second person mentioned in that paragraph is a corporation.

(3) The acts referred to in subsections (1) and (2) are the following:

(a) the supplier making it known to a second person that the supplier will not supply goods to the second person unless the second person agrees not to sell those goods at a price less than a price specified by the supplier;

(b) the supplier inducing, or attempting to induce, a second person not to sell, at a price less than a price specified by the supplier, goods supplied to the second person by the supplier or by a third person who, directly or indirectly, has obtained the goods from the supplier;

(c) the supplier entering into an agreement, or offering to enter into an agreement, for the supply of goods to a second person, being an agreement one of the terms of which is, or would be, that the second person will not sell the goods at a price less than a price specified, or that would be specified, by the supplier;

(d) the supplier withholding the supply of goods to a second person for the reason that the second person:

(i) has not agreed as mentioned in paragraph (a); or

(ii) has sold, or is likely to sell, goods supplied to him or her by the supplier, or goods supplied to him or her by a third person who, directly or indirectly, has obtained the goods from the supplier, at a price less than a price specified by the supplier as the price below which the goods are not to be sold;

(e) the supplier withholding the supply of goods to a second person for the reason that a third person who, directly or indirectly, has obtained, or wishes to obtain, goods from the second person:

(i) has not agreed not to sell those goods at a price less than a price specified by the supplier; or

(ii) has sold, or is likely to sell, goods supplied to him or her, or to be supplied to him or her, by the second person, at a price less than a price specified by the supplier as the price below which the goods are not to be sold; and

(f) the supplier using, in relation to any goods supplied, or that may be supplied, by the supplier to a second person, a statement of a price that is likely to be understood by that person as the price below which the goods are not to be sold.

(4) For the purposes of subsection (3):

(a) where a price is specified by another person on behalf of the supplier, it shall be deemed to have been specified by the supplier;

(b) where the supplier makes it known, in respect of goods, that the price below which those goods are not to be sold is a price specified by another person in respect of those goods, or in respect of goods of a like description, that price shall be deemed to have been specified, in respect of the first-mentioned goods, by the supplier;

(c) where a formula is specified by or on behalf of the supplier and a price may be ascertained by calculation from, or by reference to, that formula, that price shall be deemed to have been specified by the supplier; and

(d) where the supplier makes it known, in respect of goods, that the price below which those goods are not to be sold is a price ascertained by calculation from, or by reference to, a formula specified by another person in respect of those goods or in respect of goods of a like description, that price shall be deemed to have been specified, in respect of the first-mentioned goods, by the supplier.

(5) In subsection (4), ***formula*** includes a set form or method.

(6) For the purposes of subsection (3), anything done by a person acting on behalf of, or by arrangement with, the supplier shall be deemed to have been done by the supplier.

(7) A reference in any of paragraphs (3)(a) to (e), inclusive, including a reference in negative form, to the selling of goods at a price less than a price specified by the supplier shall be construed as including references to:

(a) the advertising of goods for sale at a price less than a price specified by the supplier as the price below which the goods are not to be advertised for sale;

(b) the displaying of goods for sale at a price less than a price specified by the supplier as the price below which the goods are not to be displayed for sale; and

(c) the offering of goods for sale at a price less than a price specified by the supplier as the price below which the goods are not to be offered for sale;

and a reference in paragraph (3)(d), (e) or (f) to a price below which the goods are not to be sold shall be construed as including a reference to the price below which the goods are not to be advertised for sale, to the price below which the goods are not to be displayed for sale and to the price below which the goods are not to be offered for sale.

96A Resale price maintenance in relation to services

(1) This Part applies to conduct in relation to services in a way that corresponds to the way it applies to conduct in relation to goods.

(2) For the purposes of subsection (1), this Part is to be read with appropriate modifications, including the following modifications:

(a) references in this Part to goods are to be read as references to services;

(b) references to the sale of goods are to be read as references to the re-supply of services.

97 Recommended prices

For the purposes of paragraph 96(3)(b), the supplier is not to be taken as inducing, or attempting to induce, a second person as mentioned in that paragraph in relation to any goods:

(a) by reason only of a statement of a price being applied to the goods as mentioned in paragraph 99(1)(a) or being applied to a covering, label, reel or thing as mentioned in paragraph 99(1)(b), provided that the statement is preceded by the words "recommended price"; or

(b) by reason only of his or her having given notification in writing to the second person (not being a notification by way of a statement being applied as mentioned in paragraph (a)) of the price that he or she recommends as appropriate for the sale of those goods, provided that there is included in the notification, and in each writing that refers, whether expressly or by implication, to the notification, a statement to the following effect:

"The price set out or referred to herein is a recommended price only and there is no obligation to comply with the recommendation.".

98 Withholding the supply of goods

(1) For the purposes of paragraph 96(3)(d) or (e), the supplier shall be deemed to withhold the supply of goods to another person if:

(a) the supplier refuses or fails to supply those goods to, or as requested by, the other person;

(b) the supplier refuses to supply those goods except on terms that are disadvantageous to the other person;

(c) in supplying goods to the other person, the supplier treats that person less favourably, whether in respect of time, method or place of delivery or otherwise, than the supplier treats other persons to whom the supplier supplies the same or similar goods; or

(d) the supplier causes or procures a person to withhold the supply of goods to the other person as mentioned in paragraph (a), (b) or (c) of this subsection.

(2) Paragraph 96(3)(d) does not apply in relation to the withholding by the supplier of the supply of goods to another person who, within the preceding year, has sold goods obtained, directly or indirectly, from the supplier at less than their cost to that other person:

(a) for the purpose of attracting to the establishment at which the goods were sold persons likely to purchase other goods; or

(b) otherwise for the purpose of promoting the business of that other person.

(3) For the purposes of subsection (2), there shall be disregarded:

(a) a genuine seasonal or clearance sale of goods that were not acquired for the purpose of being sold at that sale; or

(b) a sale of goods that took place with the consent of the supplier.

99 Statements as to the minimum price of goods

(1) For the purposes of paragraph 96(3)(f), if:

(a) a statement is applied to goods, whether by being woven in, impressed on, worked into or annexed or affixed to the goods or otherwise;

(b) a statement is applied to a covering, label, reel or thing in or with which goods are supplied; or

(c) a statement is used in a sign, advertisement, invoice, catalogue, business letter, business paper, price list or other document or otherwise in a manner likely to lead to the belief that it refers to goods;

the statement shall be deemed to have been used in relation to those goods.

(2) For the purposes of subsection (1), ***covering*** includes a stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper and ***label*** includes a band or ticket.

100 Evidentiary provisions

(1) Where, in proceedings under this Act by a person (in this section referred to as ***the plaintiff***) against another person (in this section referred to as ***the defendant***), it is claimed that the defendant has engaged in the practice of resale price maintenance and it is established that:

(a) the defendant has acted, in relation to the plaintiff, as mentioned in paragraph 98(1)(a), (b), (c) or (d);

(b) during a period ending immediately before the time when the defendant so acted, the defendant had been supplying goods of the kind withheld to the plaintiff or to another person carrying on a business similar to that of the plaintiff; and

(c) during the period of 6 months immediately before the time when the defendant so acted, the defendant became aware of a matter or circumstance capable of constituting a reason referred to in paragraph 96(3)(d) or (e) for the defendant's so acting;

then, subject to subsection (2), it shall be presumed, unless the contrary is established, that that matter or circumstance was the reason for the defendant's so acting.

(2) Subsection (1) does not apply where the plaintiff establishes the matter mentioned in paragraph 98(1)(b) or (c) but the terms disadvantageous to the plaintiff, or the less favourable treatment of the plaintiff, consisted only of a requirement by the defendant as to the time at which, or the form in which, payment was to be made or as to the giving of security to secure payment.

(3) In the application of this section in proceedings by the Commission for an injunction, references to the plaintiff shall be construed as references to a person specified in the application for the injunction as the person in relation to whom the defendant is claimed to have acted as mentioned in paragraph (1)(a).

Part IX—Review by Tribunal of Determinations of Commission

Division 1—Applications for review (other than for merger clearances)

101 Applications for review

(1) A person dissatisfied with a determination by the Commission under Division 1 of Part VII:

(a) in relation to an application for an authorization or a minor variation of an authorization; or

(b) in relation to the revocation of an authorization, or the revocation of an authorization and the substitution of another authorization;

may, as prescribed and within the time allowed by or under the regulations or under subsection (1B), as the case may be, apply to the Tribunal for a review of the determination.

(1AAA) Subsection (1) does not apply to a determination under subsection 89(1A).

(1AA) If:

(a) the person applying under subsection (1) for review of a determination was the applicant for an authorization, or for the minor variation of an authorization, for the revocation of an authorization or for the revocation of an authorization and the substitution of another authorization; or

(b) the Tribunal is satisfied that the person has a sufficient interest;

the Tribunal must review the determination.

(1A) Where a person has, whether before or after the commencement of this subsection, made an application under subsection (1) for a review of a determination, the Tribunal may, if the Tribunal determines it to be appropriate, make a determination by consent of the applicant, the Commission, and all persons who have been permitted under subsection 109(2) to intervene in the proceedings for review, whether or not the Tribunal is satisfied of the matters referred to in subsection 90(5A), (5B), (6), (7), (8), (8A), (8B) or (9).

(1B) A presidential member may, on the application of a person concerned:

(a) in an application for an authorization under subsection 88(9); or

(b) in an application for a minor variation or a revocation of such an authorization; or

(c) in an application for the revocation of such an authorization and the substitution of another authorization;

shorten the time allowed by or under the regulations within which an application under subsection (1) may be made for a review of the determination by the Commission of the application referred to in paragraph (a), (b) or (c) if the member is satisfied that special circumstances exist and that, in all the circumstances, it would not be unfair to do so.

(2) A review by the Tribunal is a re-hearing of the matter and subsections 90(5A), (5B), (6), (7), (8), (8A), (8B) and (9), 91A(4), 91A(5), 91B(5) and 91C(7) apply in relation to the Tribunal in like manner as they apply in relation to the Commission.

101A Application for review of notice under subsection 93(3) or (3A) or 93AC(1) or (2)

A person dissatisfied with the giving of a notice by the Commission under subsection 93(3) or (3A) or 93AC(1) or (2) may, as prescribed and within the time allowed by or under the regulations, apply to the Tribunal for a review of the giving of the notice and, if the person was the person to whom the notice was given or the Tribunal is satisfied that the person has a sufficient interest, the Tribunal shall review the giving of the notice.

102 Functions and powers of Tribunal

(1) On a review of a determination of the Commission under Division 1 of Part VII in relation to:

(a) an application for an authorization; or

(b) an application for a minor variation of an authorization; or

(c) an application for, or the Commission's proposal for, the revocation of an authorization; or

(d) an application for, or the Commission's proposal for, the revocation of an authorization and the substitution of another authorization;

the Tribunal may make a determination affirming, setting aside or varying the determination of the Commission and, for the purposes of the review, may perform all the functions and exercise all the powers of the Commission.

(1A) If a person applies to the Tribunal for review of a determination of the Commission relating to:

(a) the grant of an authorisation under subsection 88(9); or

(b) the minor variation, or the revocation, of an authorization granted under that subsection; or

(c) the revocation of an authorization granted under that subsection and the substitution of another authorization;

the Tribunal must make its determination on the review within 60 days after receiving the application for review.

(1B) The 60 day time limit in subsection (1A) does not apply if the Tribunal considers that the matter cannot be dealt with properly within that period of 60 days, either because of its complexity or because of other special circumstances.

(1C) If subsection (1B) applies, the Tribunal must notify the applicant before the end of the 60 day period that the matter cannot be dealt with properly within that period.

(2) A determination by the Tribunal affirming, setting aside or varying a determination of the Commission under Division 1 of Part VII in relation to:

(a) an application for an authorization; or

(b) an application for a minor variation of an authorization; or

(c) an application for, or the Commission's proposal for, the revocation of an authorization; or

(d) an application for, or the Commission's proposal for, the revocation of an authorization and the substitution of another authorization;

is, for the purposes of this Act other than this Part, to be taken to be a determination of the Commission.

(4) Upon a review of the giving of a notice by the Commission under subsection 93(3):

(a) if the person who applied for the review satisfies the Tribunal that:

(i) the conduct or proposed conduct does not and would not have the purpose, and does not and is not likely to have or would not have and would not be likely to have the effect, of substantially lessening competition (within the meaning of section 47); or

(ii) in all the circumstances:

(A) the conduct or proposed conduct has resulted or is likely to result, or would result or be likely to result, in a benefit to the public; and

(B) that benefit outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted or is

likely to result, or would result or be likely to result, from the conduct or proposed conduct;

the Tribunal must make a determination setting aside the notice; or

(b) if the person who applied for the review does not so satisfy the Tribunal—the Tribunal must make a determination affirming the notice.

(5) Where the Tribunal makes a determination setting aside a notice given by the Commission under subsection 93(3), then, after the setting aside of the notice, subsection 93(7) has effect in relation to the conduct referred to in the notice as if the Commission had not given the notice.

(5AA) Upon a review of the giving of a notice by the Commission under subsection 93AC(1):

(a) if the person who applied for the review satisfies the Tribunal that any benefit to the public that has resulted or is likely to result or would result or be likely to result from the provision outweighs or would outweigh the detriment to the public that has resulted or is likely to result or would result or be likely to result from the provision—the Tribunal must make a determination setting aside the notice; or

(b) if the person who applied for the review does not so satisfy the Tribunal—the Tribunal must make a determination affirming the notice.

(5AB) Upon a review of the giving of a notice by the Commission under subsection 93AC(2):

(a) if the person who applied for the review satisfies the Tribunal that:

(i) the provision does not and would not have the purpose, and does not and is not likely to have or would not have and would not be likely to have the effect, of substantially lessening competition (within the meaning of section 45); or

(ii) in all the circumstances:

(A) the provision has resulted or is likely to result, or would result or be likely to result, in a benefit to the public; and

(B) that benefit outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted or is likely to result, or would result or be likely to result, from the provision;

the Tribunal must make a determination setting aside the notice; or

(b) if the person who applied for the review does not so satisfy the Tribunal—the Tribunal must make a determination affirming the notice.

(5AC) If the Tribunal sets aside a notice (the ***objection notice***) given by the Commission under subsection 93AC(1) or (2), then:

(a) if the Commission gave the objection notice as part of a process starting when the Commission gave a notice under subsection 93A(2) (conference notice) during the period described in paragraph 93AD(1)(a)—the Commission is taken for the purposes of paragraph 93AD(1)(b) to have decided not to give the objection notice at the time the Tribunal set it aside; and

(b) for the purposes of subsections 93AD(2) and (3), the objection notice is taken not to have been given.

(5A) The Tribunal must set aside a notice under subsection 93(3A) if the person who applied for a review of the giving of the notice satisfies the Tribunal that the likely benefit to the public from the conduct or proposed conduct to which the notice relates will outweigh the likely detriment to the public from the conduct or proposed conduct.

(5B) The Tribunal must affirm the giving of a notice under subsection 93(3A) if the person who applied for a review of the giving of the notice does not satisfy the Tribunal as described in subsection (5A).

(5C) If the Tribunal sets aside a notice given by the Commission under subsection 93(3A), then:

(a) if the Commission gave the notice as part of a process starting when the Commission gave a notice under subsection 93A(2) during the period described in paragraph 93(7A)(a)—the Commission is taken for the purposes of paragraph 93(7A)(b) to have decided not to give the notice under subsection 93(3A) at the time the Tribunal set aside the notice given under subsection 93(3A); and

(b) for the purposes of subsections 93(7B) and (7C) the notice is taken not to have been given.

(6) For the purposes of a review by the Tribunal under this Division, the member of the Tribunal presiding at the review may require the Commission to furnish such information, make such reports and provide such other assistance to the Tribunal as the member specifies.

(7) For the purposes of a review under this Division, the Tribunal may have regard to any information furnished, documents produced or evidence given to the Commission in connexion with the making of the determination, or the giving of the notice, to which the review relates.

Division 2—Procedure and Evidence

102A Definition

In this Part:

proceedings includes:

(a) applications made to the Tribunal under Subdivision C of Division 3 of Part VII; and

(b) applications made to the Tribunal under section 111 (about review of Commission's decisions on merger clearances).

103 Procedure generally

(1) In proceedings before the Tribunal:

(a) the procedure of the Tribunal is, subject to this Act and the regulations, within the discretion of the Tribunal;

(b) the proceedings shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and a proper consideration of the matters before the Tribunal permit; and

(c) the Tribunal is not bound by the rules of evidence.

(2) The powers of the Tribunal with respect to matters of procedure in particular proceedings may be exercised by a presidential member.

(3) The powers mentioned in subsection (2) may be exercised by a presidential member:

(a) whether or not the Tribunal has been constituted under section 37 in relation to the proceedings; and

(b) once the Tribunal is so constituted—whether or not that member is part of the Division of the Tribunal so constituted.

104 Regulations as to certain matters

The regulations may make provision:

(a) for securing, by means of preliminary statements of facts and contentions, and by the production of documents, that all material facts and considerations are brought before the Tribunal by all persons participating in any proceedings before the Tribunal; and

(aa) with respect to evidence in proceedings before the Tribunal, including the appointment of persons to assist the Tribunal by giving evidence (whether personally or by means of a written report); and

(b) with respect to the representation in any such proceedings of persons having a common interest in the proceedings.

105 Power to take evidence on oath

(1) The Tribunal may take evidence on oath or affirmation and for that purpose a member of the Tribunal may administer an oath or affirmation.

(2) A member of the Tribunal may summon a person to appear before the Tribunal to give evidence and to produce such documents (if any) as are referred to in the summons.

106 Hearings to be in public except in special circumstances

(1) Subject to this section, the hearing of proceedings before the Tribunal shall be in public.

(2) Where the Tribunal is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason, the Tribunal may:

(a) direct that a hearing or part of a hearing shall take place in private and give directions as to the persons who may be present; or

(b) give directions prohibiting or restricting the publication of evidence given before the Tribunal, whether in public or in private, or of matters contained in documents filed or lodged with the Registrar, received in evidence by the Tribunal or placed in the records of the Tribunal.

(3) The powers of the Tribunal under this section may be exercised by the Tribunal as constituted for the purposes of the hearing or by the Tribunal constituted by a presidential member.

107 Evidence in form of written statement

The Tribunal may permit a person appearing as a witness before the Tribunal to give evidence by tendering, and, if the Tribunal thinks fit, verifying by oath or affirmation, a written statement, which shall be filed with the Registrar.

108 Taking of evidence by single member

The Tribunal as constituted for the purposes of any proceedings in which evidence may be taken may authorize a presidential member to take evidence for the purposes of the proceedings on its behalf, with such limitations (if any) as the Tribunal so constituted directs, and, where such an authority is given:

(a) that member may take evidence accordingly; and

(b) for the purposes of this Act, that member shall, in relation to the taking of evidence in accordance with the authority, be deemed to constitute the Tribunal.

109 Participants in proceedings before Tribunal

(1) A person to whom an authorization under Division 1 of Part VII was granted is entitled to participate in any proceedings before the Tribunal instituted by another person in relation to that authorization.

(1A) A person to whom a notice was given by the Commission under subsection 93(3) or (3A) or 93AC(1) or (2) is entitled to participate in any proceedings before the Tribunal instituted by another person in relation to that notice.

(2) The Tribunal may, upon such conditions as it thinks fit, permit a person to intervene in proceedings before the Tribunal.

110 Representation

In proceedings before the Tribunal:

(a) a natural person may appear in person;

(aa) a person other than a body corporate may be represented by an employee of the person approved by the Tribunal;

(b) a body corporate may be represented by an employee, or a director or other officer, of the body corporate approved by the Tribunal;

(c) an unincorporated association of persons or a member of an unincorporated association of persons may be represented by a member or officer of the association approved by the Tribunal; and

(d) any person may be represented by a barrister or a solicitor of the Supreme Court of a State or Territory or of the High Court.

Division 3—Review of Commission's determinations on merger clearances

111 Applications for review

(1) A person who applied under Subdivision B of Division 3 of Part VII for:

(a) a clearance; or

(b) a minor variation of a clearance; or

(c) a revocation of a clearance; or

(d) a revocation of a clearance and a substitution of another clearance;

and who is dissatisfied with the determination by the Commission in relation to the application may, as prescribed and within the time allowed by or under the regulations or under subsection (5), apply to the Tribunal for a review of the determination.

(2) A person who was granted a clearance under Subdivision B of Division 3 of Part VII that was:

(a) revoked by a determination of the Commission under section 95AS; or

(b) revoked and substituted with another clearance by a determination of the Commission under section 95AS;

may, as prescribed and within the time allowed by or under the regulations, apply to the Tribunal for a review of the determination.

(2A) The regulations may make it a requirement that an applicant under subsection (1) or (2) give an undertaking under section 87B that the applicant will not make the acquisition while the application is being considered by the Tribunal.

(3) The Tribunal must review the determination after receiving the application and the prescribed fee.

Note: Division 2 contains provisions about procedure and evidence that relate to proceedings before the Tribunal.

(4) If a person has made an application under subsection (1) or (2) for a review of a determination, the Tribunal may, if the Tribunal determines it to be appropriate, make a determination by consent of the applicant and the Commission, whether or not the Tribunal is satisfied of the matters referred to in section 95AN.

(5) A presidential member may, on the application by the applicant, shorten the time allowed by or under the regulations within which an application under subsection (1) may be made if the member is satisfied that special circumstances exist and that, in all the circumstances, it would not be unfair to do so.

112 Tribunal to notify Commission

The Tribunal must notify the Commission of the application for review.

113 Commission to give material to Tribunal

(1) After being notified of the application for review, the Commission must, within 2 business days, give to the Tribunal all the information that the Commission took into account in connection with the making of the determination to which the review relates.

(1A) The Commission must identify which of that information (if any) the Commission excluded from the merger clearance register under subsection 95AI(3), (4) or (7).

(2) In this section:

business day means a day that is not a Saturday, a Sunday, or a public holiday in the Australian Capital Territory.

merger clearance register means the register kept under section 95AH.

114 Tribunal may consult etc. to clarify information

(1) The Tribunal may seek such relevant information, and consult with such persons, as it considers reasonable and appropriate for the purposes of clarifying the information given to it under section 113.

(2) The Tribunal may disclose information identified under subsection 113(1A) to such persons and on such terms as it considers reasonable and appropriate for the purposes of clarifying the information.

115 Commission to assist Tribunal

For the purposes of the review, the member of the Tribunal presiding at the review may require the Commission to give such information, make such reports and provide such other assistance to the Tribunal as the member specifies.

116 Tribunal only to consider material before the Commission

For the purposes of the review, the Tribunal may have regard only to:

(a) the information given to the Commission in connection with the making of the determination to which the review relates and that was given to the Tribunal under section 113; and

(b) any other information that was referred to in the Commission's reasons for making the determination to which the review relates; and

(c) any information given to the Tribunal under section 114; and

(d) any information or report given to the Tribunal under section 115.

117 Tribunal to make decision on review

On the review of the Commission's determination, the Tribunal must make a determination affirming, setting aside or varying the Commission's determination.

118 Time limits for making review decision

(1) The Tribunal must make its decision on the review within 30 business days after receiving the application for review.

(2) However, if before the end of that period the Tribunal decides that the matter cannot be dealt with properly within that period, either because of its complexity or because of other special circumstances, the period is extended by a further 60 business days.

(3) If the Tribunal makes a decision under subsection (2), the Tribunal must notify the applicant of it before the end of the 30 business day period.

(3A) If the Tribunal has not made its decision on the review within the period applicable under subsection (1) or (2), the Tribunal is taken to have made a determination affirming the Commission's determination.

(4) In this section:

business day means a day that is not a Saturday, a Sunday, or a public holiday in the Australian Capital Territory.

119 Tribunal's decision taken to be Commission's

The Tribunal's decision affirming, setting aside or varying the Commission's determination is, for the purposes of this Act other than this Part, taken to be the Commission's determination.

Part X—International liner cargo shipping

Division 1—Preliminary

10.01 Objects of Part

(1) The principal objects of this Part are:

(a) to ensure that Australian exporters have continued access to outwards liner cargo shipping services of adequate frequency and reliability at freight rates that are internationally competitive; and

(b) to promote conditions in the international liner cargo shipping industry that encourage stable access to export markets for exporters in all States and Territories; and

(c) to ensure that efficient Australian flag shipping is not unreasonably hindered from normal commercial participation in any outwards liner cargo shipping trade; and

(d) as far as practicable, to extend to Australian importers in each State and Territory the protection given by this Part to Australian exporters.

(2) It is the intention of the Parliament that the principal objects of this Part should be achieved:

(a) by permitting continued conference operations while enhancing the competitive environment for international liner cargo shipping services through the provision of adequate and appropriate safeguards against abuse of conference power, particularly by:

(i) enacting additional restrictive trade practice provisions applying to ocean carriers;

(ii) requiring conference agreements to meet certain minimum standards;

(iii) making conference agreements generally publicly available;

(iv) permitting only partial and conditional exemption from restrictive trade practice prohibitions; and

(v) requiring conferences to take part in negotiations with representative shipper bodies;

(b) through increased reliance on private commercial and legal processes and a reduced level of government regulation of routine commercial matters; and

(c) by the exercise of jurisdiction, consistent with international law:

(i) over ocean carriers who have a substantial connection with Australia because they provide international liner cargo shipping services; and

(ii) to enable remedies for contravention of the provisions of this Part to be enforced within Australia.

10.01A Simplified outline

The following is a simplified outline of this Part:

- This Part sets up a system for regulating international liner cargo shipping services.
- The main components of that system are as follows:

(a) registration of conference agreements;

(b) regulation of non-conference ocean carriers with substantial market power;

(c) regulation of unfair pricing practices;

(d) registration of agents of ocean carriers.

- The parties to a conference agreement relating to international liner cargo shipping services may apply for the registration of the agreement.

- If the conference agreement is registered, the parties will be given partial and conditional exemptions from:

(a) sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK (cartel conduct); and

(b) section 45 (contracts etc. that restrict dealings or affect competition); and

(c) section 47 (exclusive dealing).• The parties to a registered conference agreement are required to negotiate with, and provide information to, representative shipper bodies.

- The Commission may investigate whether grounds exist for the Minister to deregister a conference agreement.

- The main ground for deregistration is a breach by the parties to the agreement of requirements imposed on them by this Part.

10.02 Interpretation

(1) In this Part, unless the contrary intention appears:

agreement means any contract, agreement, arrangement or understanding, whether made in or outside Australia.

ancillary service, in relation to a scheduled cargo shipping service, means:

(a) an inter-terminal transport service; or

(b) a stevedoring service; or

(c) a service provided outside Australia;

that:

(d) relates to the cargo transported, or to be transported, on the scheduled cargo shipping service; and

(e) is provided by, or on behalf of, the provider of the scheduled cargo shipping service.

association includes a body corporate.

Australian exporter means a person who exports goods from Australia.

Australian flag shipping operator means a person who:

(a) is an Australian citizen or a body corporate incorporated by or under the law of the Commonwealth or of a State or Territory;
(b) provides, or proposes to provide, shipping services; and
(c) normally uses, or proposes normally to use, in providing the services only:
(i) a ship that is registered in Australia; or
(ii) 2 or more ships, all or most of which are registered in Australia.

Australian importer means a person who imports goods into Australia.

authorised officer means an officer of the Department who is authorised, in writing, by the Minister for the purposes of this Part.

conference means an unincorporated association of 2 or more ocean carriers carrying on 2 or more businesses each of which includes, or is proposed to include, the provision of outwards liner cargo shipping services or inwards liner cargo shipping services.

conference agreement means:
(a) an outwards conference agreement; or
(b) an inwards conference agreement.

designated inwards peak shipper body means an association specified in a notice under subsection 10.03(2A).

designated inwards secondary shipper body means an association specified in a notice under subsection 10.03(2B).

designated inwards shipper body means:
(a) a designated inwards peak shipper body; or
(b) a designated inwards secondary shipper body.

designated outwards peak shipper body means an association specified in a notice under subsection 10.03(1).

designated outwards secondary shipper body means an association specified in a notice under subsection 10.03(2).

designated outwards shipper body means:
(a) a designated outwards peak shipper body; or
(b) a designated outwards secondary shipper body.

designated port area means the area within the limits of a port appointed under section 15 of the *Customs Act 1901*, being the limits fixed under that section.

designated secondary shipper body means:
(a) a designated outwards secondary shipper body; or
(b) a designated inwards secondary shipper body.

designated shipper body means:
(a) a designated outwards shipper body; or
(b) a designated inwards shipper body.

exemption order means an order under section 10.72A.

freight rate agreement means a conference agreement that consists of or includes freight rate charges.

freight rate charges:

(a) in relation to an outwards conference agreement—means those parts of the conference agreement that specify freight rates (including base freight rates, surcharges, rebates and allowances) for outwards liner cargo shipping services; and

(b) in relation to an inwards conference agreement—means those parts of the conference agreement that specify freight rates (including base freight rates, surcharges, rebates and allowances) for inwards liner cargo shipping services.

handling cargo includes a service that is related to handling of cargo.

inland terminal has the meaning given by section 10.02A.

international liner cargo shipping service means:

(a) an outwards liner cargo shipping service; or

(b) an inwards liner cargo shipping service.

inter-terminal transport service means a service for the transport of various types of general cargo:

(a) from an inland terminal to a port terminal; or

(b) from a port terminal to an inland terminal; or

(c) from a port terminal to another port terminal;

and includes the handling of the cargo within any of those terminals.

inwards conference agreement means an agreement between members of a conference in relation to inwards liner cargo shipping services provided, or proposed to be provided, by them, and includes an inwards varying conference agreement.

inwards liner cargo shipping service means an inwards scheduled cargo shipping service and, if the inwards scheduled cargo shipping service is part of a terminal-to-terminal service, includes an ancillary service that relates to the inwards scheduled cargo shipping service.

inwards loyalty agreement means an agreement:

(a) between an ocean carrier or conference and a shipper or designated inwards shipper body; and

(b) that makes provision, in relation to inwards liner cargo shipping services, having the purpose or effect of giving certain benefits to the shipper, or a shipper represented by the designated inwards shipper body, if the shipper ships with the ocean carrier, or members of the conference:

(i) all or particular cargo, or a particular portion of all or particular cargo, shipped by the shipper; or

(ii) a particular quantity of cargo or of particular cargo.

inwards scheduled cargo shipping service means a scheduled cargo shipping service where the transport of the cargo by sea commences from a place outside Australia and ends at a place in Australia.

inwards varying conference agreement means an agreement:

(a) that varies an inwards conference agreement; or

(b) that otherwise affects an inwards conference agreement (including an agreement referred to in subsection (4)).

loyalty agreement means:

(a) an outwards loyalty agreement; or

(b) an inwards loyalty agreement.

ocean carrier means a person who provides, or proposes to provide, international liner cargo shipping services.

outwards conference agreement means an agreement between members of a conference in relation to outwards liner cargo shipping services provided, or proposed to be provided, by them, and includes an outwards varying conference agreement.

outwards liner cargo shipping service means an outwards scheduled cargo shipping service and, if the outwards scheduled cargo shipping service is part of a terminal-to-terminal service, includes an ancillary service that relates to the outwards scheduled cargo shipping service.

outwards loyalty agreement means an agreement:

(a) between an ocean carrier or conference and a shipper or designated outwards shipper body; and

(b) that makes provision, in relation to outwards liner cargo shipping services, having the purpose or effect of giving certain benefits to the shipper, or a shipper represented by the designated outwards shipper body, if the shipper ships with the ocean carrier, or members of the conference:

(i) all or particular cargo, or a particular portion of all or particular cargo, shipped by the shipper; or

(ii) a particular quantity of cargo or of particular cargo.

outwards scheduled cargo shipping service means a scheduled cargo shipping service where the transport of the cargo by sea commences from a place in Australia and ends at a place outside Australia.

outwards varying conference agreement means an agreement:

(a) that varies an outwards conference agreement; or

(b) that otherwise affects an outwards conference agreement (including an agreement referred to in subsection (3)).

port terminal means:

(a) the area within the limits of a wharf appointed under section 15 of the *Customs Act 1901*, being the limits fixed under that section; or

(b) a terminal facility within the limits of a designated port area.

pricing practice means the fixing, controlling or maintaining by an ocean carrier of prices charged for, or the giving or allowing by an ocean carrier of discounts, allowances, rebates or credits in relation to, outwards liner cargo shipping services or inwards liner cargo shipping services provided by the ocean carrier.

provisionally registered conference agreement means a conference agreement that is provisionally registered under this Part.

registered agent, in relation to an ocean carrier, means the person specified in the register of ocean carrier agents as the agent of the ocean carrier.

registered conference agreement means a conference agreement that is finally registered under this Part.

registered non-conference ocean carrier with substantial market power means an ocean carrier specified in the register of non-conference ocean carriers with substantial market power.

Registrar means the Registrar of Liner Shipping.

scheduled cargo shipping service means a scheduled service for the transport of various types of general cargo by sea on particular routes, generally by container and generally at predetermined freight rates.

stevedoring service means:

(a) the loading or unloading of cargo into or from a ship; or

(b) the handling of cargo within a port terminal.

terminal-to-terminal service means:

(a) an outwards scheduled cargo shipping service, together with any ancillary service that relates to the outwards scheduled cargo shipping service; or

(b) an inwards scheduled cargo shipping service, together with any ancillary service that relates to the inwards scheduled cargo shipping service.

vary, in relation to a conference agreement, includes vary by way of:

(a) omitting or altering any of the provisions of, or parties to, the agreement;

(b) adding new provisions or parties to the agreement; or

(c) substituting new provisions or parties for any of the provisions of, or parties to, the agreement.

varying conference agreement means:

(a) an outwards varying conference agreement; or

(b) an inwards varying conference agreement.

(2) A reference in this Part to the minimum level of outwards liner cargo shipping services provided, or proposed to be provided, under an outwards conference agreement includes a reference to the frequency of sailings, cargo carrying capacity, and ports of call, of outwards liner cargo shipping services provided, or proposed to be provided, under the agreement.

(2A) A reference in this Part to the minimum level of inwards liner cargo shipping services provided, or proposed to be provided, under an inwards conference agreement includes a reference to the frequency of sailings, cargo carrying capacity, and ports of call, of inwards liner cargo shipping services provided, or proposed to be provided, under the agreement.

(3) A reference in this Part to an agreement that affects an outwards conference agreement includes a reference to an agreement between parties to the conference agreement or between parties to the conference agreement and other ocean carriers:

(a) that affects the conduct of parties to the conference agreement in relation to outwards liner cargo shipping services provided, or proposed to be provided, under the conference agreement;

(b) that affects the minimum level of outwards liner cargo shipping services provided, or proposed to be provided, under the conference agreement; or

(c) that otherwise affects:

(i) the operation, or proposed operation, of the conference agreement; or

(ii) outwards liner cargo shipping services provided, or proposed to be provided, under the conference agreement.

(4) A reference in this Part to an agreement that affects an inwards conference agreement includes a reference to an agreement between parties to the conference agreement or between parties to the conference agreement and other ocean carriers:

(a) that affects the conduct of parties to the conference agreement in relation to inwards liner cargo shipping services provided, or proposed to be provided, under the conference agreement; or

(b) that affects the minimum level of inwards liner cargo shipping services provided, or proposed to be provided, under the conference agreement; or

(c) that otherwise affects:

(i) the operation, or proposed operation, of the conference agreement; or

(ii) inwards liner cargo shipping services provided, or proposed to be provided, under the conference agreement.

(5) For the purposes of this Part (except where the contrary intention appears), if:

(a) an ancillary service relates to a scheduled cargo shipping service; and

(b) the ancillary service is provided on behalf of the provider of the scheduled cargo shipping service by a third person;

the ancillary service is taken to be provided by the provider of the scheduled cargo shipping service instead of by the third person.

10.02A Inland terminals

(1) The Minister may, by legislative instrument, declare that a specified facility is an ***inland terminal*** for the purposes of this Part.

(2) The facility must be in Australia, but outside a designated port area.

(3) In making a declaration under subsection (1), the Minister must have regard to the following matters:

(a) whether the facility is under the control of a person who is, or of persons each of whom is:

(i) an ocean carrier; or

(ii) a person who provides services at the facility at the request of an ocean carrier;

(b) whether the facility is used for either or both of the following purposes:

(i) assembling export cargoes for transport to a port terminal located at the port where the cargoes are to be loaded onto ships for export;

(ii) delivering imported cargoes to importers or their representatives;

(c) any other matters that the Minister thinks are relevant.

(4) In making a declaration under subsection (1), the Minister must not give preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

(5) A declaration under subsection (1) has effect accordingly.

10.03 Designated shipper bodies

(1) If the Minister is of the opinion that an association represents the interests, in relation to outwards liner cargo shipping services, of Australian shippers generally, the Minister may, by legislative instrument, declare that the association is a designated outwards peak shipper body for the purposes of this Part.

(2) If the Minister is of the opinion:

(a) that an association represents the interests, in relation to outwards liner cargo shipping services, of all or any of the following kinds of persons:

(i) Australian shippers in a particular trade;

(ii) Australian shippers of particular kinds of goods;

(iii) shippers in a particular part of Australia;

(iv) producers of goods of a kind exported, or proposed to be exported, from Australia; and

(b) that it is desirable that the association be a designated outwards secondary shipper body for the purposes of this Part;

the Minister may, by legislative instrument, declare that the association is a designated outwards secondary shipper body for the purposes of this Part.

(2A) If the Minister is of the opinion that an association represents the interests, in relation to inwards liner cargo shipping services, of Australian shippers generally, the Minister may, by legislative instrument, declare that the association is a designated inwards peak shipper body for the purposes of this Part.

(2B) If the Minister is of the opinion:

(a) that an association represents the interests, in relation to inwards liner cargo shipping services, of all or any of the following kinds of persons:

(i) Australian shippers in a particular trade;

(ii) Australian shippers of particular kinds of goods;

(iii) shippers in a particular part of Australia; and

(b) that it is desirable that the association be a designated inwards secondary shipper body for the purposes of this Part;

the Minister may, by legislative instrument, declare that the association is a designated inwards secondary shipper body for the purposes of this Part.

(3) Where the Minister declares that an association is a designated outwards peak shipper body, a designated inwards peak shipper body, a designated outwards secondary shipper body or a designated inwards secondary shipper body for the purposes of this Part, the Registrar shall enter particulars of the association in the register of designated shipper bodies.

(4) The particulars entered in the register shall include whether the association is a designated outwards peak shipper body, a designated inwards peak shipper body, a designated outwards secondary shipper body or a designated inwards secondary shipper body.

(5) The Minister may, by legislative instrument, make guidelines to be applied by the Registrar in the exercise of the Registrar's powers to nominate designated secondary shipper bodies for the purposes of sections 10.29, 10.41 and 10.52.

(6) The Registrar shall enter particulars of any nomination of a designated secondary shipper body for the purposes of section 10.29, 10.41 or 10.52 in the register of designated shipper bodies.

Division 2—Additional restrictive trade practice provisions applying to ocean carriers

10.04 Application of section 46 in relation to conference agreements

(1) For the purposes of section 46, if the parties to a conference agreement together have a substantial degree of power in a market in which any party to the agreement provides international liner cargo shipping services under the agreement, each party to the conference agreement shall be taken to have a substantial degree of power in the market.

(2) In subsection (1):

conference agreement means an agreement between members of a conference in relation to international liner cargo shipping services provided, or proposed to be provided, by them, and includes an agreement that varies such an agreement.

Division 3—Minimum standards for conference agreements

10.06 Application of Australian law to outwards conference agreements and withdrawal from agreements

(1) An outwards conference agreement must expressly provide for a question arising under the agreement in relation to an outwards liner cargo shipping service provided, or proposed to be provided, under the agreement to be determined in Australia in accordance with Australian law unless the parties and the Minister agree, in writing, to the particular question being otherwise determined.

(2) An outwards conference agreement must expressly permit any party to the agreement to withdraw from the agreement on reasonable notice without penalty.

10.07 Minimum levels of shipping services to be specified in conference agreements

(1) An outwards conference agreement must contain provisions specifying the minimum level of outwards liner cargo shipping services to be provided under the agreement.

(2) An inwards conference agreement must contain provisions specifying the minimum level of inwards liner cargo shipping services to be provided under the agreement.

Note: See also paragraph 10.33(1)(b) and section 10.72A.

10.08 Conference agreements may include only certain restrictive trade practice provisions

(1) If a conference agreement includes a provision:

(aa) that is a provision where the following conditions are satisfied in relation to the provision:

(i) the purpose/effect condition set out in subsection 44ZZRD(2);

(ii) the competition condition set out in subsection 44ZZRD(4); or

(ab) that is a provision where the following conditions are satisfied in relation to the provision:

(i) the purpose condition set out in subsection 44ZZRD(3);

(ii) the competition condition set out in subsection 44ZZRD(4); or

(a) that is an exclusionary provision; or

(b) that has the purpose, or has or is likely to have the effect, of substantially lessening competition (within the meaning of section 45);

the provision, so far as it is covered by paragraph (aa), (ab), (a) or (b), must either:

(c) deal only with the following matters:

(i) the fixing or other regulation of freight rates;

(ii) the pooling or apportionment of earnings, losses or traffic;

(iii) the restriction or other regulation of the quantity or kind of cargo to be carried by parties to the agreement;

(iv) the restriction or other regulation of the entry of new parties to the agreement; or

(d) be necessary for the effective operation of the agreement and of overall benefit to:

(i) in the case of an outwards conference agreement—Australian exporters; or

(ii) in the case of an inwards conference agreement—Australian importers.

(2) If a conference agreement includes a provision that permits or requires the practice of exclusive dealing (within the meaning of section 47), the provision, so far as it permits or requires that practice, must be necessary for the effective operation of the agreement and of overall benefit to:

(a) in the case of an outwards conference agreement—Australian exporters; or

(b) in the case of an inwards conference agreement—Australian importers.

Note: See also paragraph 10.33(1)(ba) and section 10.72A.

(3) This section does not apply in relation to a provision of a conference agreement so far as the provision requires or permits a party to the agreement to enter into a loyalty agreement.

10.09 Where may consequences of conference agreements not complying with minimum standards be found?

The consequences of a conference agreement not complying with this Division are to be found in the following provisions:

(a) section 10.28 (decision on application for provisional registration);

(b) section 10.33 (decision on application for final registration);

(c) section 10.45 (circumstances in which Minister may exercise powers in relation to registered conference agreements).

Division 4—Registers and files and public inspection of them

10.10 Registers and conference agreement files open to public inspection

(1) The registers and conference agreement files kept by the Registrar and the Commission under this Part are open to public inspection.

(2) A person is entitled, on application to the Registrar or the Commission, as the case requires, and payment of the prescribed fee, to obtain a copy of the whole or any part of:
  (a) an entry in a register kept under this Part; or
  (b) a conference agreement file kept under this Part.

10.11 What registers are to be kept by the Registrar?

(1) The Registrar shall keep:
  (a) a register of conference agreements; and
  (b) a register of designated shipper bodies; and
  (c) a register of non-conference ocean carriers with substantial market power; and
  (d) a register of obligations concerning unfair pricing practices; and
  (e) a register of ocean carrier agents; and
  (f) a register of exemption orders.

(2) An entry in a register must contain such particulars as are prescribed in relation to the register.

10.12 What conference agreement files are to be kept by the Registrar?

(1) The Registrar shall keep a file, to be known as the conference agreement file, for each conference agreement (other than a varying conference agreement).

(2) The conference agreement file for a conference agreement must include:
  (a) documents filed with the Registrar under Division 6 in relation to the agreement or any relevant varying conference agreement (other than any part of a document that is not open to public inspection);
  (b) abstracts accepted by the Registrar under section 10.36 in relation to such documents (being abstracts of those parts of the documents that are not open to public inspection); and
  (c) notifications given to the Registrar under subsection 10.40(1) or 10.43(1) in relation to the agreement or any relevant varying conference agreement.

10.13 What register is to be kept by the Commission?

(1) The Commission shall keep a register of Commission investigations.

(2) Subject to section 10.88, the register of Commission investigations shall contain:
  (a) references given to the Commission by the Minister under subsections 10.47(1), 10.50(1), 10.57(1) and 10.63(1);
  (b) particulars of decisions made by the Commission under subsections 10.48(2), 10.48(2A) and 10.58(2) to hold investigations;
  (c) requests made to the Commission by the Minister under subsections 10.48(3) and 10.58(3);
  (d) documents given to the Commission in relation to investigations by it under this Part;

(e) particulars of oral submissions made to the Commission in relation to such investigations; and

(f) reports given to the Minister by the Commission in relation to such investigations.

Division 5—Exemptions from certain restrictive trade practice prohibitions

Subdivision A—Exemptions relating to conference agreements

10.14 Exemptions apply only to certain activities

(1) Subject to this section, the exemptions provided by this Subdivision apply only in relation to the following parts of an outwards liner cargo shipping service or an inwards liner cargo shipping service:

(a) the parts of the service that consist of the transport of the cargo by sea;

(b) stevedoring services;

(c) activities that take place outside Australia.

(2) The exemptions provided by this Subdivision extend to the fixing of charges for an inter-terminal transport service where the service is part of an outwards liner cargo shipping service or an inwards liner cargo shipping service.

(3) The exemptions provided by this Subdivision extend to the determination of common terms and conditions for bills of lading for use in relation to an outwards liner cargo shipping service or an inwards liner cargo shipping service.

(4) To avoid doubt, the exemptions provided by this Subdivision do not extend to any dealings between the parties to a conference agreement and a person who provides ancillary services on behalf of the provider of a scheduled cargo shipping service.

10.15 When do exemptions commence to apply in relation to registered conference agreements?

(1) The exemptions provided by this Subdivision (other than sections 10.17A and 10.18A) apply in relation to the operation of a registered outwards conference agreement only after the end of 30 days after the conference agreement is finally registered.

(2) The exemptions provided by this Subdivision (other than sections 10.17A and 10.18A) apply in relation to the operation of a registered inwards conference agreement only after whichever is the later of the following times:

(a) the end of 30 days after the conference agreement is finally registered;

(b) the commencement of Part 2 of Schedule 1 to the *Trade Practices Amendment (International Liner Cargo Shipping) Act 2000*.

10.16 Exemptions do not apply to variations of conference agreement unless varying agreement registered

Where a registered conference agreement is varied or otherwise affected by a varying conference agreement (other than an agreement that consists solely of freight rate charges), the exemptions provided by this Subdivision (other than sections 10.17A and 10.18A) apply only in relation to the operation of the registered conference agreement itself, and not that agreement as varied or otherwise affected, unless the varying conference agreement has been finally registered.

10.17 Exemptions from sections 44ZZRF, 44ZZRG, 44ZZRJ, 44ZZRK and 45

(1) Sections 44ZZRF, 44ZZRJ and 45 do not apply in relation to the making of a contract or arrangement, or the arriving at an understanding, if:

(a) the contract, arrangement or understanding is a conference agreement; and

(b) the parties apply for its provisional registration under this Part within 30 days after the making of the contract or arrangement or arriving at the understanding.

(2) Sections 44ZZRG, 44ZZRK and 45 do not apply in relation to conduct engaged in by a party to a registered conference agreement so far as the conduct gives effect to a provision of the agreement in relation to an outwards liner cargo shipping service or an inwards liner cargo shipping service.

10.17A Exemptions from sections 44ZZRF, 44ZZRG, 44ZZRJ, 44ZZRK and 45 for freight rate agreements

(1) Sections 44ZZRF, 44ZZRJ and 45 do not apply to the making of freight rate charges in a freight rate agreement if:

(a) the freight rates (including base freight rates, surcharges, rebates and allowances) specified in the freight rate agreement are for outwards liner cargo shipping services provided under a single registered outwards conference agreement after the end of 30 days after the last-mentioned agreement is finally registered; and

(b) the parties to the freight rate agreement are the same as the parties to the registered outwards conference agreement.

(2) Sections 44ZZRF, 44ZZRJ and 45 do not apply to the making of freight rate charges in a freight rate agreement if:

(a) the freight rates (including base freight rates, surcharges, rebates and allowances) specified in the freight rate agreement are for inwards liner cargo shipping services provided under a single registered inwards conference agreement after whichever is the later of the following times:

(i) the end of 30 days after the last-mentioned agreement is finally registered;

(ii) the commencement of Part 2 of Schedule 1 to the *Trade Practices Amendment (International Liner Cargo Shipping) Act 2000*; and

(b) the parties to the freight rate agreement are the same as the parties to the registered inwards conference agreement.

(3) Sections 44ZZRG, 44ZZRK and 45 do not apply to conduct engaged in by a party to a freight rate agreement, so far as the conduct gives effect to freight rate charges in the freight rate agreement, if:

(a) the freight rates (including base freight rates, surcharges, rebates and allowances) specified in the freight rate agreement are for outwards liner cargo shipping services provided under a single registered outwards conference agreement after the end of 30 days after the last-mentioned agreement is finally registered; and

(b) the parties to the freight rate agreement are the same as the parties to the registered outwards conference agreement.

(4) Sections 44ZZRG, 44ZZRK and 45 do not apply to conduct engaged in by a party to a freight rate agreement, so far as the conduct gives effect to freight rate charges in the freight rate agreement, if:

(a) the freight rates (including base freight rates, surcharges, rebates and allowances) specified in the freight rate agreement are for inwards liner cargo shipping services provided under a single registered inwards conference agreement after whichever is the later of the following times:

(i) the end of 30 days after the last-mentioned agreement is finally registered;

(ii) the commencement of Part 2 of Schedule 1 to the *Trade Practices Amendment (International Liner Cargo Shipping) Act 2000*; and

(b) the parties to the freight rate agreement are the same as the parties to the registered inwards conference agreement.

10.18 Exemption from section 47

(1) Section 47 does not apply in relation to conduct engaged in by a party to a registered conference agreement so far as the conduct gives effect to a provision of the agreement in relation to an outwards liner cargo shipping service or an inwards liner cargo shipping service.

(2) The exemption provided by subsection (1) does not apply in relation to subsections 47(6) and (7).

10.18A Exemptions from section 47 for freight rate agreements

(1) Section 47 does not apply to conduct engaged in by a party to a freight rate agreement, so far as the conduct gives effect to freight rate charges in the freight rate agreement, if:

(a) the freight rates (including base freight rates, surcharges, rebates and allowances) specified in the freight rate agreement are for outwards liner cargo shipping services provided under a single registered outwards conference agreement after the end of 30 days after the last-mentioned agreement is finally registered; and

(b) the parties to the freight rate agreement are the same as the parties to the registered outwards conference agreement.

(2) Section 47 does not apply to conduct engaged in by a party to a freight rate agreement, so far as the conduct gives effect to freight rate charges in the freight rate agreement, if:

(a) the freight rates (including base freight rates, surcharges, rebates and allowances) specified in the freight rate agreement are for inwards liner cargo shipping services provided under a single registered inwards conference agreement after whichever is the later of the following times:

(i) the end of 30 days after the last-mentioned agreement is finally registered;

(ii) the commencement of Part 2 of Schedule 1 to the *Trade Practices Amendment (International Liner Cargo Shipping) Act 2000*; and

(b) the parties to the freight rate agreement are the same as the parties to the registered inwards conference agreement.

(3) The exemptions provided by subsections (1) and (2) do not apply in relation to subsections 47(6) and (7).

Subdivision B—Exemptions relating to loyalty agreements

10.19 Exemptions from sections 44ZZRF, 44ZZRG, 44ZZRJ, 44ZZRK and 45

(1) Sections 44ZZRF, 44ZZRJ and 45 do not apply in relation to the making of a contract or arrangement, or the arriving at an understanding, if the contract, arrangement or understanding is a loyalty agreement.

(2) Sections 44ZZRG, 44ZZRK and 45 do not apply in relation to conduct engaged in by a party to a loyalty agreement so far as the conduct gives effect to a provision of the agreement in relation to an outwards liner cargo shipping service or an inwards liner cargo shipping service.

10.20 Exemption from section 47

(1) Section 47 does not apply in relation to conduct engaged in by a party to a loyalty agreement in relation to another party to the agreement so far as the conduct gives effect to a provision of the agreement in relation to an outwards liner cargo shipping service or an inwards liner cargo shipping service.

(2) The exemption provided by subsection (1) does not apply in relation to subsections 47(6) and (7).

10.21 Exemptions cease to apply in relation to a shipper at the shipper's option

The exemptions provided by this Subdivision in relation to the operation of a loyalty agreement cease to apply in relation to conduct engaged in by an ocean carrier in relation to a shipper if the shipper notifies, as prescribed, the Commission and each ocean carrier who is a party to the agreement that the shipper no longer wishes the exemptions to apply.

Subdivision D—Other exemptions

10.24 Exemptions from sections 44ZZRF, 44ZZRG, 44ZZRJ, 44ZZRK, 45 and 47 in relation to certain negotiations

(1) Sections 44ZZRF, 44ZZRJ, 45 and 47 do not apply in relation to conduct engaged in by an ocean carrier, conference, shipper or designated shipper body so far as the conduct relates to the determination of terms and conditions of loyalty agreements.

(2) Sections 44ZZRF, 44ZZRG, 44ZZRJ, 44ZZRK, 45 and 47 do not apply in relation to conduct engaged in by an ocean carrier, conference, shipper or designated shipper body so far as the conduct relates to the obligations of an ocean carrier under any of the following provisions:

(a) section 10.29 (parties to conference agreement to negotiate minimum level of shipping services after provisional registration of agreement);

(b) section 10.41 (parties to registered conference agreement to negotiate with certain designated shipper bodies etc.);

(c) section 10.52 (non-conference ocean carrier with substantial market power to negotiate with certain designated shipper bodies etc.).

(3) The exemptions provided by this section do not apply in relation to subsections 47(6) and (7).

10.24A Exemptions from sections 44ZZRF, 44ZZRG, 44ZZRJ, 44ZZRK, 45 and 47 in relation to stevedoring contracts

(1) Sections 44ZZRF, 44ZZRJ and 45 do not apply in relation to the making of a stevedoring contract.

Note: For ***stevedoring contract***, see subsection (5).

(2) Sections 44ZZRG, 44ZZRK, 45 and 47 do not apply in relation to conduct engaged in by a party to a stevedoring contract so far as the conduct gives effect to a provision of the contract.

(3) Sections 44ZZRF, 44ZZRJ, 45 and 47 do not apply in relation to conduct engaged in by an ocean carrier or a stevedoring operator so far as the conduct relates to the determination of terms and conditions of a stevedoring contract.

Note: For ***stevedoring operator***, see subsection (5).

(3A) The exemptions provided by this section do not extend to any dealings between stevedoring operators.

(4) The exemptions provided by this section do not apply in relation to subsections 47(6) and (7).

(5) In this section:

stevedoring contract means a contract between:

(a) an ocean carrier; and

(b) a stevedoring operator;

under which the stevedoring operator provides, or arranges for the provision of, stevedoring services to the ocean carrier in connection with cargo transported on international liner cargo shipping services provided by the ocean carrier.

stevedoring operator means a person who:

(a) provides, or proposes to provide; or

(b) arranges for the provision of, or proposes to arrange for the provision of;

stevedoring services in connection with cargo transported on international liner cargo shipping services.

Division 6—Registration of conference agreements

Subdivision A—Provisional registration

10.25 Application for provisional registration of conference agreement

(1) The parties to a conference agreement may apply for its provisional registration under this Part.

(2) The application must comply with the following provisions:

(a) subsections 10.26(1) and (2) (how application is to be made and verified);

(b) section 10.27 (copy of agreement to be filed with application etc.).

10.26 How application is to be made and verified

(1) An application for the provisional registration of a conference agreement must be:

(a) in the appropriate prescribed form;

(b) made to the Registrar in accordance with the regulations; and

(c) accompanied by the appropriate prescribed fee.

(2) The application must comply with any regulations requiring its verification (in whole or part) by or on behalf of the applicants.

(3) The application may be made by a party to the agreement on behalf of the party and other parties to the agreement.

10.27 Copy of agreement to be filed with application etc.

(1) Subject to subsections (1A) and (1B), an application for the provisional registration of a conference agreement must be accompanied by:

(a) a complete copy of the agreement so far as it is in writing (including all provisions of the agreement so far as they are in writing); and

(b) a written memorandum that fully sets out the agreement so far as it is not in writing (including all provisions of the agreement so far as they are not in writing);

other than any parts of the agreement that relate to the minimum level of:

(c) in the case of an outwards conference agreement—outwards liner cargo shipping services to be provided under the agreement or an outwards conference agreement that is varied or otherwise affected by the agreement; or

(d) in the case of an inwards conference agreement—inwards liner cargo shipping services to be provided under the agreement or an inwards conference agreement that is varied or otherwise affected by the agreement.

(1A) The copy of the agreement referred to in paragraph (1)(a) need not include the freight rate charges in the agreement.

(1B) The written memorandum referred to in paragraph (1)(b) need not include the freight rate charges in the agreement.

(2) A document that accompanies an application for the provisional registration of a conference agreement must comply with any regulations requiring its verification (in whole or part) by or on behalf of the applicants.

10.27A Copy of conference agreement to be given to designated peak shipper body

(1) If:

(a) the parties to an outwards conference agreement apply for its provisional registration; and

(b) at the time of the application, there is a designated outwards peak shipper body;

the parties must give the designated outwards peak shipper body a copy of:

(c) the complete copy of the agreement referred to in paragraph 10.27(1)(a); and

(d) the written memorandum referred to in paragraph 10.27(1)(b);

as soon as practicable after the application is made.

(2) If:

(a) the parties to an inwards conference agreement apply for its provisional registration; and

(b) at the time of the application, there is a designated inwards peak shipper body;

the parties must give the designated inwards peak shipper body a copy of:

(c) the complete copy of the agreement referred to in paragraph 10.27(1)(a); and

(d) the written memorandum referred to in paragraph 10.27(1)(b);

as soon as practicable after the application is made.

10.28 Decision on application for provisional registration

(1) If the Registrar is satisfied:

(a) that an application has properly been made for the provisional registration of a conference agreement; and

(aa) in the case of an outwards conference agreement—that subsection 10.27A(1) has been complied with, or does not apply to the agreement; and

(ab) in the case of an inwards conference agreement—that subsection 10.27A(2) has been complied with, or does not apply to the agreement; and

(b) in the case of an outwards conference agreement—that the agreement complies with section 10.06 (application of Australian law to outwards conference agreements and withdrawal from agreements) or, if the agreement varies or otherwise affects another conference agreement, that the other conference agreement as varied or affected complies with that section; and

(ba) in the case of an inwards conference agreement that was in force at the commencement of this paragraph—that there are no circumstances that, under the regulations, are taken to be special circumstances for the purposes of this paragraph; and

(c) that provisional registration of the agreement is not prevented by one or more of the following provisions:

(i) section 10.38 (application for registration to be returned where request for confidentiality refused etc.);

(ii) section 10.39 (application also to be made for registration of varying agreements);

(iii) subsection 10.40(1) (notification of happening of affecting events prior to final registration etc.);

the Registrar shall, within 14 days after the making of the application, provisionally register the agreement by entering in the register of conference agreements:

(d) particulars of the agreement; and

(e) a notation to the effect that the agreement has been provisionally registered.

(2) If the Registrar is not so satisfied, the Registrar shall, within that 14 day period, refuse to provisionally register the agreement.

(3) When the Registrar provisionally registers the agreement or refuses to provisionally register the agreement, the Registrar shall immediately notify the applicants.

(4) If the Registrar provisionally registers the agreement, the Registrar must give the Commission a copy of:

(a) the complete copy of the agreement referred to in paragraph 10.27(1)(a); and

(b) the written memorandum referred to in paragraph 10.27(1)(b).

10.29 Parties to conference agreement to negotiate minimum level of shipping services after provisional registration of agreement

(1) The parties to a provisionally registered outwards conference agreement shall:

(a) take part in negotiations with the designated outwards peak shipper bodies or, if there is not at that time a designated outwards peak shipper body, the designated outwards secondary shipper bodies nominated by the Registrar for the purposes of the agreement for the purposes of this section, in relation to the minimum level of outwards liner cargo shipping services to be provided under the agreement (including any provisions of the agreement that affect the level of those services) and consider the matters raised, and representations made, by the shipper bodies;

(b) if a shipper body requests the parties to make available for the purposes of the negotiations any information reasonably necessary for those purposes and itself makes available for those purposes any such information requested by the parties—make the information available to the shipper body; and

(c) provide an authorised officer with such information as the officer requires relating to the negotiations, notify an authorised officer of meetings to be held in the course of the negotiations, permit an authorised officer to be present at the meetings, and consider suggestions made by an authorised officer.

(1A) The parties to a provisionally registered inwards conference agreement must:

(a) take part in negotiations with:

(i) the designated inwards peak shipper bodies; or

(ii) if there is not at that time a designated inwards peak shipper body—the designated inwards secondary shipper bodies nominated by the Registrar for the purposes of the agreement for the purposes of this section;

in relation to the minimum level of inwards liner cargo shipping services to be provided under the agreement (including any provisions of the agreement that affect the level of those services) and consider the matters raised, and representations made, by the shipper bodies; and

(b) if a shipper body requests the parties to make available for the purposes of the negotiations any information reasonably necessary for those purposes and itself makes available for those purposes any such information requested by the parties—make the information available to the shipper body; and

(c) provide an authorised officer with such information as the officer requires relating to the negotiations, notify an authorised officer of meetings to be held in the course of the negotiations, permit an authorised officer to be present at the meetings, and consider suggestions made by an authorised officer.

(1B) Subsections (1) and (1A) do not apply in relation to a conference agreement unless, within 14 days after the provisional registration of the agreement, the shipper bodies

notify, as prescribed, the Registrar and the parties to the agreement that they wish to have negotiations in relation to the agreement.

(2) Subsections (1) and (1A) do not apply in relation to a conference agreement if the shipper bodies notify, as prescribed, the Registrar and the parties to the agreement that they do not wish to have negotiations in relation to the agreement.

(3) The nomination of a designated secondary shipper body for the purposes of a provisionally registered conference agreement must be made by written notice given to the parties to the agreement.

Subdivision B—Final registration

10.30 Application for final registration of conference agreement

(1) The parties to a provisionally registered conference agreement may apply for its final registration under this Part.

(2) The application must comply with the following provisions:
  (a) subsections 10.31(1) and (2) (how application is to be made and verified);
  (b) section 10.32 (copy of agreement to be filed with application etc.).

10.31 How application is to be made and verified

(1) An application for the final registration of a conference agreement must be:
  (a) in the appropriate prescribed form;
  (b) made to the Registrar in accordance with the regulations; and
  (c) accompanied by the appropriate prescribed fee.

(2) The application must comply with any regulations requiring its verification (in whole or part) by or on behalf of the applicants.

(3) The application may be made by a party to the agreement on behalf of the party and other parties to the agreement.

10.32 Copy of agreement to be filed with application etc.

(1) Subject to subsections (1A) and (1B), an application for the final registration of a conference agreement must be accompanied by:
  (a) a complete copy of the agreement so far as it is in writing (including all provisions of the agreement so far as they are in writing); and
  (b) a written memorandum that fully sets out the agreement so far as it is not in writing (including all provisions of the agreement so far as they are not in writing).

(1A) The copy of the agreement referred to in paragraph (1)(a) need not include the freight rate charges in the agreement.

(1B) The written memorandum referred to in paragraph (1)(b) need not include the freight rate charges in the agreement.

(2) A document that accompanies an application for the final registration of a conference agreement must comply with any regulations requiring its verification (in whole or part) by or on behalf of the applicants.

10.33 Decision on application for final registration

(1) If the Registrar is satisfied:

(a) that an application has properly been made for the final registration of a conference agreement; and

(b) any of the following subparagraphs applies:

(i) that the agreement complies with section 10.07 (minimum levels of shipping services to be specified in conference agreements) or, if the agreement varies or otherwise affects another conference agreement, that the other conference agreement as varied or affected complies with section 10.07;

(ii) that section 10.07 does not apply in relation to the agreement because of an exemption order;

(iii) that the agreement is an inwards conference agreement that was in force at the commencement of this subparagraph; and

(ba) any of the following subparagraphs applies:

(i) that the agreement complies with section 10.08 (conference agreements may include only certain restrictive trade practice provisions) or, if the agreement varies or otherwise affects another conference agreement, that the other conference agreement as varied or affected complies with section 10.08;

(ii) that section 10.08 does not apply in relation to the agreement because of an exemption order;

(iii) that the agreement is an inwards conference agreement that was in force at the commencement of this subparagraph; and

(c) in the case of an outwards conference agreement—that subsection 10.29(1) (parties to conference agreement to negotiate minimum level of shipping services after provisional registration of agreement) has been complied with, or does not apply, in relation to the agreement; and

(ca) in the case of an inwards conference agreement—that subsection 10.29(1A) (parties to conference agreement to negotiate minimum level of shipping services after provisional registration of agreement) has been complied with, or does not apply, in relation to the agreement; and

(d) that final registration of the agreement is not prevented by one or more of the following provisions:

(i) section 10.38 (application for registration to be returned where request for confidentiality refused etc.);

(ii) section 10.39 (application also to be made for registration of varying conference agreements);

(iii) subsection 10.40(1) (notification of happening of affecting events prior to final registration etc.);

the Registrar shall, within 14 days after the making of the application, finally register the agreement by entering in the register of conference agreements a notation to the effect that the agreement has been finally registered.

(2) If the Registrar is not so satisfied, the Registrar shall, within that 14 day period, refuse to finally register the agreement.

(3) When the Registrar finally registers the agreement or refuses to finally register the agreement, the Registrar shall immediately notify the applicants.

(4) If the Registrar finally registers the agreement, the Registrar must give the Commission a copy of:

(a) the complete copy of the agreement referred to in paragraph 10.32(1)(a); and

(b) the written memorandum referred to in paragraph 10.32(1)(b).

Subdivision C—Confidentiality requests

10.34 Request for confidentiality

(1) An application for the provisional or final registration of a conference agreement may include a request that a specified part of the application, or of a document accompanying the application, not be open to public inspection under this Part.

(2) If such a request is included in the application, the application must include a statement of reasons in support of the request.

10.35 Abstract to accompany request for confidentiality

(1) Where a request is made under section 10.34 that a part of the application in which the request is included, or of a document accompanying the application, not be open to public inspection under this Part, the application must be accompanied by an abstract of the part of the application or other document in relation to which the request is made.

(2) The abstract must:

(a) be in the appropriate prescribed form; and

(b) comply with any regulations requiring its verification (in whole or part) by or on behalf of the applicants.

10.36 Examination of abstract

(1) Where:

(a) a request is properly made under section 10.34 that a part of a document not be open to public inspection under this Part; and

(b) the request is accompanied by an abstract of the part of the document;

the Registrar shall first determine whether to accept the abstract.

(2) If the Registrar is satisfied:

(a) that the abstract adequately describes the scope of the part of the document; and

(b) that the abstract complies with subsection 10.35(2);

the Registrar shall accept the abstract.

(3) If the Registrar is not so satisfied, the Registrar shall:

(a) refuse to accept the abstract; and

(b) refuse the request and immediately notify the applicants of the decision.

10.37 Decision on request for confidentiality

(1) If:

(a) the Registrar is satisfied that a request has properly been made under section 10.34 that a part of a document not be open to public inspection under this Part;

(b) the Registrar has, under section 10.36, accepted an abstract for the part of the document; and

(c) the Registrar is also satisfied, on the basis of the statement of reasons in support of the request that is included in the application for provisional or final registration of the conference agreement concerned:

(i) in the case of an outwards conference agreement—that granting the request would not disadvantage Australian exporters; and

(ia) in the case of an inwards conference agreement—that granting the request would not disadvantage Australian importers; and

(ii) that the request is justified because disclosure of the part of the document would disclose:

(A) trade secrets;

(B) information (other than trade secrets) having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or

(C) any other information concerning a person in relation to the person's business or professional affairs, or concerning the business, commercial or financial affairs of an organisation or undertaking, the disclosure of which would, or could reasonably be expected to, unreasonably affect the person adversely in relation to the person's lawful business or professional affairs or the organisation or undertaking in relation to its lawful business, commercial or financial affairs;

the Registrar shall, within 14 days after the making of the request, direct that the part of the document not be open to public inspection under this Part.

(2) If the Registrar is not so satisfied, the Registrar shall, within that 14 day period, refuse the request and immediately notify the applicants of the decision.

10.38 Application for registration to be returned where request for confidentiality refused etc.

Where:

(a) an application for the provisional or final registration of a conference agreement includes a request under section 10.34 that a part of a document not be open to public inspection under this Part; and

(b) the request is refused by the Registrar;

the Registrar shall also refuse the application, and shall return the application, and any documents that accompanied the application, to the applicants.

Subdivision D—Miscellaneous

10.39 Application also to be made for registration of varying conference agreements

(1) Subject to subsection (2), if:

(a) application has been made for the provisional or final registration of a conference agreement (in this section called the ***original agreement***), but the original agreement has not been finally registered; and

(b) another conference agreement that varies or otherwise affects the original agreement is or has been made or arrived at;

the Registrar shall not provisionally or finally register the original agreement unless application has been made for the provisional registration of the other conference agreement.

(2) Subsection (1) does not apply if the conference agreement referred to in paragraph (1)(b) consists solely of freight rate charges.

10.40 Notification of happening of affecting events prior to final registration etc.

(1) If:

(a) application has been made for the provisional or final registration of a conference agreement, but the agreement has not been finally registered; and

(b) either of the following subparagraphs applies:

(i) the proposed operation of the conference agreement is affected, or outwards liner cargo shipping services or inwards liner cargo shipping services proposed to be provided under the agreement are affected, by the happening of an event or otherwise than by a varying conference agreement;

(ii) parties to the conference agreement have made or arrived at an agreement with other ocean carriers that affects outwards liner cargo shipping services or inwards liner cargo shipping services provided, or that would, but for the agreement, have been provided, by the other ocean carriers;

the Registrar shall not provisionally or finally register the original agreement unless the parties to the agreement have notified the Registrar of the matter.

(2) The notice must be:

(a) in the appropriate prescribed form; and

(b) given to the Registrar in accordance with the regulations.

(3) The notice must comply with any regulations requiring its verification (in whole or part).

(4) Where the parties to a conference agreement give a notice under subsection (1), the Registrar may make such variations (if any) to the particulars entered in the register of conference agreements in relation to the agreement as the Registrar considers necessary or desirable to take account of the notice.

Division 7—Obligations of ocean carriers in relation to registered conference agreements

10.41 Parties to registered conference agreement to negotiate with certain designated shipper bodies etc.

(1) The parties to a registered conference agreement shall:

(a) take part in negotiations with a relevant designated shipper body in relation to negotiable shipping arrangements (including any provisions of the agreement that affect those arrangements) whenever reasonably requested by the shipper body, and consider the matters raised, and representations made, by the shipper body;

(b) if the shipper body requests the parties to make available for the purposes of the negotiations any information reasonably necessary for those purposes and itself makes available for those purposes any such information requested by the parties—make the information available to the shipper body; and

(c) provide an authorised officer with such information as the officer requires relating to the negotiations, notify an authorised officer of meetings to be held in the course of the negotiations, permit an authorised officer to be present at the meetings, and consider suggestions made by an authorised officer.

(2) The parties to the agreement shall give each relevant designated shipper body at least 30 days notice of any change in negotiable shipping arrangements unless the shipper body agrees to a lesser period of notice for the change.

(3) In this section:

eligible Australian contract means:

(a) a contract entered into in Australia; or

(b) a contract where questions arising under the contract are to be determined in accordance with Australian law.

freight rates includes base freight rates, surcharges, rebates and allowances.

negotiable shipping arrangements:

(a) in relation to an outwards conference agreement—means the arrangements for, or the terms and conditions applicable to, outwards liner cargo shipping services provided, or proposed to be provided, under the conference agreement (including, for example, freight rates, charges for inter-terminal transport services, frequency of sailings and ports of call); or

(b) in relation to an inwards conference agreement—means:

(i) the arrangements for, or the terms and conditions applicable to, inwards liner cargo shipping services provided, or proposed to be provided, under the conference agreement (including, for example, freight rates, charges for inter-terminal transport services, frequency of sailings and ports of call), where those arrangements or those terms and conditions, as the case may be, are embodied in an eligible Australian contract; or

(ii) the arrangements for, or the terms and conditions applicable to, the parts of the inwards liner cargo shipping services provided, or proposed to be provided, under the conference agreement that consist of activities that take place on land in Australia (including, for example, terminal handling charges and charges for inter-terminal transport services).

relevant designated shipper body:

(a) in relation to an outwards conference agreement—means:

(i) a designated outwards peak shipper body; or

(ii) a designated outwards secondary shipper body nominated by the Registrar (by written notice given to the parties to the agreement) for the purposes of the agreement for the purposes of this section; or

(b) in relation to an inwards conference agreement—means:

(i) a designated inwards peak shipper body; or

(ii) a designated inwards secondary shipper body nominated by the Registrar (by written notice given to the parties to the agreement) for the purposes of the agreement for the purposes of this section.

10.42 Application to be made for registration of varying conference agreements

(1) Subject to subsection (3), where a conference agreement that varies or otherwise affects a registered conference agreement is made or arrived at, application shall be made for its provisional registration.

(2) The application must be made within 30 days after the making of or arriving at the agreement.

(3) Subsection (1) does not apply to a conference agreement that consists solely of freight rate charges.

10.43 Parties to registered conference agreement to notify happening of affecting events etc.

(1) Where:

(a) the operation, or proposed operation, of a registered conference agreement is affected, or outwards liner cargo shipping services or inwards liner cargo shipping services provided, or proposed to be provided, under the agreement are affected, by the happening of an event or otherwise than by a varying conference agreement; or

(b) parties to a registered conference agreement make or arrive at an agreement with other ocean carriers that affects outwards liner cargo shipping services or inwards liner cargo shipping services provided, or that would, but for the agreement, have been provided, by the other ocean carriers;

the parties to the registered conference agreement shall notify the Registrar of the matter.

(2) The notice must be:

(a) in the appropriate prescribed form; and

(b) given to the Registrar in accordance with the regulations within 30 days after the operation, or proposed operation, of the agreement is affected, the services are affected or the agreement is made or arrived at, as the case may be.

(3) The notice must comply with any regulations requiring its verification (in whole or part).

(4) Where the parties to a registered conference agreement give a notice under subsection (1), the Registrar may make such variations (if any) to the particulars entered in the register of conference agreements in relation to the agreement as the Registrar considers necessary or desirable to take account of the notice.

Division 8—Powers of Minister in relation to registered conference agreements

10.44 Powers exercisable by Minister in relation to registered conference agreements etc.

(1) Subject to sections 10.45 and 10.46, the Minister may direct the Registrar:

(a) to cancel the registration of a registered conference agreement; or

(b) to cancel the registration of a registered conference agreement so far as it relates to:

(i) a particular provision of the agreement;

(ii) a particular party to the agreement; or

(iii) particular conduct.

(2) Where the Minister gives a direction under subsection (1), the Registrar shall immediately enter particulars of the direction in the register of conference agreements.

(3) On the entry in the register of conference agreements of particulars of a direction to cancel the registration of a registered conference agreement, the exemptions provided by Subdivision A of Division 5 cease to apply in relation to the agreement.

(4) On the entry in the register of conference agreements of particulars of a direction to cancel the registration of a registered conference agreement so far as it relates to a particular provision of the agreement, the exemptions provided by Subdivision A of Division 5 cease to apply in relation to the provision.

(5) On the entry in the register of conference agreements of particulars of a direction to cancel the registration of a registered conference agreement so far as it relates to a particular party to the agreement, the exemptions provided by Subdivision A of Division 5 cease to apply in relation to the party.

(6) On the entry in the register of conference agreements of particulars of a direction to cancel the registration of a registered conference agreement so far as it relates to particular conduct, the exemptions provided by Subdivision A of Division 5 cease to apply in relation to conduct of that kind in relation to the agreement.

(7) A direction under subsection (1) must be given in writing, and the Registrar shall serve a copy of the direction on the parties to the conference agreement concerned.

(8) If:

(a) the Commission reports to the Minister under section 10.47 or 10.48 in relation to either or both of the matters referred to in subparagraphs 10.45(1)(a)(viii) and (ix); and

(b) after taking the report into account, the Minister is satisfied of either or both of those matters and decides to give a direction under subsection (1);

the Minister must:

(c) prepare a statement about the decision; and

(d) cause:

(i) a copy of the statement; and

(ii) a copy of the Commission's report;

to be laid before each House of the Parliament within 15 sittings days of that House after the decision was made.

10.45 Circumstances in which Minister may exercise powers in relation to registered conference agreements

(1) The Minister shall not give a direction under subsection 10.44(1) in relation to a registered conference agreement unless:

(a) the Minister is satisfied of one or more of the following matters:

(i) in the case of an outwards conference agreement—that the agreement does not comply with section 10.06 (application of Australian law to outwards conference agreements and withdrawal from agreements);

(ia) that section 10.07 (minimum levels of shipping services to be specified in conference agreements) applies to the agreement, and that the agreement does not comply with that section;

(ib) that section 10.08 (conference agreements may include only certain restrictive trade practice provisions) applies to the agreement, and that the agreement does not comply with that section;

(ii) that section 10.41 (parties to registered conference agreement to negotiate with certain designated shipper bodies etc.) applies to the parties to the agreement, and that the parties have contravened, or propose to contravene, that section;

(iia) that parties to the agreement have contravened, or propose to contravene, subsection 10.43(1) (parties to registered conference agreement to notify happening of affecting events etc.);

(iii) that section 10.42 (application to be made for registration of varying conference agreements) has not been complied with in relation to a conference agreement that varies or otherwise affects the agreement;

(iv) that parties to the agreement have given effect to or applied, or propose to give effect to or apply, the agreement without due regard to the need for outwards liner cargo shipping services or inwards liner cargo shipping services provided under the agreement to be:

(A) efficient and economical; and

(B) provided at the capacity and frequency reasonably required to meet the needs of shippers who use, and shippers who may reasonably be expected to need to use, the services;

(v) in the case of an outwards conference agreement—that parties to the agreement have given effect to or applied, or propose to give effect to or apply, the agreement in a manner that prevents or hinders an Australian flag shipping operator from engaging efficiently in the provision of outwards liner cargo shipping services to an extent that is reasonable;

(vi) that provisional or final registration of the agreement was granted on the basis of a statement or information that was false or misleading in a material particular;

(vii) that parties to the agreement have breached an undertaking given by the parties to the agreement under section 10.49;

(viii) that subsection (3) applies to parties to the agreement;

(ix) that subsection (4) applies to parties to the agreement; and

(aa) if the Minister is satisfied of either or both of the matters referred to in subparagraphs (1)(a)(viii) and (ix)—at least 21 days before giving the direction, the Minister served on each party to the agreement a written notice of his or her intention to give the direction; and

(b) the Minister has carried on or attempted to carry on, either personally or through authorised officers, consultations with the parties to the agreement directed at

obtaining an undertaking or action by the parties that would have made a direction under subsection 10.44(1) unnecessary; and

(c) either of the following subparagraphs applies:

(i) the Commission has reported to the Minister under section 10.47 or 10.48 in relation to matters referred to in paragraph (a) of which the Minister is satisfied and the Minister has taken the report into account;

(ii) the Minister is satisfied that the special circumstances of the case make it desirable to give the direction before he or she receives such a report from the Commission.

(2) For the purposes of subparagraph (1)(a)(v), in determining what is reasonable, have regard to:

(a) the national interest; and

(b) the interests of the following:

(i) Australian shippers generally;

(ii) Australian shippers in a particular trade;

(iii) Australian shippers of particular kinds of goods;

(iv) shippers in a particular part of Australia; and

(c) any other relevant matters.

(3) This subsection applies to the parties to a registered conference agreement if:

(a) the agreement includes a provision that is covered by paragraph 10.08(1)(aa) or (b); and

(b) the parties to the agreement have engaged in conduct, or propose to engage in conduct, to give effect to or apply the provision; and

(c) that conduct or proposed conduct has not resulted in, or is unlikely to result in, a benefit to the public that outweighs the detriment to the public constituted by any lessening of competition that:

(i) has resulted, or is likely to result, from the conduct; or

(ii) would result, or be likely to result, if the proposed conduct were engaged in; and

(d) there are exceptional circumstances that warrant the giving of a direction under subsection 10.44(1).

(4) This subsection applies to the parties to a registered conference agreement if:

(a) the parties to the agreement have prevented, or are proposing to prevent, the entry of a prospective party to the agreement; and

(b) the prevention or proposed prevention is unreasonable; and

(c) the prevention or proposed prevention is contrary to the interests of any or all of the following:

(i) Australian shippers generally;

(ii) Australian shippers in a particular trade;

(iii) Australian shippers of particular kinds of goods;

(iv) shippers in a particular part of Australia;

(v) in the case of an outwards conference agreement—producers of goods of a kind exported, or proposed to be exported, from Australia.

10.46 Action to be taken where powers exercised by Minister without first obtaining Commission report

(1) Where the Minister gives a direction under subsection 10.44(1) before receiving a report under section 10.47 or 10.48 in relation to matters referred to in paragraph 10.45(1)(a) of which the Minister was satisfied before giving the direction, the Minister shall immediately refer the matters to the Commission under section 10.47.

(2) The Commission shall report to the Minister within a period of not more than 60 days in relation to those matters and any other matters that the Commission is then investigating under this Division in relation to the conference agreement concerned.

(3) If, after taking the Commission's report into account, the Minister is satisfied of one or more of the matters referred to in paragraph 10.45(1)(a), the Minister may, within 21 days after receiving the Commission's report, direct the Registrar not to take action under subsection (4) in relation to the agreement, and may also give such further directions under subsection 10.44(1) in relation to the agreement as the Minister considers appropriate.

(4) The Registrar shall delete the particulars of the direction under subsection 10.44(1) from the register of conference agreements at the end of 21 days after the Minister receives the Commission's report unless the Minister has given a direction under subsection (3) in relation to the agreement.

(5) On the deletion of the particulars of the direction, Subdivision A of Division 5 applies in relation to the agreement to the extent to which it would have applied but for the entry of the particulars.

(6) Subsection (1) shall not be taken by implication to limit the matters that may be referred to the Commission under section 10.47.

(7) A direction under subsection (3) must be given in writing, and the Registrar must serve a copy of the direction on the parties to the conference agreement concerned.

(8) If, after taking the Commission's report into account:

(a) the Minister is satisfied of either or both of the matters referred to in subparagraphs 10.45(1)(a)(viii) and (ix); and

(b) the Minister decides to give a direction under subsection (3);

the Minister must:

(c) prepare a statement about the decision; and

(d) cause:

(i) a copy of the statement; and

(ii) a copy of the Commission's report;

to be laid before each House of the Parliament within 15 sittings days of that House after the decision was made.

10.47 Investigation and report by Commission on reference by Minister

(1) The Minister may refer to the Commission for investigation and report the question whether grounds exist for the Minister to be satisfied in relation to a registered conference agreement of one or more specified matters referred to in paragraph 10.45(1)(a).

(2) The Commission shall hold an investigation into the question and report to the Minister.

(3) In its investigation, the Commission shall give special consideration to any matters specified in the reference as matters to be given special consideration by the Commission.

10.48 Investigation and report by Commission on own initiative or on application by affected person

(1) A person affected by the operation of a registered conference agreement may apply to the Commission for an investigation into the question whether grounds exist for the Minister to be satisfied in relation to the agreement of one or more specified matters referred to in paragraph 10.45(1)(a).

(2) If subsection (1) applies, the Commission may hold an investigation into the question, and, if it decides to do so, it shall inform the Minister of its decision and report to the Minister.

(2A) The Commission may, on its own initiative, hold an investigation into the question whether grounds exist for the Minister to be satisfied in relation to a registered conference agreement of either or both of the matters referred to in subparagraphs 10.45(1)(a)(viii) and (ix).

(2B) If subsection (2A) applies, the Commission must inform the Minister of its decision to hold an investigation and report to the Minister.

(3) In its investigation, the Commission shall give special consideration to such matters (if any) as the Minister requests it to give special consideration.

(4) A request under subsection (3) must be made in writing.

(5) Without limiting subsection (1), each of the following persons shall be taken to be a person affected by the operation of a registered conference agreement:

(a) a party to the agreement;

(b) a designated shipper body;

(c) in the case of an outwards conference agreement—an Australian flag shipping operator;

(d) a shipper who uses, or may reasonably be expected to need to use, outwards liner cargo shipping services or inwards liner cargo shipping services provided, or proposed to be provided, under the agreement;

(e) an association representing shippers who use, or may reasonably be expected to need to use, such services.

10.49 Undertakings by parties to registered conference agreement

(1) The parties to a registered conference agreement may, at any time, offer to give an undertaking to do, or not to do, a specified act or thing.

(2) The offer must be:

(a) in the appropriate prescribed form; and

(b) made to the Minister in accordance with the regulations.

(3) If the Minister accepts the offer, the Minister may do one or more of the following:

(a) revoke any reference made to the Commission under section 10.47 in relation to the agreement;

(b) direct the Commission, in writing, to cease holding any investigation being held by it under section 10.48 in relation to the agreement;

(c) revoke any direction given under subsection 10.44(1) in relation to the agreement.

(4) If the Minister accepts the offer, the parties shall be taken to have given the undertaking, and the Registrar shall immediately register the undertaking by entering particulars of it in the register of conference agreements.

(5) If the Minister revokes a direction given under subsection 10.44(1), the Registrar shall immediately include in the register a notation to the effect that the direction has been revoked.

(6) On the inclusion of the notation, Subdivision A of Division 5 applies in relation to the agreement to the extent to which it would have applied but for the entry of the particulars of the direction.

10.49A Enforcement of undertakings

(1) A party to a registered conference agreement must not contravene an undertaking given under section 10.49.

(2) Part VI applies in relation to subsection (1) as if that subsection were a provision of Part IV.

Division 9—Obligations of non-conference ocean carriers with substantial market power

10.50 Investigations by Commission into market power of ocean carriers

(1) The Minister may refer to the Commission for investigation and report the question whether an ocean carrier has a substantial degree of market power in the provision of outwards liner cargo shipping services or inwards liner cargo shipping services on a trade route otherwise than because the ocean carrier is a party to a conference agreement.

(2) The Commission shall hold an investigation into the question and report to the Minister.

(3) In its investigation, the Commission shall give special consideration to any matters specified in the reference as matters to be given special consideration by the Commission.

10.51 Determination by Minister of market power of ocean carriers

(1) Where:

(a) the Commission reports to the Minister under section 10.50 that an ocean carrier has a substantial degree of market power in the provision of outwards liner cargo shipping services or inwards liner cargo shipping services on a trade route otherwise than because the ocean carrier is a party to a conference agreement; or

(b) an ocean carrier agrees, in writing, to the Minister giving a direction under this subsection in relation to the ocean carrier in relation to a trade route;

the Minister may direct the Registrar to register the ocean carrier as a non-conference ocean carrier with substantial market power in relation to the trade route.

(2) Where the Minister gives a direction under subsection (1), the Registrar shall immediately enter particulars of the ocean carrier and the trade route in the register of non-conference ocean carriers with substantial market power.

(3) A direction under subsection (1) must be in writing, and the Registrar shall serve a copy of the direction on the ocean carrier concerned.

10.52 Non-conference ocean carrier with substantial market power to negotiate with certain designated shipper bodies etc.

(1) A registered non-conference ocean carrier with substantial market power shall:

(a) take part in negotiations with a relevant designated shipper body in relation to negotiable shipping arrangements whenever reasonably requested by the shipper body, and consider the matters raised, and representations made, by the shipper body;

(b) if the shipper body requests the ocean carrier to make available for the purposes of the negotiations any information reasonably necessary for those purposes and itself makes available for those purposes any such information requested by the ocean carrier—make the information available to the shipper body; and

(c) provide an authorised officer with such information as the officer requires relating to the negotiations, notify an authorised officer of meetings to be held in the course of the negotiations, permit an authorised officer to be present at the meetings, and consider suggestions made by an authorised officer.

(2) The ocean carrier shall give each relevant designated shipper body at least 30 days notice of any change in negotiable shipping arrangements unless the shipper body agrees to a lesser period of notice for the change.

(3) In this section:

eligible Australian contract means:

(a) a contract entered into in Australia; or

(b) a contract where questions arising under the contract are to be determined in accordance with Australian law.

freight rates includes base freight rates, surcharges, rebates and allowances.

negotiable shipping arrangements means:

(a) the arrangements for, or the terms and conditions applicable to, outwards liner cargo shipping services provided, or proposed to be provided, by the ocean carrier on the relevant trade route (including, for example, freight rates, charges for inter-terminal transport services, frequency of sailings and ports of call); or

(b) the arrangements for, or the terms and conditions applicable to, inwards liner cargo shipping services provided, or proposed to be provided, by the ocean carrier on the relevant trade route (including, for example, freight rates, charges for inter-terminal transport services, frequency of sailings and ports of call), where those arrangements or those terms and conditions, as the case may be, are embodied in an eligible Australian contract; or

(c) the arrangements for, or the terms and conditions applicable to, the parts of the inwards liner cargo shipping services provided, or proposed to be provided, by the ocean carrier on the relevant trade route that consist of activities that take place on land in Australia (including, for example, terminal handling charges and charges for inter-terminal transport services).

relevant designated shipper body:

(a) in relation to negotiations connected with outwards liner cargo shipping services—means:

(i) a designated outwards peak shipper body; or

(ii) a designated outwards secondary shipper body nominated by the Registrar (by written notice given to the ocean carrier) for the purposes of the relevant trade route; or

(b) in relation to negotiations connected with inwards liner cargo shipping services—means:

(i) a designated inwards peak shipper body; or

(ii) a designated inwards secondary shipper body nominated by the Registrar (by written notice given to the ocean carrier) for the purposes of the relevant trade route.

relevant trade route means the trade route specified in relation to the ocean carrier in the register of non-conference ocean carriers with substantial market power.

10.53 Non-conference ocean carrier with substantial market power not to hinder Australian flag shipping operators etc.

(1) A registered non-conference ocean carrier with substantial market power shall not prevent or hinder an Australian flag shipping operator from engaging efficiently in the provision of outwards liner cargo shipping services to an extent that is reasonable.

(2) For the purposes of subsection (1), in determining what is reasonable, have regard to:

(a) the national interest; and

(b) the interests of the following:

(i) Australian shippers generally;

(ii) Australian shippers in a particular trade;

(iii) Australian shippers of particular kinds of goods;

(iv) shippers in a particular part of Australia; and

(c) any other relevant matters.

Division 10—Powers of Minister in relation to non-conference ocean carriers with substantial market power

10.54 Powers exercisable by Minister in relation to obligations of non-conference ocean carriers with substantial market power

(1) Subject to sections 10.55 and 10.56, the Minister may, by writing served on a registered non-conference ocean carrier with substantial market power, order the ocean carrier to comply with any of the ocean carrier's obligations under Division 9.

(2) Where the Minister makes an order under subsection (1), the Registrar shall immediately enter particulars of the order in the register of non-conference ocean carriers with substantial market power.

10.55 Circumstances in which Minister may exercise powers

The Minister shall not make an order under subsection 10.54(1) unless:

(a) the Minister is satisfied of either or both of the following matters:

(i) that section 10.52 (non-conference ocean carrier with substantial market power to negotiate with certain designated shipper bodies etc.) applies to the ocean carrier concerned, and that the ocean carrier has contravened, or proposes to contravene, that section;

(ii) that the ocean carrier concerned has contravened, or proposes to contravene, section 10.53 (non-conference ocean carrier with substantial market power not to hinder Australian flag shipping operators etc.);

(b) the Minister has carried on or attempted to carry on, either personally or through authorised officers, consultations with the ocean carrier directed at obtaining an undertaking or action by the ocean carrier that would have made an order under subsection 10.54(1) unnecessary; and

(c) either of the following subparagraphs applies:

(i) the Commission has reported to the Minister under section 10.57 or 10.58 in relation to matters referred to in paragraph (a) of which the Minister is satisfied and the Minister has taken the report into account;

(ii) the Minister is satisfied that the special circumstances of the case make it desirable to make the order before he or she receives such a report from the Commission.

10.56 Action to be taken where powers exercised by Minister without first obtaining Commission report

(1) Where the Minister makes an order under subsection 10.54(1) before receiving a report under section 10.57 or 10.58 in relation to matters referred to in paragraph 10.55(a) of which the Minister was satisfied before making the order, the Minister shall immediately refer the matters to the Commission under section 10.57.

(2) The Commission shall report to the Minister within a period of not more than 60 days in relation to those matters and any other matters that the Commission is then investigating under this Division in relation to the ocean carrier concerned.

(3) If, after taking the Commission's report into account, the Minister is satisfied of one or more of the matters referred to in paragraph 10.55(a), the Minister may, within 21 days after receiving the Commission's report, direct the Registrar not to take action under subsection (4) in relation to the ocean carrier, and may also make such further orders

under subsection 10.54(1) in relation to the ocean carrier as the Minister considers appropriate.

(4) The Registrar shall delete the particulars of the order under subsection 10.54(1) from the register of non-conference ocean carriers with substantial market power at the end of 21 days after the Minister receives the Commission's report unless the Minister has given a direction under subsection (3) in relation to the ocean carrier.

(5) Subsection (1) shall not be taken by implication to limit the matters that may be referred to the Commission under section 10.57.

(6) A direction under subsection (3) must be given in writing, and the Registrar must serve a copy of the direction on the ocean carrier.

10.57 Investigation and report by Commission on reference by Minister

(1) The Minister may refer to the Commission for investigation and report the question whether grounds exist for the Minister to be satisfied in relation to a registered non-conference ocean carrier with substantial market power of one or more specified matters referred to in paragraph 10.55(a).

(2) The Commission shall hold an investigation into the question and report to the Minister.

(3) In its investigation, the Commission shall give special consideration to any matters specified in the reference as matters to be given special consideration by the Commission.

10.58 Investigation and report by Commission on application by affected person

(1) A person affected by the conduct of a registered non-conference ocean carrier with substantial market power may apply to the Commission for an investigation into the question whether grounds exist for the Minister to be satisfied in relation to the ocean carrier of one or more specified matters referred to in paragraph 10.55(a).

(2) The Commission may hold an investigation into the question, and, if it decides to do so, it shall inform the Minister of its decision and report to the Minister.

(3) In its investigation, the Commission shall give special consideration to such matters (if any) as the Minister requests it to give special consideration.

(4) A request under subsection (3) must be made in writing.

(5) Without limiting subsection (1), each of the following persons shall be taken to be a person affected by the conduct of a registered non-conference ocean carrier with substantial market power:

(a) a designated shipper body;

(b) in the case of an investigation relating to outwards liner cargo shipping services—an Australian flag shipping operator;

(c) a shipper who uses, or may reasonably be expected to need to use, outwards liner cargo shipping services or inwards liner cargo shipping services provided, or proposed to be provided, on the trade route specified in relation to the ocean carrier in the register of non-conference ocean carriers with substantial market power;

(d) an association representing shippers who use, or may reasonably be expected to need to use, such services.

10.59 Undertakings by ocean carrier

(1) A registered non-conference ocean carrier with substantial market power may, at any time, offer to give an undertaking to do, or not to do, a specified act or thing.

(2) The offer must be:

(a) in the appropriate prescribed form; and

(b) made to the Minister in accordance with the regulations.

(3) If the Minister accepts the offer, the Minister may do one or more of the following:

(a) revoke any reference made to the Commission under section 10.57 in relation to the ocean carrier;

(b) direct the Commission, in writing, to cease holding any investigation being held by it under section 10.58 in relation to the ocean carrier;

(c) revoke any order made under subsection 10.54(1) in relation to the ocean carrier.

(4) If the Minister accepts the offer, the ocean carrier shall be taken to have given the undertaking, and the Registrar shall immediately register the undertaking by entering particulars of it in the register of non-conference ocean carriers with substantial market power.

(5) If the Minister revokes an order made under subsection 10.54(1), the Registrar shall immediately include in the register a notation to the effect that the order has been revoked.

10.60 Enforcement of orders and undertakings

(1) An ocean carrier shall not contravene an order made under subsection 10.54(1) or an undertaking given under section 10.59.

(2) Part VI applies in relation to subsection (1) as if that subsection were a provision of Part IV.

Division 11—Unfair pricing practices

10.61 Powers exercisable by Minister in relation to pricing practices etc.

(1) Subject to section 10.62, the Minister may, by writing served on an ocean carrier, order the ocean carrier not to engage in a pricing practice.

(2) Where the Minister makes an order under subsection (1), the Registrar shall immediately enter particulars of the order in the register of obligations concerning unfair pricing practices.

10.62 Circumstances in which Minister may exercise powers

The Minister shall not make an order under subsection 10.61(1) unless:

(a) the Minister is satisfied:

(i) that the ocean carrier concerned has engaged in the pricing practice concerned in relation to outwards liner cargo shipping services or inwards liner cargo shipping services provided on a particular trade route;

(ii) that the practice has resulted in the freight rates charged by the ocean carrier for all or some outwards liner cargo shipping services or inwards liner cargo shipping services provided on the trade route being less than normal freight rates for services of that kind (as determined in accordance with section 10.66);

(iii) that the practice is of such a magnitude or such a recurring or systematic character that it has prevented or hindered, or threatens to prevent or hinder, the provision of outwards liner cargo shipping services or inwards liner cargo shipping services on the trade route that are:

(A) efficient and economical; and

(B) provided at the capacity and frequency reasonably required to meet the needs of shippers who use, and shippers who may reasonably be expected to need to use, the services; and

(iv) that the practice is contrary to the national interest (as determined in accordance with section 10.67);

(b) the Minister has carried on or attempted to carry on, either personally or through authorised officers, consultations with the ocean carrier directed at obtaining an undertaking or action by the ocean carrier that would have made an order under subsection 10.61(1) unnecessary; and

(c) the Commission has reported to the Minister under section 10.63 in relation to the ocean carrier in relation to outwards liner cargo shipping services or inwards liner cargo shipping services provided on the trade route and the Minister has taken the report into account.

10.63 Investigation and report by Commission

(1) The Minister may, on the complaint of an affected person or otherwise, refer to the Commission for investigation and report the question whether grounds exist for the Minister to be satisfied, in relation to an ocean carrier in relation to outwards liner cargo shipping services or inwards liner cargo shipping services provided on a trade route, of the matters referred to in paragraph 10.62(a).

(2) The Commission shall hold an investigation into the question and report to the Minister.

(3) In its investigation, the Commission shall give special consideration to any matters specified in the reference as matters to be given special consideration by the Commission.

10.64 Undertakings not to engage in pricing practices

(1) An ocean carrier may, at any time, offer to give an undertaking:
  (a) not to engage in a pricing practice; and
  (b) to give the Registrar such information as the Registrar from time to time requires (verified as the Registrar requires) for the purpose of ascertaining whether the ocean carrier is engaging in, or has engaged in, the pricing practice.

(2) The offer must be:
  (a) in the appropriate prescribed form; and
  (b) made to the Minister in accordance with the regulations.

(3) If the Minister accepts the offer, the Minister may do either or both of the following:
  (a) revoke any reference made to the Commission under subsection 10.63(1) in relation to the ocean carrier;
  (b) revoke any order made under subsection 10.61(1) in relation to the ocean carrier.

(4) If the Minister accepts the offer, the ocean carrier shall be taken to have given the undertaking, and the Registrar shall immediately register the undertaking by entering particulars of it in the register of obligations concerning unfair pricing practices.

(5) If the Minister revokes an order made under subsection 10.61(1), the Registrar shall immediately include in the register a notation to the effect that the order has been revoked.

10.65 Enforcement of orders and undertakings

(1) An ocean carrier shall not contravene an order made under subsection 10.61(1) or an undertaking given under section 10.64.

(2) Part VI applies in relation to subsection (1) as if that subsection were a provision of Part IV.

10.66 Determination of normal freight rates for shipping services

(1) The normal freight rates for outwards liner cargo shipping services or inwards liner cargo shipping services provided on a trade route are, subject to subsection (2), the freight rates actually charged in the ordinary course of shipping business for the same or similar services on the same or a comparable trade route by ocean carriers who do not enjoy non-commercial advantages given by a government (including a government of a foreign country).

(2) If such actual freight rates do not exist or it is not possible to ascertain satisfactorily what they are, the normal freight rates for the services may be determined by:
  (a) comparing the costs of the ocean carrier concerned and comparable ocean carriers who do not enjoy non-commercial advantages given by a government (including a government of a foreign country); and
  (b) allowing reasonable margins of profit.

(3) The comparison shall:

(a) take into account all costs incurred in the ordinary course of shipping business, whether the costs are fixed or variable; and

(b) allow for reasonable overhead expenses.

10.67 Determination of whether practice contrary to national interest

(1) In determining whether a pricing practice in relation to outwards liner cargo shipping services is contrary to the national interest, regard shall be had, in particular, to:

(a) the effect that the practice has had, or is likely to have, in relation to:

(i) continued access by Australian exporters to outwards liner cargo shipping services of adequate frequency and reliability at freight rates that are internationally competitive; and

(ii) stable access to export markets for exporters in all States and Territories;

(b) the extent to which any advantages provided by the practice or similar practices are enjoyed by competitors of Australian exporters; and

(c) the effect that denial of any advantages provided by the practice would have on the competitiveness of Australian industries.

(2) Subsection (3) applies when determining whether a pricing practice in relation to inwards liner cargo shipping services is contrary to the national interest.

(3) Regard must be had, in particular, to the effect that the practice has had, or is likely to have, in relation to continuous stable access by Australian importers in all States and Territories to inwards liner cargo shipping services that:

(a) are of adequate frequency and reliability; and

(b) are at freight rates that are internationally competitive.

Division 12—Registration of ocean carrier agents

10.68 Ocean carrier who provides international liner cargo shipping services to have registered agent

(1) Every ocean carrier who provides international liner cargo shipping services shall, at all times, be represented for the purposes of this Act by a person who:

(a) is an individual resident in Australia;

(b) has been appointed by the ocean carrier as the ocean carrier's agent for the purposes of this Act; and

(c) is specified in the register of ocean carrier agents as the ocean carrier's agent.

(2) An ocean carrier who, without reasonable excuse, contravenes subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding:

(a) in the case of a natural person—$2,000; and

(b) in the case of a body corporate—$10,000.

10.69 Representation of ocean carrier by registered agent

(1) Everything done by or in relation to an ocean carrier's registered agent in that capacity shall, for the purposes of this Act, be taken to be done by or in relation to the ocean carrier.

(2) Without limiting subsection (1), a document required or permitted to be served on, or given to, an ocean carrier under or for the purposes of this Act (including the process of any court) may be served on, or given to, the ocean carrier by serving it on, or giving it to, the ocean carrier's registered agent.

(3) A document that is, under subsection (2), permitted to be served on, or given to, an ocean carrier's registered agent may be served on, or given to, the agent by:

(a) delivering it to the agent personally; or

(b) leaving it at, or sending it by pre-paid post to, the address for service specified in relation to the agent in the register of ocean carrier agents.

(4) Subsection (3) does not affect:

(a) 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 that subsection; or

(b) the power of a court to authorise service of a document otherwise than as provided in that subsection.

10.70 Application by ocean carrier for registration of agent

(1) An ocean carrier may apply for the registration of a person as the ocean carrier's agent for the purposes of this Act.

(2) The person must:

(a) be an individual resident in Australia;

(b) have been appointed by the ocean carrier as the ocean carrier's agent for the purposes of this Act; and

(c) have an address for service in Australia.

(3) The application must be:

(a) made to the Registrar;
(b) made in the prescribed form and in accordance with the regulations; and
(c) accompanied by the prescribed fee.

10.71 Registration of agent

(1) Where an ocean carrier properly applies under section 10.70 for the registration of an agent, the Registrar shall register the agent by entering particulars of the ocean carrier and the agent in the register of ocean carrier agents.

(2) The particulars entered in the register must include:
(a) the name of the ocean carrier; and
(b) the name, and address for service, of the agent.

10.72 Change of agent etc.

(1) An ocean carrier may, by notice given to the Registrar:
(a) revoke the appointment of the ocean carrier's registered agent and, subject to subsection (2), appoint a new agent for the purposes of this Act;
(b) change the address for service of the ocean carrier's registered agent to another address in Australia; or
(c) request the Registrar to vary any of the particulars entered in the register of ocean carrier agents in relation to the ocean carrier.

(2) A new agent appointed under paragraph (1)(a) must:
(a) be an individual resident in Australia; and
(b) have an address for service in Australia.

(3) A notice under paragraph (1)(a), (b) or (c):
(a) must be in the appropriate prescribed form;
(b) must be given to the Registrar in accordance with the regulations; and
(c) may be expressed to take effect on and from a specified future day.

(4) Where an ocean carrier properly gives a notice under paragraph (1)(a) or (b), the Registrar shall immediately make such variations to the particulars entered in the register of ocean carrier agents in relation to the ocean carrier as are necessary to give effect to the notice.

(5) Where an ocean carrier properly gives a notice under paragraph (1)(c), the Registrar shall make such variations (if any) to the particulars entered in the register of ocean carrier agents in relation to the ocean carrier as the Registrar considers necessary or desirable to give effect to the notice.

Division 12A—Exemption orders for inwards conference agreements etc.

10.72A Exemption orders for inwards conference agreements etc.

(1) The Minister may, by legislative instrument, make an order exempting:

(a) a specified inwards conference agreement; or

(b) specified inwards liner cargo shipping services; or

(c) specified conduct in relation to the provision, or proposed provision, of inwards liner cargo shipping services;

from the scope of any or all of the eligible regulatory provisions.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

(2) The Registrar must enter particulars of any order under subsection (1) in the register of exemption orders.

(4) For the purposes of this section, each of the following provisions is an ***eligible regulatory provision***:

(a) subsection 10.07(2);

(b) section 10.08;

(c) paragraph 10.28(1)(ba);

(d) subsection 10.29(1A);

(e) section 10.40;

(f) section 10.41;

(g) section 10.43;

(h) subparagraph 10.45(1)(a)(iv);

(i) subsection 10.45(3);

(j) subsection 10.45(4);

(k) section 10.52;

(l) subparagraph 10.62(a)(i).

10.72B Criteria for making exemption order

(1) The Minister must not make an exemption order unless the Minister is of the opinion that it is in the national interest to make the order.

(2) For the purposes of subsection (1), in determining what is in the national interest, the Minister must have regard to each of the following:

(a) Australia's international relations;

(b) Australia's international obligations;

(c) any relevant principle of international law or practice;

(d) the interests of Australian exporters;

(e) the interests of Australian importers;

(f) any other relevant matters.

10.72C Duration of exemption order may be limited

(1) An exemption order may be expressed to be in force for a period specified in the order.

(2) Subsection (1) does not prevent the revocation of an exemption order in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.

10.72D Conditions of exemption order

An exemption order may be expressed to be subject to such conditions as are specified in the order.

Division 13—General provisions relating to registers and conference agreement files

10.73 Form of registers and conference agreement files

(1) The registers and conference agreement files kept by the Registrar may be kept in such form (whether or not documentary form) as the Registrar considers appropriate.

(2) The register of Commission investigations may be kept in such form (whether or not documentary form) as the Commission considers appropriate.

10.74 Deletion of entries wrongly existing in certain registers

Where the Registrar is satisfied that an entry wrongly exists in a register kept by the Registrar, the Registrar shall delete the entry.

10.75 Deletion of obsolete entries in certain registers

Where the Registrar is satisfied that an entry in a register kept by the Registrar is obsolete, the Registrar may delete the entry.

10.76 Correction of clerical errors and other mistakes in certain registers etc.

Where the Registrar is satisfied that a clerical error or other mistake exists in particulars entered in a register kept by the Registrar or that matters included in particulars entered in a register kept by the Registrar are obsolete, the Registrar may vary the particulars for the purpose of correcting the error or mistake or removing the obsolete matters.

Division 14—Administration

10.77 Registrar of Liner Shipping

There shall be a Registrar of Liner Shipping.

10.78 Appointment of Registrar etc.

The Registrar shall be appointed by the Minister, and holds office during the pleasure of the Minister.

10.79 Acting Registrar

The Minister may appoint a person to act as Registrar:

(a) during a vacancy in the office of Registrar (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the Registrar is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

10.80 Registrar and staff to be public servants

The Registrar, and any staff of the Registrar, shall be persons engaged under the *Public Service Act 1999*.

10.81 Delegation by Minister

The Minister may, by signed writing, delegate to the Registrar, or to a person occupying a specified office in the Department, all or any of the Minister's powers under or in relation to this Part (other than powers under sections 10.02A and 10.03, subsections 10.06(1) and 10.44(1), sections 10.46, 10.47, 10.48 and 10.50, subsection 10.54(1), sections 10.56, 10.57 and 10.58, subsection 10.61(1) and sections 10.63 and 10.72A).

10.82 Delegation by Registrar

The Registrar may, by signed writing, delegate to a person occupying a specified office in the Department all or any of the Registrar's powers under this Part.

Division 14A—Review of decisions of Commission

10.82A Review by Tribunal

(1) For the purposes of this section, each of the following decisions of the Commission is a ***reviewable decision***:

(a) a decision to refuse to hold an investigation under subsection 10.48(2) or 10.58(2);

(b) a decision under section 10.88 to:

(i) exclude a document, or the particulars of a submission, from the register of Commission investigations; or

(ii) refuse to exclude a document, or the particulars of a submission, from the register of Commission investigations.

(2) If the Commission makes a reviewable decision:

(a) a person whose interests are affected by the decision; or

(b) a designated shipper body;

may apply in writing to the Tribunal for a review of the decision.

(3) An application under this section for a review of a decision must be made within 21 days after the Commission made the decision.

(4) If the Tribunal receives an application under this section for a review of a decision, the Tribunal must review the decision.

10.82B Functions and powers of Tribunal

(1) On a review of a decision of the Commission of a kind mentioned in section 10.82A, the Tribunal may make a decision affirming, setting aside or varying the decision of the Commission and, for the purposes of the review, may perform all the functions and exercise all the powers of the Commission.

(2) A decision by the Tribunal affirming, setting aside or varying a decision of the Commission is taken for the purposes of this Act (other than this Division) to be a decision of the Commission.

(3) For the purposes of a review by the Tribunal, the member of the Tribunal presiding at the review may require the Commission to give such information, make such reports and provide such other assistance to the Tribunal as the member specifies.

(4) For the purposes of a review, the Tribunal may have regard to any information given, documents produced or evidence given to the Commission in connection with the making of the decision to which the review relates.

Note: Division 2 of Part IX applies to proceedings before the Tribunal.

10.82C Provisions that do not apply in relation to a Tribunal review

Division 1 of Part IX does not apply in relation to a review by the Tribunal of a decision of the Commission of a kind mentioned in section 10.82A.

Division 14B—Review of decisions of Minister

10.82D Review by Tribunal

(1) For the purposes of this section, each of the following decisions of the Minister is a ***reviewable decision***:

(a) a decision to:

(i) give; or

(ii) refuse to give;

a direction under subsection 10.44(1), subsection 10.46(3), paragraph 10.49(3)(b), subsection 10.51(1), subsection 10.56(3) or paragraph 10.59(3)(b);

(b) a decision under section 10.49, 10.59 or 10.64 to:

(i) accept an offer; or

(ii) refuse to accept an offer;

(c) a decision under paragraph 10.49(3)(a), 10.59(3)(a) or 10.64(3)(a) to:

(i) revoke a reference; or

(ii) refuse to revoke a reference;

(d) a decision under paragraph 10.49(3)(c) to:

(i) revoke a direction; or

(ii) refuse to revoke a direction;

(e) a decision to:

(i) make; or

(ii) refuse to make;

an order under subsection 10.54(1) or 10.61(1);

(f) a decision under paragraph 10.59(3)(c) or 10.64(3)(b) to:

(i) revoke an order; or

(ii) refuse to revoke an order.

(2) If the Minister makes a reviewable decision:

(a) a person whose interests are affected by the decision; or

(b) a designated shipper body;

may apply in writing to the Tribunal for a review of the decision.

(3) An application under this section for a review of a decision must be made within 21 days after the Minister made the decision.

(4) If the Tribunal receives an application under this section for a review of a decision, the Tribunal must review the decision.

10.82E Functions and powers of Tribunal

(1) On a review of a decision of the Minister of a kind mentioned in section 10.82D, the Tribunal may make a decision affirming, setting aside or varying the decision of the Minister and, for the purposes of the review, may perform all the functions and exercise all the powers of the Minister.

(2) A decision by the Tribunal affirming, setting aside or varying a decision of the Minister is taken for the purposes of this Act (other than this Division) to be a decision of the Minister.

(3) For the purposes of a review by the Tribunal, the member of the Tribunal presiding at the review may request the Minister to give such information, make such reports and provide such other assistance to the Tribunal as the member specifies. The Minister must comply with such a request.

(4) For the purposes of a review, the Tribunal may have regard to any information given, documents produced or evidence given to the Minister in connection with the making of the decision to which the review relates.

Note: Division 2 of Part IX applies to proceedings before the Tribunal.

10.82F Modifying register after Tribunal review

(1) If:

(a) the Tribunal decides to set aside or vary a decision of the Minister; and

(b) a register kept by the Registrar is not consistent with the decision of the Tribunal;

the Minister must direct the Registrar to take such action, by way of modifying the register, as is necessary to ensure that the register is consistent with the Tribunal's decision.

(2) The Registrar must comply with a direction under subsection (1).

(3) If, in accordance with subsection (2), the Registrar:

(a) deletes particulars of a direction under subsection 10.44(1) from the register of conference agreements; or

(b) includes in the register of conference agreements a notation to the effect that a direction under subsection 10.44(1) has been set aside;

Subdivision A of Division 5 applies in relation to the conference agreement concerned to the extent to which that Subdivision would have applied but for the entry of the particulars of the direction.

10.82G Provisions that do not apply in relation to a Tribunal review

Division 1 of Part IX does not apply in relation to a review by the Tribunal of a decision of the Minister of a kind mentioned in section 10.82D.

Division 15—Miscellaneous

10.83 Act not to affect rights under Freedom of Information Act

Nothing in this Part affects a right that a person may have under the *Freedom of Information Act 1982*.

10.84 Review of decisions of Registrar

(1) Application may be made to the Administrative Appeals Tribunal for review of a reviewable decision.

(2) In subsection (1):

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

reviewable decision means a decision of the Registrar under this Part, other than:

(a) a decision to provisionally or finally register a conference agreement; or

(b) a decision as to the form of a register.

10.85 Statement to accompany notices of Registrar

(1) Where the Registrar makes a reviewable decision (within the meaning of section 10.84) and gives to a person whose interests are affected by the decision written notice of the making of the decision, the notice must include:

(a) a statement to the effect that application may be made to the Administrative Appeals Tribunal under the *Administrative Appeals Tribunal Act 1975* for review of a decision of the Registrar under this Part; and

(b) a statement to the effect that a person who is entitled to apply to the Administrative Appeals Tribunal for review of a decision may, under section 28 of that Act, request a statement that includes reasons for the decision.

(2) Paragraph (1)(b) does not apply in relation to a case to which subsection 28(4) of the *Administrative Appeals Tribunal Act 1975* applies.

(3) A contravention of subsection (1) in relation to a decision does not affect the validity of the decision.

10.86 Evidence

(1) A certificate signed by the Registrar stating any matter in relation to the registration under this Part of an ocean carrier, ocean carrier's agent, conference agreement, direction, undertaking, determination or order, or any other matter in relation to a register, or conference agreement file, kept by the Registrar under this Part, is *prima facie* evidence of the matter.

(2) Without limiting subsection (1), the matters that may be certified under that subsection include:

(a) whether an ocean carrier, ocean carrier's agent, conference agreement, undertaking, determination or order is or is not registered under this Part;

(b) the name and address for service of an ocean carrier's agent; and

(c) the provisions and other particulars of a conference agreement, direction, undertaking, determination or order.

(3) A document purporting to be a certificate under subsection (1) shall, unless the contrary is established, be taken to be such a certificate and to have been properly given.

10.87 Notification by Commission of references etc.

The Commission may make public, in such manner as it considers appropriate:

(a) receipt of references under subsections 10.47(1), 10.50(1), 10.57(1) and 10.63(1); and

(b) decisions made by it under subsections 10.48(2), 10.48(2A) and 10.58(2) to hold investigations.

10.88 Exclusion of documents etc. from register of Commission investigations

(1) Where:

(a) a person gives a document to the Commission in relation to an investigation; or

(b) a person makes an oral submission to the Commission in relation to an investigation;

the person may, at the same time, request that the document, or the particulars of the submission, be excluded from the register because of the confidential nature of matters contained in the document or submission.

(2) If the Commission is satisfied that the request is justified because disclosure of matters contained in the document or submission would disclose:

(a) trade secrets;

(b) information (other than trade secrets) having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or

(c) any other information concerning a person in relation to the person's business or professional affairs, or concerning the business, commercial or financial affairs of an organisation or undertaking, the disclosure of which would, or could reasonably be expected to, unreasonably affect the person adversely in relation to the person's lawful business or professional affairs or the organisation or undertaking in relation to its lawful business, commercial or financial affairs;

the Commission shall exclude the document, or the particulars of the submission, from the register.

(3) If:

(a) the Commission refuses a request to exclude a document from the register; and

(b) the person who gave the document requests the Commission to return it;

the Commission shall return the document and, in that case, paragraph 10.13(2)(d) does not apply in relation to the document.

(4) If:

(a) the Commission refuses a request to exclude the particulars of an oral submission from the register; and

(b) the person who made the submission withdraws it;

paragraph 10.13(2)(e) does not apply in relation to the submission.

(5) If the Commission is satisfied that it is otherwise desirable to do so, the Commission may exclude a document, or the particulars of a submission, from the register.

(6) If a person makes a request under subsection (1), the document or the particulars of the submission concerned must not be included in the register until the Commission has dealt with the request.

(7) In this section:

document includes a part of a document.

investigation means an investigation under section 10.47, 10.48, 10.50, 10.57, 10.58 or 10.63.

register means the register of Commission investigations.

submission includes a part of a submission.

10.89 Disclosure of confidential information

(1) In this section:

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

give includes permit access to.

officer means a person who is or has been:

(a) the Registrar;

(b) a member of the staff assisting the Registrar; or

(c) a person to whom powers under this Part have been delegated by the Minister or the Registrar.

produce includes permit access to.

(2) This section applies in relation to information if the information relates to a person and was obtained by an officer, either directly or indirectly, from a part of a document filed with the Registrar, being a part that is not open to public inspection.

(3) This section applies in relation to a part of a document filed with the Registrar, being a part that is not open to public inspection.

(4) An officer shall not:

(a) make a record of any information to which this section applies;

(b) divulge or communicate to a person any information to which this section applies; or

(c) give a person a part of a document to which this section applies;

unless the record is made, the information divulged or communicated or the part of the document given:

(d) for the purposes of this Act; or

(e) in relation to the performance of a duty or the exercise of a power under or in relation to this Act.

Penalty: $5,000 or imprisonment for 2 years, or both.

(5) Subsection (4) applies in relation to the divulging or communicating of information whether directly or indirectly, but does not apply in relation to the divulging or communicating of information to, or the giving of a part of a document to, the Minister.

(6) An officer shall not be required:

(a) to produce in a court a part of a document to which this section applies; or

(b) to divulge or communicate to a court any information to which this section applies;

except so far as it is necessary to do so for the purposes of carrying into effect the provisions of this Act.

10.90 Fees

(1) The regulations may prescribe fees for the purposes of this Part, including fees payable on applications and requests made under this Part.

(2) The regulations shall not fix fees exceeding:

(a) in the case of an application for provisional registration of a conference agreement—$1,200; and

(b) in the case of an application for final registration of a conference agreement—$700; and

(c) in the case of an application for the registration of a person as an ocean carrier's agent—$160; and

(ca) in the case of variation of the register of ocean carrier agents following a notice under subsection 10.72(1)—$160; and

(d) in the case of an application to obtain a copy of, the whole or any part of, an entry in a register kept under this Part or a conference agreement file kept under this Part—$200.

10.91 Application of Part XID and section 155 to investigations under Part

(1) Part XID and section 155 apply in relation to an investigation by the Commission under this Part as if the investigation were an investigation by the Commission relating to a matter that constitutes, or may constitute, a contravention of this Act.

(2) Subsection (1) shall not be taken to limit by implication any powers that the Commission has apart from that subsection.

Part XIA—The Competition Code

150A Definitions

In this Part, unless the contrary intention appears:

application law means:

(a) a law of a participating jurisdiction that applies the Competition Code, either with or without modifications, as a law of the participating jurisdiction; or

(b) any regulations or other legislative instrument made under a law described in paragraph (a); or

(c) the Competition Code, applying as a law of the participating jurisdiction, either with or without modifications.

apply, in relation to the Competition Code, means apply the Competition Code by reference:

(a) as in force from time to time; or

(b) as in force at a particular time.

Commonwealth entity means:

(a) an authority of the Commonwealth; or

(b) an officer of the Commonwealth.

Competition Code means (according to the context):

(a) the text described in section 150C; or

(b) that text, applying as a law of a participating jurisdiction, either with or without modifications.

modifications includes additions, omissions and substitutions.

officer, in relation to the Commonwealth, includes the following:

(a) a Minister;

(b) a person who holds:

(i) an office established by or under an Act;

(ii) an appointment made under an Act;

(iii) an appointment made by the Governor-General or a Minister but not under an Act;

(c) a person who is a member or officer of an authority of the Commonwealth;

(d) a person who is in the service or employment of the Commonwealth, or of an authority of the Commonwealth, or is employed or engaged under an Act.

participating jurisdiction means a participating State or Territory.

participating State means a State that is a party to the Conduct Code Agreement and applies the Competition Code as a law of the State, either with or without modifications.

participating Territory means a Territory that is a party to the Conduct Code Agreement and applies the Competition Code as a law of the Territory, either with or without modifications.

Schedule version of Part IV means the text that is set out in Part 1 of the Schedule to this Act.

Territory means the Australian Capital Territory or the Northern Territory.

150B Objects of this Part

The objects of this Part are:

(a) to facilitate the application of the Competition Code by participating Territories; and

(b) to facilitate the application of the Competition Code by participating States.

150C The Competition Code

(1) The Competition Code consists of:

(a) the Schedule version of Part IV;

(b) the remaining provisions of this Act (except sections 2A, 5, 6 and 172), so far as they would relate to the Schedule version if the Schedule version were substituted for Part IV;

(c) the regulations under this Act, so far as they relate to any provision covered by paragraph (a) or (b).

(2) For the purpose of forming part of the Competition Code, the provisions referred to in paragraphs (1)(b) and (c) are to be modified as necessary to fit in with the Schedule version of Part IV. In particular, references to corporations are to include references to persons who are not corporations.

150D Federal Court may exercise jurisdiction under application laws of Territories

The Federal Court may exercise jurisdiction (whether original or appellate) conferred on that Court by an application law of a Territory with respect to matters arising under the Competition Code.

150E Exercise of jurisdiction under cross-vesting provisions

This Part does not affect the operation of any other law of the Commonwealth, or any law of a State or Territory, relating to cross-vesting of jurisdiction.

150F Commonwealth consent to conferral of functions etc. on Commonwealth entities

(1) An application law may confer functions or powers, or impose duties, on a Commonwealth entity for the purposes of the Competition Code.

Note: Section 150FB sets out when such a law imposes a duty on a Commonwealth entity.

(2) Subsection (1) does not authorise the conferral of a function or power, or the imposition of a duty, by an application law to the extent to which:

(a) the conferral or imposition, or the authorisation, would contravene any constitutional doctrines restricting the duties that may be imposed on the Commonwealth entity; or

(b) the authorisation would otherwise exceed the legislative power of the Commonwealth.

(3) The Commonwealth entity cannot perform a duty or function, or exercise a power, under an application law unless the conferral of the function or power, or the imposition of the duty, is in accordance with an agreement between the Commonwealth and the State or Territory concerned.

150FA How duty is imposed

Application

(1) This section applies if an application law purports to impose a duty on a Commonwealth entity.

Note: Section 150FB sets out when such a law imposes a duty on a Commonwealth entity.

State or Territory legislative power sufficient to support duty

(2) The duty is taken not to be imposed by this Act (or any other law of the Commonwealth) to the extent to which:

(a) imposing the duty is within the legislative powers of the State or Territory concerned; and

(b) imposing the duty by the law of the State or Territory is consistent with the constitutional doctrines restricting the duties that may be imposed on the entity.

Note: If this subsection applies, the duty will be taken to be imposed by force of the law of the State or Territory (the Commonwealth having consented under section 150F to the imposition of the duty by that law).

Commonwealth legislative power sufficient to support duty but State or Territory legislative powers are not

(3) If, to ensure the validity of the purported imposition of the duty, it is necessary that the duty be imposed by a law of the Commonwealth (rather than by the law of the State or Territory), the duty is taken to be imposed by this Act to the extent necessary to ensure that validity.

(4) If, because of subsection (3), this Act is taken to impose the duty, it is the intention of the Parliament to rely on all powers available to it under the Constitution to support the imposition of the duty by this Act.

(5) The duty is taken to be imposed by this Act in accordance with subsection (3) only to the extent to which imposing the duty:

(a) is within the legislative powers of the Commonwealth; and

(b) is consistent with the constitutional doctrines restricting the duties that may be imposed on the entity.

(6) Subsections (1) to (5) do not limit section 150F.

150FB When an application law imposes a duty

For the purposes of sections 150F and 150FA, an application law ***imposes a duty*** on a Commonwealth entity if:

(a) the law confers a function or power on the entity; and

(b) the circumstances in which the function or power is conferred give rise to an obligation on the entity to perform the function or to exercise the power.

150G Application laws may operate concurrently with this Act

This Act is not intended to exclude the operation of any application law, to the extent that the application law is capable of operating concurrently with this Act.

150H No doubling-up of liabilities

(1) If:

(a) an act or omission is an offence against this Act and is also an offence against an application law; and

(b) the offender has been punished for the offence under the application law;

the offender is not liable to be punished for the offence against this Act.

(2) If a person has been ordered to pay a pecuniary penalty under an application law, the person is not liable to a pecuniary penalty under this Act in respect of the same conduct.

150I References in instruments to the Competition Code

(1) A reference in any instrument to the Competition Code is a reference to the Competition Codes of any or all of the participating jurisdictions.

(2) Subsection (1) has effect except so far as the contrary intention appears in the instrument or the context of the reference otherwise requires.

150J Authorisations etc. under this Act may relate also to Competition Code

The validity of an authorisation, notification, clearance or any other thing given or done for the purposes of this Act is not affected only because it was given or done also for the purposes of the Competition Code.

150K Gazettal of jurisdictions that excessively modify the Code

(1) If the Minister is satisfied that the laws of a participating jurisdiction have made significant modifications to the Competition Code in its application to persons within the legislative competence of the participating jurisdiction, the Minister may publish a notice in the *Gazette* stating that the Minister is so satisfied.

(2) The Minister may, by further notice in the *Gazette*, revoke a notice published under subsection (1).

Part XIAA—The New Tax System Price Exploitation Code

150L Definitions

In this Part, unless the contrary intention appears:

application law means:

(a) a law of a State or Territory that applies the New Tax System Price Exploitation Code, either with or without modifications, as a law of the State or Territory; or

(b) any regulations or other legislative instrument made under a law described in paragraph (a); or

(c) the New Tax System Price Exploitation Code, applying as a law of a State or Territory, either with or without modifications.

apply, in relation to the New Tax System Price Exploitation Code, means apply the New Tax System Price Exploitation Code by reference:

(a) as in force from time to time; or

(b) as in force at a particular time.

modifications includes additions, omissions and substitutions.

New Tax System Price Exploitation Code means (according to the context):

(a) the text described in section 150N; or

(b) that text, applying as a law of a State or Territory, either with or without modifications.

officer, in relation to the Commonwealth, includes the following:

(a) a Minister;

(b) a person who holds:

(i) an office established by or under an Act; or

(ii) an appointment made under an Act; or

(iii) an appointment made by the Governor-General or a Minister but not under an Act;

(c) a person who is a member or officer of an authority of the Commonwealth;

(d) a person who is in the service or employment of the Commonwealth, or of an authority of the Commonwealth, or is employed or engaged under an Act.

Schedule version of Part VB means the text that is set out in Part 2 of the Schedule to this Act.

Territory means the Australian Capital Territory or the Northern Territory.

150M Object of this Part

The object of this Part is to facilitate the application of the New Tax System Price Exploitation Code by the States and Territories.

150N The New Tax System Price Exploitation Code

(1) The New Tax System Price Exploitation Code consists of:

(a) the Schedule version of Part VB; and

(b) the remaining provisions of this Act (except sections 2A, 5, 6 and 172), so far as they would relate to the Schedule version if the Schedule version were substituted for Part VB; and

(c) the regulations under this Act, so far as they relate to any provision covered by paragraph (a) or (b); and

(d) the guidelines under section 75AV.

(2) For the purpose of forming part of the New Tax System Price Exploitation Code, the provisions referred to in paragraphs (1)(b), (c) and (d) are to be modified as necessary to fit in with the Schedule version of Part VB. In particular, references to corporations are to include references to persons who are not corporations.

150O Federal Court may exercise jurisdiction under application laws of Territories

The Federal Court may exercise jurisdiction (whether original or appellate) conferred on that Court by an application law of a Territory with respect to matters arising under the New Tax System Price Exploitation Code.

150P Exercise of jurisdiction under cross-vesting provisions

This Part does not affect the operation of any other law of the Commonwealth, or any law of a State or Territory, relating to cross-vesting of jurisdiction.

150Q Application laws may confer functions on Commonwealth authorities and officers

An application law may confer functions and powers on authorities and officers of the Commonwealth for the purposes of the New Tax System Price Exploitation Code.

150R Application laws may operate concurrently with this Act

This Act is not intended to exclude the operation of any application law, to the extent that the application law is capable of operating concurrently with this Act.

150S No doubling-up of liabilities

(1) If:

(a) an act or omission is an offence against this Act and is also an offence against an application law; and

(b) the offender has been punished for the offence under the application law;

the offender is not liable to be punished for the offence against this Act.

(2) If a person has been ordered to pay a pecuniary penalty under an application law, the person is not liable to a pecuniary penalty under this Act in respect of the same conduct.

150T References in instruments to the New Tax System Price Exploitation Code

(1) A reference in any instrument to the New Tax System Price Exploitation Code is a reference to the New Tax System Price Exploitation Codes of any or all of the States and Territories.

(2) Subsection (1) has effect except so far as the contrary intention appears in the instrument or the context of the reference otherwise requires.

Part XIB—The Telecommunications Industry: Anti-competitive conduct and record-keeping rules

Division 1—Introduction

151AA Simplified outline

The following is a simplified outline of this Part:

- This Part sets up a special regime for regulating anti-competitive conduct in the telecommunications industry. The regime applies in addition to Part IV.
- The Part sets out the circumstances in which carriers and carriage service providers are said to ***engage in anti-competitive conduct***.
- A carrier or carriage service provider must not engage in anti-competitive conduct. This rule is called the ***competition rule***.
- The Commission may issue a notice stating that a specified carrier or carriage service provider has engaged, or is engaging, in anti-competitive conduct. The notice is called a ***Part A competition notice***.
- Proceedings for the enforcement of the competition rule (other than proceedings for injunctive relief) must not be instituted unless the alleged conduct is of a kind dealt with in a Part A competition notice that was in force at the time when the alleged conduct occurred.

- The Commission may issue a notice stating that a specified carrier or carriage service provider has contravened, or is contravening, the competition rule. The notice is called a ***Part B competition notice***.
- A Part B competition notice is prima facie evidence of the matters in the notice.
- The Commission may make an order exempting specified conduct from the scope of the definition of ***anti-competitive conduct***. The order is called an ***exemption order***.
- Carriers and carriage service providers may be directed to file tariff information with the Commission. The direction is called a ***tariff filing direction***.
- The Commission may make record-keeping rules that apply to carriers and carriage service providers.
- Carriers and carriage service providers may be directed by the Commission to make certain reports available. The direction is called a ***disclosure direction***.

151AB Definitions

In this Part, unless the contrary intention appears:

ACMA means the Australian Communications and Media Authority.

anti-competitive conduct has the meaning given by section 151AJ.

carriage service has the same meaning as in the *Telecommunications Act 1997*.

carriage service provider has the same meaning as in the *Telecommunications Act 1997*.

carrier has the same meaning as in the *Telecommunications Act 1997*.

carrier licence has the same meaning as in the *Telecommunications Act 1997*.

competition notice means:

(a) a Part A competition notice; or

(b) a Part B competition notice.

competition rule means the rule set out in section 151AK.

content service has the same meaning as in the *Telecommunications Act 1997*.

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

disclosure direction means a direction under subsection 151BUB(2), 151BUC(2), 151BUDB(2) or 151BUDC(2).

eligible partnership has the same meaning as in the *Telecommunications Act 1997*.

exemption order means an order under section 151BA.

facility has the same meaning as in the *Telecommunications Act 1997*.

Federal Court means the Federal Court of Australia.

listed carriage service has the same meaning as in the *Telecommunications Act 1997*.

Ministerially-directed report has the meaning given by section 151BUAA.

Part A competition notice means a notice issued under subsection 151AKA(1) or (2).

Part B competition notice means a notice issued under subsection 151AL(1).

person includes a partnership.

Note: Section 151CH sets out additional rules about partnerships.

record-keeping rule means a rule under section 151BU.

service provider rule has the same meaning as in the *Telecommunications Act 1997*.

tariff filing direction means a direction under section 151BK.

telecommunications market has the meaning given by section 151AF.

151AC Extension to external Territories

This Part, and the other provisions of this Act so far as they relate to this Part, extend to each eligible Territory (within the meaning of the *Telecommunications Act 1997*).

151AD Continuity of partnerships

For the purposes of this Part, a change in the composition of a partnership does not affect the continuity of the partnership.

151AE Additional operation of Part

(1) Without prejudice to its effect apart from this section, this Part also has effect as provided by this section.

(2) This Part has, by force of this subsection, the effect it would have if:
   (a) any references in this Part to a carrier were, by express provision, confined to a carrier that is a corporation; and
   (b) any references in this Part to a carriage service provider were, by express provision, confined to a carriage service provider that is a corporation.

(3) In addition to the effect that this Part has as provided by subsection (2), this Part has, by force of this subsection, the effect it would have if subsections 151AJ(2) and (3) were, by express provision, confined in their operation to engaging in conduct to the extent to which the conduct takes place in the course of or in relation to:
   (a) trade or commerce between Australia and places outside Australia; or
   (b) trade or commerce among the States; or
   (c) trade or commerce within a Territory, between a State and a Territory or between 2 Territories; or
   (d) the supply of goods or services to the Commonwealth or an authority or instrumentality of the Commonwealth.

151AF Telecommunications market

For the purposes of this Part, a ***telecommunications market*** is a market in which any of the following goods or services are supplied or acquired:
   (a) carriage services;
   (b) goods or services for use in connection with a carriage service;
   (c) access to facilities.

Note: ***Market*** has a meaning affected by section 4E.

151AG When a body corporate is related to a partnership

For the purposes of this Part, if:
   (a) a carrier or a carriage service provider is a partnership; and
   (b) a body corporate is related to a partner in the partnership;

the body corporate is taken to be ***related to*** the carrier or carriage service provider, as the case requires.

151AH Degree of power in a telecommunications market

(1) For the purposes of this Part, if:
   (a) a body corporate is related to:

(i) a carrier; or

(ii) a carriage service provider; and

(b) the body corporate has a substantial degree of power in a telecommunications market;

the carrier or carriage service provider, as the case requires, is taken to have a ***substantial degree of power*** in that market.

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

(a) 2 or more bodies corporate are related to the one:

(i) carrier; or

(ii) carriage service provider; and

(b) those bodies corporate together have a substantial degree of power in a telecommunications market;

the carrier or carriage service provider, as the case requires, is taken to have a ***substantial degree of power*** in that market.

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

(a) a body corporate is related to:

(i) a carrier; or

(ii) a carriage service provider; and

(b) the body corporate and the carrier or carriage service provider, as the case may be, together have a substantial degree of power in a telecommunications market;

the carrier or carriage service provider, as the case requires, is taken to have a ***substantial degree of power*** in that market.

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

(a) 2 or more bodies corporate are related to:

(i) a carrier; or

(ii) a carriage service provider; and

(b) those bodies corporate and that carrier or carriage service provider, as the case may be, together have a substantial degree of power in a telecommunications market;

the carrier or carriage service provider, as the case requires, is taken to have a ***substantial degree of power*** in that market.

(5) In determining, for the purposes of this Part, the degree of power that a person has, or that persons have, in a telecommunications market, regard must be had to the extent to which the conduct of the person or any of those persons in that market is constrained by the conduct of:

(a) competitors, or potential competitors, of the person or of any of those persons in that market; or

(b) persons to whom or from whom the person or any of those persons supplies or acquires goods or services in that market.

(5A) In determining, for the purposes of this Part, the degree of power that a person has, or that persons have, in a telecommunications market, regard may be had to the power that the person has, or that the persons have, in that market that results from:

(a) any contracts, arrangements or understandings, or proposed contracts, arrangements or understandings, that the person has or may have, or that the persons have or may have, with another party or parties; and

(b) any covenants, or proposed covenants, that the person is or would be, or that the persons are or would be, bound by or entitled to the benefit of.

(6) Subsections (5) and (5A) do not, by implication, limit the matters to which regard may be had in determining, for the purposes of this Part, the degree of power that a person has, or that persons have, in a telecommunications market.

(6A) For the purposes of this Part, without limiting the matters to which the Court may have regard for the purpose of determining whether a person has a substantial degree of power in a telecommunications market, a person may have a substantial degree of power in a telecommunications market even though:

(a) the person does not substantially control the market; or

(b) the person does not have absolute freedom from constraint by the conduct of:

(i) competitors, or potential competitors, of the person in that market; or

(ii) persons to whom or from whom the person supplies or acquires goods or services in that market.

(6B) To avoid doubt, for the purposes of this Part, more than 1 person may have a substantial degree of power in a telecommunications market.

(7) In this Part:

(a) a reference to ***power*** is a reference to market power; and

(b) a reference to power in relation to, or to conduct in, a telecommunications market is a reference to power, or to conduct, in that market either as a supplier or as an acquirer of goods or services in that market.

151AI Interpretation of Part IV or VII not affected by this Part

In determining the meaning of a provision of Part IV or VII, the provisions of this Part are to be ignored.

Division 2—Anti-competitive conduct

151AJ Anti-competitive conduct

(1) This section sets out the 2 circumstances in which:

(a) a carrier; or

(b) a carriage service provider;

is said to ***engage in anti-competitive conduct*** for the purposes of this Part.

(2) A carrier or carriage service provider ***engages in anti-competitive conduct*** if the carrier or carriage service provider:

(a) has a substantial degree of power in a telecommunications market; and

(b) either:

(i) takes advantage of that power in that or any other market with the effect, or likely effect, of substantially lessening competition in that or any other telecommunications market; or

(ii) takes advantage of that power in that or any other market, and engages in other conduct on one or more occasions, with the combined effect, or likely combined effect, of substantially lessening competition in that or any other telecommunications market.

(2A) Without limiting the matters to which regard may be had for the purpose of determining whether a carrier or carriage service provider has engaged in anti-competitive conduct as defined in subsection (2), regard may be had to:

(a) any conduct of the carrier or carriage service provider that consisted of supplying goods or services for a sustained period at a price that was less than the relevant cost to the carrier or carriage service provider of supplying such goods or services; and

(b) the reasons for that conduct.

(3) A carrier or carriage service provider ***engages in anti-competitive conduct*** if the carrier or carriage service provider:

(a) engages in conduct in contravention of section 44ZZRJ, 44ZZRK, 45, 45B, 46, 47 or 48; and

(b) the conduct relates to a telecommunications market.

(4) For the purposes of the application of subsection (3) to a carrier, or a carriage service provider, that is not a corporation, in determining whether conduct of the carrier or provider is in contravention of section 44ZZRJ, 44ZZRK, 45, 45B, 46, 47 or 48 the following assumptions are to be made:

(a) the assumption that each reference to a corporation in:

(i) those sections; and

(ii) sections 44ZZRL and 44ZZRM;

included a reference to a carrier, or a carriage service provider, that is not a corporation;

(b) the assumption that subsections 45(8) and 47(12) and section 44ZZRN had not been enacted.

(5) For the purposes of the application of subsection (3) to a carrier, or a carriage service provider, that is not a corporation or a partnership, in determining whether conduct of the carrier or provider is in contravention of section 45, 45B, 46, 47 or 48, the following assumptions are to be made:

(a) the assumption that the expression "or any body corporate related to such a corporation" were omitted from subsection 45(3);

(b) the assumption that the expression "or a body corporate related to the corporation" were omitted from paragraph 45(4)(b);

(c) the assumption that the expression "or of a body corporate that is related to the corporation" were omitted from paragraphs 46(1)(a) and (1AA)(a);

(d) the assumption that subsection 46(2) had not been enacted;

(e) the assumption that the expression "or from a competitor of a body corporate related to the corporation" were omitted from each of the following provisions:

(i) paragraphs 47(2)(d) and (e);

(ii) paragraphs 47(3)(d) and (e);

(iii) subparagraphs 47(8)(a)(i) and (ii);

(f) the assumption that the expression "not being a body corporate related to the corporation" were omitted from subsections 47(6) and (7) and paragraphs 47(8)(c) and 47(9)(d);

(g) the assumption that the expression "or from a competitor of a body corporate related to the corporation" were omitted from paragraphs 47(9)(a) and (b);

(h) the assumption that the expression ", or by a body corporate related to the corporation," were omitted from paragraph 47(10)(b);

(i) the assumption that the expression "or any body corporate related to that corporation" were omitted from subparagraph 47(13)(b)(i);

(j) the assumption that the expression "or any body corporate related to either of those corporations" were omitted from paragraph 47(13)(c) and the expression "any body corporate related to the last-mentioned corporation" were substituted;

(k) the assumption that the expression "where the second person mentioned in that paragraph is a corporation" were omitted from subsection 96(2).

(6) A person may be taken to have engaged in anti-competitive conduct even if the conduct involves the exercise, or proposed exercise, of an existing legal or equitable right (whether under a contract or otherwise).

(7) Despite anything in subsection (2) or (3), a carrier or carriage service provider does not engage in anti-competitive conduct if that conduct does not constitute a contravention of section 44ZZRJ, 44ZZRK, 45, 45B, 46, 47 or 48:

(a) because an authorisation is in force; or

(b) because of the operation of subsection 44ZZRL(1) or 45(8A) or section 93; or

(c) because of the operation of subsection 45(9); or

(d) because of the operation of subsection 45B(8); or

(e) because of the operation of section 44ZZRM.

(8) A carrier or carriage service provider does not engage in anti-competitive conduct if that conduct occurred before 1 July 1997.

151AK The competition rule

(1) A carrier or carriage service provider must not engage in anti-competitive conduct.

(2) For the purposes of this Part, the rule set out in subsection (1) is to be known as the ***competition rule***.

Note: For enforcement of the competition rule, see Division 7.

Division 3—Competition notices and exemption orders

Subdivision A—Competition notices

151AKA Part A competition notices

Particular anti-competitive conduct

(1) The Commission may issue a written notice stating that a specified carrier or carriage service provider has engaged, or is engaging, in a specified instance of anti-competitive conduct.

Kind of anti-competitive conduct

(2) The Commission may issue a written notice stating that a specified carrier or carriage service provider has engaged, or is engaging, in at least one instance of anti-competitive conduct of a kind described in the notice.

Part A competition notice

(3) A notice under subsection (1) or (2) is to be known as a ***Part A competition notice***.

Part A competition notices under subsection (2)

(4) For the purposes of this Part, a kind of anti-competitive conduct described in a Part A competition notice under subsection (2) is taken to be conduct of a kind dealt with in the notice.

(5) To avoid doubt, a Part A competition notice under subsection (2) is not required to specify any instance of anti-competitive conduct.

(6) In deciding how to describe a kind of anti-competitive conduct in a Part A competition notice under subsection (2), the Commission may have regard to:

(a) whether the carrier or carriage service provider concerned could, by varying its conduct, continue to engage in anti-competitive conduct and avoid proceedings against it under one or more provisions of Division 7; and

(b) any other matters that the Commission thinks are relevant.

Threshold for issuing Part A competition notices

(7) The Commission may issue a Part A competition notice under subsection (1) that specifies an instance of anti-competitive conduct if the Commission has reason to believe that the carrier or carriage service provider concerned has engaged, or is engaging, in that instance of anti-competitive conduct.

(8) The Commission may issue a Part A competition notice under subsection (2) that describes a kind of anti-competitive conduct if the Commission has reason to believe that the carrier or carriage service provider concerned has engaged, or is engaging, in at least one instance of anti-competitive conduct of that kind.

Consultation

(9) The Commission must not issue a Part A competition notice under subsection (1) in relation to a carrier or carriage service provider unless the Commission has first:

(a) given the carrier or provider a written notice:

(i) stating that the Commission proposes to issue a Part A competition notice under subsection (1) in relation to the carrier or provider; and

(ii) describing, in summary form, the instance of anti-competitive conduct that is proposed to be specified in the Part A competition notice; and

(iii) inviting the carrier or provider to make a submission to the Commission on the proposal by a specified time limit; and

(b) considered any submission that was received within that time limit.

(10) The Commission must not issue a Part A competition notice under subsection (2) in relation to a carrier or carriage service provider unless the Commission has first:

(a) given the carrier or provider a written notice:

(i) stating that the Commission proposes to issue a Part A competition notice under subsection (2) in relation to the carrier or provider; and

(ii) describing, in summary form, the kind of anti-competitive conduct that is proposed to be specified in the Part A competition notice; and

(iii) inviting the carrier or provider to make a submission to the Commission on the proposal by a specified time limit; and

(b) considered any submission that was received within that time limit.

Note: For the effect of a Part A competition notice, see subsections 151BY(3), 151CB(3), 151CC(3) and 151CE(5).

151AL Part B competition notices

(1) The Commission may issue a written notice:

(a) stating that a specified carrier or carriage service provider has contravened, or is contravening, the competition rule; and

(b) setting out particulars of that contravention.

(2) A notice under subsection (1) is to be known as a ***Part B competition notice***.

Threshold for issuing Part B competition notices

(3) The Commission may issue a Part B competition notice relating to a particular contravention if the Commission has reason to believe that the carrier or carriage service provider concerned has committed, or is committing, the contravention.

Notice may be issued after proceedings have been instituted

(4) To avoid doubt, a Part B competition notice may be issued even if any relevant proceedings under Division 7 have been instituted.

Note: For the effect of a Part B competition notice, see subsection 151AN(1).

151AM Competition notice to be given to carrier or carriage service provider

As soon as practicable after issuing a competition notice, the Commission must give a copy of the competition notice to the carrier or carriage service provider concerned.

151AN Evidentiary effect of competition notice

(1) In any proceedings under, or arising out of, this Part, a Part B competition notice is prima facie evidence of the matters in the notice.

(2) A document purporting to be a competition notice must, unless the contrary is established, be taken to be a competition notice and to have been properly issued.

(3) The Commission may certify that a document is a copy of a competition notice.

(4) This section applies to the certified copy as if it were the original.

151AO Duration of Part A competition notice

(1) A Part A competition notice comes into force:

(a) when it is issued; or

(b) if the notice specifies a later time—at that later time;

and, unless sooner revoked, remains in force until the end of the period specified in the notice. The period must not be longer than 12 months.

(2) If a Part A competition notice expires, this Part does not prevent the Commission from issuing a fresh Part A competition notice under section 151AKA that relates to the same matter as the expired notice.

151AOA Variation of competition notice

(1) If a competition notice is in force in relation to a carrier or carriage service provider, the Commission may vary the competition notice so long as the variation is of a minor nature.

(2) If a Part A competition notice is in force in relation to a carrier or carriage service provider, the Commission may vary the competition notice by omitting the time at which the notice is expressed to come into force and substituting a later time.

(3) If a competition notice is varied, the Commission must give the carrier or carriage service provider concerned a written notice setting out the terms of the variation.

151AOB Revocation of competition notice

(1) The Commission may revoke a competition notice.

(2) If a competition notice is revoked, the Commission must give the carrier or carriage service provider concerned a written notice stating that the notice has been revoked.

151AP Guidelines

(1) In deciding whether to issue a competition notice, the Commission must have regard to:

(a) any guidelines in force under subsection (2); and

(b) such other matters as the Commission considers relevant.

(2) The Commission must, by written instrument, formulate guidelines for the purposes of subsection (1).

(3) Guidelines under subsection (2) must address the appropriateness of the Commission issuing a competition notice as opposed to the Commission taking other action under this Act.

(4) The Commission must take all reasonable steps to ensure that guidelines under subsection (2) comply with subsection (3) within 12 months after the commencement of this subsection.

151AQ Commission to act expeditiously

(1) If the Commission has reason to suspect that a carrier or carriage service provider has contravened, or is contravening, the competition rule, the Commission must act expeditiously in deciding whether to issue a competition notice in relation to that contravention.

(2) A failure to comply with subsection (1) does not affect the validity of a competition notice.

151AQA Stay of proceedings relating to competition notices

(1) Paragraphs 15(1)(a) and (b) and 15A(1)(a) and (b) of the *Administrative Decisions (Judicial Review) Act 1977* do not apply to a decision to issue a competition notice.

(2) If a person applies to the Federal Court under subsection 39B(1) of the *Judiciary Act 1903* for a writ or injunction in relation to a decision to issue a competition notice, the Court must not make any orders staying or otherwise affecting the operation or implementation of the decision pending the finalisation of the application. However, this subsection does not apply to an order under subsection (3).

(3) If:

(a) either:

(i) a person applies to the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977* for review of a decision to issue a competition notice; or

(ii) a person applies to the Federal Court under subsection 39B(1) of the *Judiciary Act 1903* for a writ or injunction in relation to a decision to issue a competition notice; and

(b) any relevant proceedings have been instituted under Division 7 of this Part;

the Federal Court or a Judge of the Federal Court may, by order, on such conditions as the Court or the Judge thinks fit, stay those proceedings.

(4) If:

(a) a person applies to the Federal Magistrates Court under the *Administrative Decisions (Judicial Review) Act 1977* for review of a decision to issue a competition notice; and

(b) any relevant proceedings have been instituted under Division 7 of this Part;

the Federal Magistrates Court or a Federal Magistrate may, by order, on such conditions as the Court or the Federal Magistrate thinks fit, stay those proceedings.

151AQB Advisory notices

Issue of advisory notice

(1) The Commission may give a carrier or carriage service provider a written notice (an ***advisory notice***) advising the carrier or provider of the action it should take, or consider taking, in order to ensure that it does not engage, or continue to engage, in anti-competitive conduct.

(2) The Commission does not have a duty to consider whether to issue an advisory notice in relation to:

(a) a particular instance of anti-competitive conduct; or

(b) a particular kind of anti-competitive conduct;

before it issues a Part A competition notice in relation to that instance or kind of conduct.

Nature of advisory notice

(3) An advisory notice is an instrument of an advisory character.

Varying or revoking advisory notice

(5) The Commission may vary or revoke an advisory notice.

(6) If an advisory notice is varied, the Commission must give the carrier or carriage service provider concerned a written notice setting out the terms of the variation.

(7) If an advisory notice is revoked, the Commission must give the carrier or carriage service provider concerned a written notice stating that the advisory notice has been revoked.

Publication of advisory notice

(8) If the Commission is satisfied that:
   (a) the publication of an advisory notice would result, or be likely to result, in a benefit to the public; and
   (b) that benefit would outweigh any substantial prejudice to the commercial interests of a person that would result, or be likely to result, if the advisory notice were published;

the Commission may publish the advisory notice in such manner as it thinks fit.

151AR Register of competition notices

(1) The Commission must keep a Register in relation to competition notices.

(2) The Register must include particulars of all competition notices (including notices that have expired).

(3) The Register may be maintained by electronic means.

(4) A person may, on payment of the fee (if any) specified in the regulations:
   (a) inspect the Register; and
   (b) make a copy of, or take extracts from, the Register.

(5) For the purposes of this section, if the Register is maintained by electronic means, a person is taken to have made a copy of, or taken an extract from, the Register if the Commission gives the person a printout of, or of the relevant parts of, the Register.

(6) If a person requests that a copy be provided in an electronic form, the Commission may provide the relevant information:
   (a) on a data processing device; or
   (b) by way of electronic transmission.

Subdivision B—Exemption orders

151AS Exemption orders

(1) A person may apply to the Commission for an order exempting specified conduct of the person from the scope of section 151AJ (which deals with anti-competitive conduct). The order is called an ***exemption order***.

(2) An exemption order is not invalid only because the conduct specified in the order is conduct of a kind that, apart from the order, is outside the scope of section 151AJ (which deals with anti-competitive conduct).

151AT Form of application

An application for an exemption order must be:

(a) in writing; and

(b) in a form approved in writing by the Commission; and

(c) accompanied by the prescribed fee.

151AU Further information

(1) The Commission may request an applicant for an exemption order to give the Commission further information about the application.

(2) The Commission may refuse to consider the application until the applicant gives the Commission the information.

(3) The Commission may withdraw its request for further information, in whole or in part.

151AV Withdrawal of application

An applicant for an exemption order may withdraw the application by written notice given to the Commission.

151AW Commission must publicise receipt of applications

If the Commission receives an application for an exemption order, the Commission must publicise the receipt of the application in such manner as it thinks fit.

151AX Commission may refuse to consider application if it relates to the same conduct as an authorisation application

(1) This section applies if:

(a) the Commission receives, or has received, an application for an exemption order; and

(b) the Commission receives, or has received, an application for an authorisation under Division 1 of Part VII; and

(c) the application for the exemption order and the application for the authorisation relate to the same conduct.

(2) The Commission may refuse to:

(a) consider the application for the exemption order; or

(b) convene a conference under section 151AZ to discuss the application for the exemption order;

until:

(c) the Commission has made a determination under section 90 in relation to the application for the authorisation; or

(d) if the Commission makes such a determination—the expiry of the time limit allowed for a person to apply to the Tribunal for a review of the determination; or

(e) if a person applies to the Tribunal for a review of the determination—the review (including any court proceedings arising out of the review) is finalised.

151AY Commission may refuse to consider application if it relates to the same conduct as a Part VII notification

(1) This section applies if:

(a) the Commission receives, or has received, an application for an exemption order; and

(b) the Commission receives, or has received, a notice under subsection 93(1) or 93AB(1A) or (1); and

(c) the application for the exemption order and the notice relate to the same conduct.

(2) The Commission may refuse to:

(a) consider the application for the exemption order; or

(b) convene a conference under section 151AZ to discuss the application for the exemption order;

until:

(c) the Commission decides whether or not to give a notice under subsection 93(3) or (3A) or 93AC(1) or (2); or

(d) if the Commission gives such a notice—the expiry of the time limit allowed for a person to apply to the Tribunal for review of the decision; or

(e) if a person applies to the Tribunal for a review of the decision—the review (including any court proceedings arising out of the review) is finalised.

151AZ Commission may convene conference to discuss application

(1) If the Commission receives an application for an exemption order, the Commission may convene a conference to discuss the application.

(2) If the Commission decides to convene a conference, the Commission must give:

(a) the applicant (or a representative of the applicant); and

(b) any other persons whom the Commission considers interested;

a reasonable opportunity to attend and take part in the conference.

(3) This Act does not prevent a conference under this section from being combined with a conference under section 90A or 93A if the combined conference relates to the same conduct.

151BA Commission must grant or reject application

If the Commission receives an application for an exemption order, the Commission must either:

(a) make the order; or

(b) refuse to make the order.

151BB Commission to give opportunity for submissions

Before making an exemption order, the Commission must give:

(a) the applicant; and

(b) any other person whom the Commission considers interested;

a reasonable opportunity to make submissions to the Commission about the order.

151BC Criteria for making exemption order

(1) The Commission must not make an exemption order in relation to particular conduct of a person unless it is satisfied that:

(a) both:

(i) the conduct will result, or is likely to result, in a benefit to the public; and

(ii) that benefit outweighs, or will outweigh, the detriment to the public constituted by any lessening of competition that will result, or is likely to result, from engaging in the conduct; or

(b) the conduct is not anti-competitive conduct.

(2) In determining whether the Commission is satisfied about the matters referred to in paragraph (1)(a), the Commission may have regard to the following matters:

(a) the extent to which the conduct relates to the supply of goods or services on favourable terms and conditions to:

(i) a financially disadvantaged individual; or

(ii) an individual who is disadvantaged on health grounds; or

(iii) a non-profit community organisation or a non-profit charitable organisation; or

(iv) an educational institution; or

(v) a health facility;

(b) the extent to which the conduct relates to the supply of goods or services for:

(i) community, charitable or educational purposes; or

(ii) the promotion of health or safety;

on favourable terms and conditions;

(c) the need to satisfy any applicable universal service obligation;

(d) the extent to which the conduct prevents or reduces, or is likely to prevent or reduce, pollution or other forms of degradation of environmental amenity;

(e) the extent to which the conduct contributes, or is likely to contribute, to technical innovation, or the development of new goods or services, by Australian industry.

(3) Subsection (2) does not, by implication, limit the matters to which the Commission may have regard.

(4) The Commission must not make an exemption order in relation to particular conduct of a person if:

(a) the conduct is in contravention of section 46; and

(b) subsection 46(6) does not apply to the conduct.

(5) Subsections 151AJ(4) and (5) apply for the purposes of subsection (4) of this section in a corresponding way to the way in which they apply for the purposes of subsection 151AJ(3).

(6) In this section:

environment includes all aspects of the surroundings of human beings, whether affecting human beings as individuals or in social groupings.

151BD Notification of decision

(1) If the Commission makes an exemption order, the Commission must give the applicant a written notice setting out the order and the reasons for the order.

(2) If the Commission refuses to make an exemption order, the Commission must give the applicant a written notice stating that the order has been refused and setting out the reasons for the refusal.

151BE Duration of exemption order may be limited

An exemption order may be expressed to be in force for a period specified in the order.

151BF Conditions of exemption order

An exemption order may be expressed to be subject to such conditions as are specified in the order.

151BG Revocation of exemption order

(1) If:
  (a) an exemption order is in force in relation to a person; and
  (b) the Commission is satisfied that:
    (i) the order was made on the basis of information that was false or misleading in a material particular; or
    (ii) a condition to which the order is subject has been contravened; or
    (iii) there has been a material change of circumstances since the order was made;

the Commission may revoke the order.

(2) The Commission must not revoke an exemption order unless the Commission has first:
  (a) published a draft notice of revocation and invited people to make submissions to the Commission on the draft notice; and
  (b) considered any submissions that were received within the time limit specified by the Commission when it published the draft notice.

(3) The Commission may make a further exemption order under section 151BA in substitution for the revoked order.

(4) If the Commission revokes an exemption order relating to a person, the Commission must give the person a written notice stating that the order has been revoked and setting out the reasons for the revocation.

(5) A revocation of an exemption order takes effect:
  (a) at the time when notice of the revocation is given; or
  (b) if a later time is specified in the notice of the revocation—at that later time.

151BH Register of exemption orders

(1) The Commission must keep a Register in relation to exemption orders.

(2) The Register must include the following:
  (a) particulars of all exemption orders (including orders that have expired);
  (b) applications for exemption orders received by the Commission (including applications that have been withdrawn);
  (c) particulars of decisions refusing to make exemption orders;
  (d) particulars of decisions revoking, or refusing to revoke, exemption orders;
  (e) particulars of the Commission's reasons for making exemption orders.

(3) Despite subsection (2), the Register must not set out information covered by subsection (2) if the disclosure of the information could reasonably be expected to prejudice substantially the commercial interests of the person, or any of the persons, to whom the information relates.

(4) The Register may be maintained by electronic means.

(5) A person may, on payment of the fee (if any) specified in the regulations:
  (a) inspect the Register; and
  (b) make a copy of, or take extracts from, the Register.

(6) For the purposes of this section, if the Register is maintained by electronic means, a person is taken to have made a copy of, or taken an extract from, the Register if the Commission gives the person a printout of, or of the relevant parts of, the Register.

(7) If a person requests that a copy be provided in an electronic form, the Commission may provide the relevant information:
  (a) on a data processing device; or
  (b) by way of electronic transmission.

Subdivision C—Miscellaneous

151BJ *Conduct* includes proposed conduct

A reference in this Division to ***conduct*** includes a reference to proposed conduct.

Division 4—Tariff filing

151BK Tariff filing directions

(1) This section applies to a person who is a carrier or carriage service provider if the Commission is satisfied that the person has a substantial degree of power in a telecommunications market.

(2) The Commission may give the person a written direction that:

(a) contains a statement to the effect that any or all of the following are within the scope of the direction:

(i) specified carriage services;

(ii) specified ancillary goods;

(iii) specified ancillary services; and

(b) complies with subsection (3), (4) or (5).

The direction is called a ***tariff filing direction***.

Note: For enforcement of tariff filing directions, see Division 7.

(3) A direction complies with this subsection if it contains a requirement that if, at the time the direction is given, the person has charges for goods or services within the scope of the direction, the person must give the Commission, within the period and in the form specified in the direction, a written statement setting out such information about those charges as is specified in the direction.

(4) A direction complies with this subsection if it contains a requirement that the person must, at least 7 days before:

(a) imposing a new charge for goods or services within the scope of the direction at any time when the direction is in force; or

(b) varying a charge for goods or services within the scope of the direction at any time when the direction is in force; or

(c) ceasing to impose a charge for goods or services within the scope of the direction at any time when the direction is in force;

give the Commission, in the form specified in the direction, a written statement setting out such information about the person's intentions as is specified in the direction.

Note: See subsection (6) for a special rule relating to this subsection.

(5) A direction complies with this subsection if it contains a requirement that, in the event that the person:

(a) imposes a new charge for goods or services within the scope of the direction at any time when the direction is in force; or

(b) varies a charge for goods or services within the scope of the direction at any time when the direction is in force; or

(c) ceases to impose a charge for goods or services within the scope of the direction at any time when the direction is in force;

the person must give the Commission:

(d) within such period after the imposition, variation or cessation, as the case may be, as is specified in the direction; and

(e) in the form specified in the direction;

a written statement setting out such information about the imposition, variation or cessation, as the case may be, as is specified in the direction.

(6) The Commission may, on the application of the person, make a written determination that subsection (4) has effect, in relation to a specified matter, as if the reference in that subsection to 7 days were a reference to such shorter period as is specified in the determination. The determination has effect accordingly.

(7) This section does not, by implication, limit section 87B or 155.

(8) This section does not prevent 2 or more tariff filing directions being given to the same person at the same time.

(9) For the purposes of this section, information relating to the terms and conditions on which goods or services have been, are being or are proposed to be supplied is taken to be information relating to charges that have been imposed, are being imposed or are proposed to be imposed for those goods or services.

(10) A tariff filing direction given before 1 July 1997 comes into force on 1 July 1997.

(11) In this section:

ancillary goods means goods for use in connection with a carriage service.

ancillary service means a service for use in connection with a carriage service.

variation, in relation to a charge, means a variation of the nature of the charge or the amount of the charge, or both.

151BL Specification of goods and services

(1) Goods or services may be specified in a tariff filing direction by reference to any or all of the following:

(a) the nature of the goods or services;

(b) the customers to whom the goods or services are, or are proposed to be, supplied (whether those customers are identified by name, by inclusion in a specified class or in any other way);

(c) the kinds of terms and conditions on which the goods or services are, or are proposed to be, supplied.

(2) Subsection (1) does not, by implication, limit the ways in which goods and services may be specified in a tariff filing direction.

151BM Notification of reasons

If the Commission gives a tariff filing direction to a person, the Commission must give the person a written notice setting out the reasons for the direction.

151BN Duration of direction may be limited

A tariff filing direction may be expressed to cease to be in force at a time ascertained in accordance with the direction.

Note: A time specified in accordance with the direction may be the time of occurrence of a specified event or the time when a specified condition is satisfied.

151BO Revocation of direction

(1) If a tariff filing direction relating to a person is in force, the Commission may revoke the direction.

(2) The Commission must give the person a written notice stating that the direction has been revoked.

(3) A revocation of a tariff filing direction takes effect:
  (a) at the time when the notice of revocation is given; or
  (b) if a later time is specified in the notice of revocation—at that later time.

151BP Variation of direction

(1) If a tariff filing direction relating to a person is in force, the Commission may vary the direction.

(2) The Commission must give the person a written notice setting out:
  (a) the terms of the variation; and
  (b) the reasons for the variation.

(3) A variation of a tariff filing direction takes effect:
  (a) at the time when the notice of variation is given; or
  (b) if a later time is specified in the notice of variation—at that later time.

151BQ Public access to tariff information

(1) This section applies to a particular item of information given to the Commission by a person (the ***first person***) in accordance with a tariff filing direction.

(2) If the Commission is satisfied that:
  (a) the disclosure of the information would result, or be likely to result, in a benefit to the public; and
  (b) that benefit would outweigh both:
    (i) the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the information were disclosed; and
    (ii) any substantial prejudice to the commercial interests of a person that would result, or be likely to result, if the information were disclosed;

  the Commission must give the first person a written notice stating that the Commission intends to make copies of the information, together with copies of the direction, available for inspection and purchase by the public.

(3) If the Commission gives the first person a notice under subsection (2), the Commission must make copies of the information, together with copies of the direction, available for inspection and purchase by the public:
  (a) as soon as practicable after the end of the 7-day period that began when the notice was given to the first person; or
  (b) if the Commission decides that the information and direction should not be made available during a further period of up to 14 days—after the end of that further period.

151BR Register of tariff filing directions

(1) The Commission must keep a Register in relation to tariff filing directions.

(2) The Register must include the following:
  (a) particulars of all tariff filing directions (including directions that have expired);
  (b) particulars of all revocations of tariff filing directions;

(c) particulars of all variations of tariff filing directions.

(3) The Register may be maintained by electronic means.

(4) A person may, on payment of the fee (if any) specified in the regulations:
(a) inspect the Register; and
(b) make a copy of, or take extracts from, the Register.

(5) For the purposes of this section, if the Register is maintained by electronic means, a person is taken to have made a copy of, or taken an extract from, the Register if the Commission gives the person a printout of, or of the relevant parts of, the Register.

(6) If a person requests that a copy be provided in an electronic form, the Commission may provide the relevant information:
(a) on a data processing device; or
(b) by way of electronic transmission.

151BT Meaning of *terms and conditions*

In this Division:

terms and conditions, in relation to the supply of goods or services, includes:
(a) charges for the supply of the goods or services; and
(b) any discounts, allowances, rebates or credits given or allowed in relation to the supply of the goods or services; and
(c) any commissions or similar benefits (whether monetary or otherwise) payable or given in relation to the supply of the goods or services; and
(d) the supply of other goods or services, where the other goods or services are supplied in connection with the first-mentioned goods or services; and
(e) the making of payments for such other goods or services.

Division 5—Tariff filing by Telstra

151BTA Tariff filing by Telstra

(1) This section applies to a charge for a basic carriage service.

(2) At least 7 days before:

(a) imposing a new charge; or

(b) varying a charge; or

(c) ceasing to impose a charge;

Telstra must give the Commission, in a form approved in writing by the Commission, a written statement setting out such information about Telstra's intentions as the Commission requires.

(3) The Commission may, on the application of Telstra, make a written determination that subsection (2) has effect, in relation to a specified matter, as if the reference in that subsection to 7 days were a reference to such shorter period as specified in the determination.

(4) A determination under subsection (3) has effect accordingly.

(5) Divisions 6 and 7 apply to a contravention of subsection (2) in a corresponding way to the way in which they apply to a contravention of a tariff filing direction.

(6) This section does not, by implication, limit the application of Division 4 to Telstra.

(7) The Commission may, by written notice given to Telstra, exempt a charge for a specified basic carriage service from the scope of subsection (2).

(8) A basic carriage service may be specified for the purposes of subsection (7) by reference to any or all of the following:

(a) the customers to whom the services are, or are proposed to be, supplied;

(b) the kinds of terms and conditions on which the services are, or are proposed to be, supplied.

(9) Subsection (8) does not, by implication, limit subsection (7).

(10) An exemption under subsection (7) may be unconditional or subject to such conditions (if any) as are specified in the exemption.

(11) Section 151BQ applies to information given to the Commission under this section in a corresponding way to the way in which it applies to information given to the Commission in accordance with a tariff filing direction.

(13) In this section:

basic carriage service has the meaning given by section 174 of the *Telecommunications Act 1991*, as in force before 1 July 1997, but does not include a service supplied to an existing carrier.

existing carrier means a person who held a general telecommunications licence, or a public mobile licence, that was in force under the *Telecommunications Act 1991* immediately before 1 July 1997.

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

terms and conditions has the same meaning as in section 151BT.

variation, in relation to a charge, means a variation of the nature of the charge or the amount of the charge, or both.

Division 6—Record-keeping rules and disclosure directions

151BU Commission may make record-keeping rules

(1) The Commission may, by written instrument, make rules for and in relation to requiring one or more specified carriers or one or more specified carriage service providers to keep and retain records. Rules under this subsection may also require those carriers or carriage service providers to prepare reports consisting of information contained in those records. Rules under this subsection may also require those carriers or carriage service providers to give any or all of the reports to the Commission. Rules under this subsection are to be known as ***record-keeping rules***.

Note 1: Carriers and carriage service providers may be specified by name, by inclusion in a specified class or in any other way.

Note 2: For enforcement of the record-keeping rules, see Division 7.

(2) The rules may specify the manner and form in which the records are to be kept.

(2A) The rules may specify the manner and form in which reports are to be prepared.

(2B) The rules may provide for:

(a) the preparation of reports as and when required by the Commission; or

(b) the preparation of periodic reports relating to such regular intervals as are specified in the rules.

(2C) The rules may require or permit a report prepared in accordance with the rules to be given to the Commission, in accordance with specified software requirements and specified authentication requirements:

(a) on a specified kind of data processing device; or

(b) by way of a specified kind of electronic transmission.

(2D) Subsections (2), (2A), (2B) and (2C) do not limit subsection (1).

(3) If the rules apply to a particular carrier or carriage service provider, the Commission must give the carrier or provider a copy of the rules.

(4) The Commission must not exercise its powers under this section so as to require the keeping or retention of records unless the records contain, or will contain, information that is relevant to:

(a) ascertaining whether the competition rule has been, or is being, complied with; or

(b) ascertaining whether tariff filing directions have been, or are being, complied with; or

(c) the operation of this Part (other than this Division); or

(d) the operation of Part XIC (which deals with access); or

(e) the operation of Division 3 of Part 20 of the *Telecommunications Act 1997* (which deals with Rules of Conduct relating to dealings with international telecommunications operators); or

(f) the operation of Part 9 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (which deals with regulation of Telstra's charges).

(5) Record-keeping rules made before 1 July 1997 come into force on 1 July 1997.

(6) This section does not limit section 155 (which is about the general information-gathering powers of the Commission).

151BUAA Minister may give directions to Commission

(1) The Minister may give written directions to the Commission in relation to the exercise of its powers under section 151BU, 151BUDA, 151BUDB or 151BUDC.

(1A) The Minister may only give a direction under subsection (1) that:

(a) requires the Commission to exercise its powers under section 151BU, 151BUDA, 151BUDB or 151BUDC; or

(b) requires the Commission to exercise its powers under section 151BU, 151BUDA, 151BUDB or 151BUDC in a particular way.

(1B) The Minister may give a written direction to the Commission requiring it, in the event that it receives a specified Ministerially-directed report, to:

(a) prepare a specified kind of analysis of the report; and

(b) publish the analysis within a specified period after receiving the report.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

(1C) The Minister may give a written direction to the Commission requiring it, in the event that it receives a report in a specified series of Ministerially-directed periodic reports, to:

(a) prepare a specified kind of analysis of the report; and

(b) publish the analysis within a specified period after receiving the report.

(2) The Commission must comply with a direction under this section.

(3) If:

(a) a record-keeping rule is made as a result of a direction under subsection (1); and

(b) the rule requires the preparation of a report;

then:

(c) the rule must contain a statement to the effect that the rule was made as a result of a Ministerial direction; and

(d) a report prepared under the rule is to be known as a ***Ministerially-directed report***.

(4) A direction under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

151BUAAA Minister to give direction to Commission about Telstra's wholesale operations and retail operations

(1) The Minister must take all reasonable steps to ensure that a special Telstra direction is given within 6 months after the commencement of this section.

(2) For the purposes of this section, a ***special Telstra direction*** is a direction under section 151BUAA that:

(a) relates to Telstra's wholesale operations and retail operations; and

(b) requires the Commission to exercise its powers under section 151BU to make rules requiring Telstra to:

(i) keep and retain particular records; and

(ii) prepare reports consisting of information contained in those records; and

(iii) give those reports to the Commission; and

(c) requires the Commission to exercise its powers under at least one of sections 151BUDA, 151BUDB and 151BUDC in relation to those reports.

(3) Before giving a special Telstra direction in compliance with subsection (1), the Minister must:

(a) publish a draft of the direction and invite people to make submissions to the Minister on the draft direction; and

(b) consider any submissions that are received within the time limit specified by the Minister when he or she published the draft direction.

(4) This section does not, by implication, limit the Minister's powers to give subsequent directions to the Commission in relation to Telstra's wholesale operations and retail operations.

(5) In this section:

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

wholesale operations includes operations in relation to services that Telstra supplies:

(a) to itself; or

(b) to other persons, in order that the other persons can provide carriage services and/or content services.

151BUAB Request for disclosure

(1) A person may request the Commission to exercise its powers under:

(a) section 151BUA or 151BUB in relation to a particular report; or

(b) section 151BUC in relation to a particular series of periodic reports.

(2) The request must be in writing.

(3) The Commission must consider the request.

(4) However, the Commission need not consider the request if it considers that the request is frivolous, vexatious or was not made in good faith.

151BUA Commission gives access to reports

(1) This section applies to a particular report given to the Commission by a carrier, or a carriage service provider, in accordance with the record-keeping rules.

Criteria for disclosure

(2) If the Commission is satisfied that the disclosure of the report, or the disclosure of particular extracts from the report, would be likely to:

(a) promote competition in markets for listed carriage services; or

(b) facilitate the operation of:

(i) this Part (other than this Division); or

(ii) Part XIC (which deals with access); or

(iii) Division 3 of Part 20 of the *Telecommunications Act 1997* (which deals with Rules of Conduct relating to dealings with international telecommunications operators); or

(iv) Part 9 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (which deals with regulation of Telstra's charges);

the Commission may give the carrier or carriage service provider concerned:

(c) a written notice stating that the Commission intends to make copies of the report or extracts, together with other relevant material (if any) specified in the notice,

available for inspection and purchase by the public as soon as practicable after the end of the period specified in the notice; or

(d) a written notice stating that the Commission intends to make copies of the report or extracts, together with other relevant material (if any) specified in the notice, available for inspection and purchase:

(i) by such persons as are specified in the notice; and

(ii) on such terms and conditions (if any) as are specified in the notice;

as soon as practicable after the end of the period specified in the notice.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

Period specified in notice

(3) The period specified in a notice under subsection (2) must run for at least 28 days after the notice was given.

Criteria for giving notice

(4) In deciding whether to give a notice under subsection (2), the Commission must have regard to:

(a) the legitimate commercial interests of the carrier or carriage service provider concerned; and

(b) such other matters as the Commission considers relevant.

Consultation before giving notice

(5) The Commission must not give the carrier or carriage service provider concerned a notice under subsection (2) unless the Commission has first:

(a) given the carrier or carriage service provider a written notice:

(i) setting out a draft version of the notice under subsection (2); and

(ii) inviting the carrier or carriage service provider to make a submission to the Commission on the draft by a specified time limit; and

(b) considered any submission that was received within that time limit.

The time limit specified in a notice under paragraph (a) must be at least 28 days after the notice was given.

Public access

(6) If the Commission gives the carrier or carriage service provider concerned a notice under paragraph (2)(c), the Commission:

(a) must make copies of the report or extracts, together with the other material (if any) specified in the notice, available for inspection and purchase by the public as soon as practicable after the end of the period specified in the notice; and

(b) may also give a written direction to the carrier or carriage service provider concerned requiring it to take such action as is specified in the direction to inform the public, or such persons as are specified in the direction, that the report is, or the extracts are, so available.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

(7) A person must comply with a direction under paragraph (6)(b).

Limited access

(8) If the Commission gives the carrier or carriage service provider concerned a notice under paragraph (2)(d), the Commission must:

(a) make copies of the report or extracts, together with the other material (if any) specified in the notice, available for inspection and purchase by the persons specified in the notice as soon as practicable after the end of the period specified in the notice; and

(b) take reasonable steps to inform the persons who inspect or purchase copies of the report or extracts of the terms and conditions (if any) that are specified in the notice.

(9) If, in accordance with subsection (8), a person inspects or purchases a copy of the report or extracts, the person must comply with the terms and conditions (if any) that are specified in the notice concerned.

Offences

(10) A person who contravenes subsection (7) is guilty of an offence punishable on conviction by a fine not exceeding 20 penalty units.

(11) A person who contravenes subsection (9) is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

151BUB Carrier or carriage service provider gives access to reports

(1) This section applies to a report prepared by a carrier, or a carriage service provider, in accordance with the record-keeping rules.

Disclosure direction

(2) If the Commission is satisfied that the disclosure of the report, or the disclosure of particular extracts from the report, would be likely to:

(a) promote competition in markets for listed carriage services; or

(b) facilitate the operation of:

(i) this Part (other than this Division); or

(ii) Part XIC (which deals with access); or

(iii) Division 3 of Part 20 of the *Telecommunications Act 1997* (which deals with Rules of Conduct relating to dealings with international telecommunications operators); or

(iv) Part 9 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (which deals with regulation of Telstra's charges);

the Commission may give the carrier or carriage service provider concerned:

(c) a written direction requiring it to make copies of the report or extracts, together with other relevant material (if any) specified in the direction, available for inspection and purchase by the public as soon as practicable after the end of the period specified in the direction; or

(d) a written direction requiring it to make copies of the report or extracts, together with other relevant material (if any) specified in the direction, available for inspection and purchase:

(i) by such persons as are specified in the direction; and

(ii) on such terms and conditions (if any) as are specified in the direction;

as soon as practicable after the end of the period specified in the direction.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

(3) The period specified in a direction under subsection (2) must run for at least 28 days after the direction was given.

(4) A direction under paragraph (2)(d) is also taken to require the carrier or carriage service provider concerned to take reasonable steps to inform the persons who inspect or purchase copies of the report or extracts of the terms and conditions (if any) that are specified in the direction.

Criteria for giving direction

(5) In deciding whether to give a direction under subsection (2), the Commission must have regard to:

(a) the legitimate commercial interests of the carrier or carriage service provider concerned; and

(b) such other matters as the Commission considers relevant.

Consultation before giving direction

(6) The Commission must not give the carrier or carriage service provider concerned a direction under subsection (2) unless the Commission has first:

(a) given the carrier or carriage service provider a written notice:

(i) setting out a draft version of the direction; and

(ii) inviting the carrier or carriage service provider to make a submission to the Commission on the draft by a specified time limit; and

(b) considered any submission that was received within that time limit.

The time limit specified in the notice must be at least 28 days after the notice was given.

Direction to give information about availability of report

(7) If the Commission gives the carrier or carriage service provider concerned a direction under paragraph (2)(c), the Commission may also give it a written direction requiring it to take such action as is specified in the direction to inform the public that the report is, or extracts are, available for inspection and purchase.

(8) If the Commission gives the carrier or carriage service provider concerned a direction under paragraph (2)(d), the Commission may also give it a written direction requiring it to take such action as is specified in the direction to inform the persons specified in the paragraph (2)(d) direction that the report is, or the extracts are, available for inspection and purchase.

(9) A person must comply with a direction under subsection (7) or (8).

Reasonable charge

(10) The price charged by the carrier or carriage service provider concerned for the purchase of a copy of the report or extracts and the other material (if any) must not exceed the reasonable costs incurred by the carrier or carriage service provider concerned in making the copy of the report or extracts and the other material (if any) available for purchase.

Compliance with terms and conditions

(11) If, in accordance with a direction under paragraph (2)(d), a person inspects or purchases a copy of the report or extracts, the person must comply with the terms and conditions (if any) that are specified in the direction.

Offences

(12) A person who contravenes subsection (9) is guilty of an offence punishable on conviction by a fine not exceeding 20 penalty units.

(13) A person who contravenes subsection (11) is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

Section 151BUC does not limit this section

(14) Section 151BUC does not limit this section.

151BUC Carrier or carriage service provider gives access to periodic reports

(1) This section applies to a particular series of periodic reports that are required to be prepared by a carrier, or a carriage service provider, in accordance with the record-keeping rules.

Disclosure direction

(2) If the Commission is satisfied that the disclosure of each of the reports in that series, or the disclosure of particular extracts from each of the reports in that series, would be likely to:

(a) promote competition in markets for listed carriage services; or

(b) facilitate the operation of:

(i) this Part (other than this Division); or

(ii) Part XIC (which deals with access); or

(iii) Division 3 of Part 20 of the *Telecommunications Act 1997* (which deals with Rules of Conduct relating to dealings with international telecommunications operators); or

(iv) Part 9 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (which deals with regulation of Telstra's charges);

the Commission may give the carrier or carriage service provider concerned:

(c) a written direction requiring it to make copies of each of those reports or extracts, together with other relevant material (if any) specified in the direction, available for inspection and purchase by the public by such times as are ascertained in accordance with the direction; or

(d) a written direction requiring it to make copies of each of those reports or extracts, together with other relevant material (if any) specified in the direction, available for inspection and purchase:

(i) by such persons as are specified in the direction; and

(ii) on such terms and conditions (if any) as are specified in the direction;

by such times as are ascertained in accordance with the direction.

Note 1: For example, a direction under paragraph (2)(c) could require that each report in a particular series of quarterly reports be made available by the 28th day after the end of the quarter to which the report relates.

Note 2: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

(3) In the case of the first report in the series (or extracts from that report), the applicable time ascertained in accordance with a direction under subsection (2) must be later than the 28th day after the day on which the direction was given.

(4) A direction under paragraph (2)(d) is also taken to require the carrier or carriage service provider concerned to take reasonable steps to inform the persons who inspect or

purchase copies of the report or extracts of the terms and conditions (if any) that are specified in the direction.

Criteria for giving direction

(5) In deciding whether to give a direction under subsection (2), the Commission must have regard to:

(a) the legitimate commercial interests of the carrier or carriage service provider concerned; and

(b) such other matters as the Commission considers relevant.

Consultation before giving direction

(6) The Commission must not give the carrier or carriage service provider concerned a direction under subsection (2) unless the Commission has first:

(a) given the carrier or carriage service provider a written notice:

(i) setting out a draft version of the direction; and

(ii) inviting the carrier or carriage service provider to make a submission to the Commission on the draft by a specified time limit; and

(b) considered any submission that was received within that time limit.

The time limit specified in the notice must be at least 28 days after the notice was given.

Direction to give information about availability of reports

(7) If the Commission gives the carrier or carriage service provider concerned a direction under paragraph (2)(c), the Commission may also give it a written direction requiring it to take such action as is specified in the direction to inform the public that each of those reports is, or extracts are, available for inspection and purchase.

(8) If the Commission gives the carrier or carriage service provider concerned a direction under paragraph (2)(d), the Commission may also give it a written direction requiring it to take such action as is specified in the direction to inform the persons specified in the paragraph (2)(d) direction that each of those reports is, or the extracts are, available for inspection and purchase.

(9) A person must comply with a direction under subsection (7) or (8).

Reasonable charge

(10) The price charged by the carrier or carriage service provider concerned for the purchase of a copy of the report or extracts and the other material (if any) must not exceed the reasonable costs incurred by the carrier or carriage service provider concerned in making the copy of the report or extracts and the other material (if any) available for purchase.

Compliance with terms and conditions

(11) If, in accordance with a direction under paragraph (2)(d), a person inspects or purchases a copy of the report or extracts, the person must comply with the terms and conditions (if any) that are specified in the direction.

Offences

(12) A person who contravenes subsection (9) is guilty of an offence punishable on conviction by a fine not exceeding 20 penalty units.

(13) A person who contravenes subsection (11) is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

151BUD Exemption of reports from access requirements

Full exemption

(1) The Commission may make a written determination exempting specified reports from the scope of sections 151BUA, 151BUB and 151BUC, either:

(a) unconditionally; or

(b) subject to such conditions (if any) as are specified in the determination.

The determination has effect accordingly.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

(2) If all of the information contained in a report (the ***first report***) is, or is to be, set out in a report under Division 12A, the first report is exempt from the scope of sections 151BUA, 151BUB and 151BUC.

Partial exemption

(3) The Commission may make a written determination that specified information is ***exempt information*** for the purposes of this section, either:

(a) unconditionally; or

(b) subject to such conditions (if any) as are specified in the determination.

The determination has effect accordingly.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

(4) If some, but not all, of the information contained in a report is, or is to be, set out in a report under Division 12A, so much of the information as is, or is to be, set out in the Division 12A report is ***exempt information*** for the purposes of this section.

(5) If a report contains exempt information, sections 151BUA, 151BUB and 151BUC apply as if:

(a) the exempt information were not part of the report; and

(b) so much of the report as does not consist of the exempt information were a report in its own right.

Disallowable instrument

(6) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

151BUDA Commission gives access to Ministerially-directed reports

(1) This section applies to a particular Ministerially-directed report given to the Commission by a carrier, or a carriage service provider, in accordance with the record-keeping rules.

Public access

(2) The Commission:

(a) may make:

(i) copies of the report or copies of extracts from the report; and

(ii) such other relevant material (if any) as the Commission determines;

available to the public; and

(b) may also give a written direction to the carrier or provider requiring it to take such action as is specified in the direction to inform the public, or such persons as are specified in the direction, that the report is, or the extracts are, so available.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

Limited access

(3) The Commission may make:

(a) copies of the report or copies of extracts from the report; and

(b) such other relevant material (if any) as the Commission determines;

available:

(c) to particular persons; and

(d) on such terms and conditions (if any) as the Commission determines.

(4) If subsection (3) applies, the Commission must take reasonable steps to inform the persons who access copies of the report or extracts of the terms and conditions (if any) on which the copies are available.

(5) If, in accordance with subsection (3), a person accesses a copy of the report or extracts, the person must comply with the terms and conditions (if any) on which the copy is available.

Offences

(6) A person is guilty of an offence if:

(a) the person is subject to a direction under paragraph (2)(b); and

(b) the person omits to do an act; and

(c) the omission breaches the direction.

Penalty: 20 penalty units.

(7) A person is guilty of an offence if:

(a) the person is subject to a requirement under subsection (5); and

(b) the person does an act or omits to do an act; and

(c) the act or omission breaches the requirement.

Penalty: 100 penalty units.

Exercise of power by Commission

(8) The Commission may only exercise a power under this section as required by a direction in force under section 151BUAA.

Application of section 151BUA

(9) This section does not limit section 151BUA.

151BUDB Carrier or carriage service provider gives access to Ministerially-directed reports

(1) This section applies to a Ministerially-directed report prepared by a carrier, or a carriage service provider, in accordance with the record-keeping rules.

Disclosure direction

(2) The Commission may give the carrier or provider:

(a) a written direction requiring it to make copies of the report or copies of particular extracts from the report, together with other relevant material (if any) specified in the direction, available:

(i) to the public; and

(ii) in the manner specified in the direction; and

(iii) as soon as practicable after the end of the period specified in the direction; or

(b) a written direction requiring it to make copies of the report or copies of particular extracts from the report, together with other relevant material (if any) specified in the direction, available:

(i) to such persons as are specified in the direction; and

(ii) on such terms and conditions (if any) as are specified in the direction; and

(iii) in the manner specified in the direction; and

(iv) as soon as practicable after the end of the period specified in the direction.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

(3) A direction under paragraph (2)(b) is also taken to require the carrier or provider to take reasonable steps to inform the persons who access the copies of the report or extracts of the terms and conditions (if any) that are specified in the direction.

Direction to give information about availability of report

(4) If the Commission gives the carrier or provider a direction under paragraph (2)(a), the Commission may also give it a written direction requiring it to take such action as is specified in the direction to inform the public:

(a) that the report is, or extracts are, available; and

(b) of the way in which the report or extracts may be accessed.

(5) If the Commission gives the carrier or provider a direction under paragraph (2)(b), the Commission may also give it a written direction requiring it to take such action as is specified in the direction to inform the persons specified in the paragraph (2)(b) direction that:

(a) the report is, or the extracts are, available; and

(b) of the way in which the report or extracts may be accessed.

Compliance with terms and conditions

(6) If, in accordance with a direction under paragraph (2)(b), a person accesses a copy of the report or extracts, the person must comply with the terms and conditions (if any) that are specified in the direction.

Offences

(7) A person is guilty of an offence if:

(a) the person is subject to a direction under subsection (4) or (5); and

(b) the person omits to do an act; and

(c) the omission breaches the direction.

Penalty: 20 penalty units.

(8) A person is guilty of an offence if:

(a) the person is subject to a requirement under subsection (6); and

(b) the person does an act or omits to do an act; and

(c) the act or omission breaches the requirement.

Penalty: 100 penalty units.

Exercise of power by Commission

(9) The Commission may only exercise a power under this section as required by a direction in force under section 151BUAA.

Application of section 151BUB

(10) This section does not limit section 151BUB.

Application of section 151BUDC

(11) Section 151BUDC does not limit this section.

151BUDC Carrier or carriage service provider gives access to Ministerially-directed periodic reports

(1) This section applies to a particular series of Ministerially-directed periodic reports that are required to be prepared by a carrier, or a carriage service provider, in accordance with the record-keeping rules.

Disclosure direction

(2) The Commission may give the carrier or provider:

(a) a written direction requiring it to make copies of each of the reports in that series or copies of particular extracts from each of the reports in that series, together with other relevant material (if any) specified in the direction, available:

(i) to the public; and

(ii) in the manner specified in the direction; and

(iii) by such times as are ascertained in accordance with the direction; or

(b) a written direction requiring it to make copies of each of the reports in the series or copies of particular extracts from each of the reports in the series, together with other relevant material (if any) specified in the direction, available:

(i) to such persons as are specified in the direction; and

(ii) on such terms and conditions (if any) as are specified in the direction; and

(iii) in the manner specified in the direction; and

(iv) by such times as are ascertained in accordance with the direction.

Note 1: For example, a direction under paragraph (2)(a) could require that each report in a particular series of quarterly reports be made available by the 28th day after the end of the quarter to which the report relates.

Note 2: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

(3) A direction under paragraph (2)(b) is also taken to require the carrier or provider to take reasonable steps to inform the persons who access the copies of the report or extracts of the terms and conditions (if any) that are specified in the direction.

Direction to give information about availability of report

(4) If the Commission gives the carrier or provider a direction under paragraph (2)(a), the Commission may also give it a written direction requiring it to take such action as is specified in the direction to inform the public:

(a) that each of those reports is, or extracts are, available; and

(b) of the way in which those reports or extracts may be accessed.

(5) If the Commission gives the carrier or provider a direction under paragraph (2)(b), the Commission may also give it a written direction requiring it to take such action as is specified in the direction to inform the persons specified in the paragraph (2)(b) direction:

(a) that each of those reports is, or extracts are, available; and

(b) of the way in which those reports or extracts may be accessed.

Compliance with terms and conditions

(6) If, in accordance with a direction under paragraph (2)(b), a person accesses a copy of the report or extracts, the person must comply with the terms and conditions (if any) that are specified in the direction.

Offences

(7) A person is guilty of an offence if:

(a) the person is subject to a direction under subsection (4) or (5); and

(b) the person omits to do an act; and

(c) the omission breaches the direction.

Penalty: 20 penalty units.

(8) A person is guilty of an offence if:

(a) the person is subject to a requirement under subsection (6); and

(b) the person does an act or omits to do an act; and

(c) the act or omission breaches the requirement.

Penalty: 100 penalty units.

Exercise of power by Commission

(9) The Commission may only exercise a power under this section as required by a direction in force under section 151BUAA.

Application of section 151BUC

(10) This section does not limit section 151BUC.

Application of section 151BUDB

(11) Section 151BUDB does not limit this section.

151BUE Access via the Internet

If the Commission, a carrier or a carriage service provider is required under this Division to make copies of a report, extracts or other material available for inspection and purchase, the Commission, carrier or carriage service provider, as the case may be, may

comply with that requirement by making the report, extracts or other material available for inspection and purchase on the Internet.

151BUF Self-incrimination

(1) An individual is not excused from giving a report under the record-keeping rules, or from making a report or extracts available under this Division, on the ground that the report or extracts might tend to incriminate the individual or expose the individual to a penalty.

(2) However:

(a) giving the report or making the report or extracts available; or

(b) any information, document or thing obtained as a direct or indirect consequence of giving the report or making the report or extracts available;

is not admissible in evidence against the individual in:

(c) criminal proceedings other than proceedings under, or arising out of, section 151BV; or

(d) proceedings under section 151BY for recovery of a pecuniary penalty in relation to a contravention of a disclosure direction.

151BV Incorrect records

(1) A person must not, in purported compliance with a requirement imposed by the record-keeping rules, make a record of any matter or thing in such a way that it does not correctly record the matter or thing.

(2) A person who contravenes subsection (1) is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 6 months.

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

Division 7—Enforcement of the competition rule, tariff filing directions, record-keeping rules and disclosure directions

151BW Person involved in a contravention of the competition rule, a tariff filing direction, a record-keeping rule or a disclosure direction

A reference in this Division to a person involved in a contravention of the competition rule, a tariff filing direction, a record-keeping rule or a disclosure direction is a reference to a person who:

(a) has aided, abetted, counselled or procured the contravention; or

(b) has induced, whether by threats or promises or otherwise, the contravention; or

(c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or

(d) has conspired with others to effect the contravention.

151BX Pecuniary penalties for breach of the competition rule, a tariff filing direction, a record-keeping rule or a disclosure direction

(1) If the Federal Court is satisfied that a person:

(a) has contravened the competition rule, a tariff filing direction, a record-keeping rule or a disclosure direction; or

(b) has attempted to contravene the competition rule, a tariff filing direction, a record-keeping rule or a disclosure direction; or

(c) has been involved in a contravention of the competition rule, a tariff filing direction, a record-keeping rule or a disclosure direction;

the Court may order the person to pay to the Commonwealth such pecuniary penalty, in respect of each contravention, as the Court determines to be appropriate.

(2) In determining a pecuniary penalty, the Court must have regard to all relevant matters, including:

(a) the nature and extent of the contravention; and

(b) the nature and extent of any loss or damage suffered as a result of the contravention; and

(c) the circumstances in which the contravention took place; and

(d) whether the person has previously been found by the Court in proceedings under this Act to have engaged in any similar conduct.

(3) The pecuniary penalty payable under subsection (1) by a body corporate is not to exceed:

(a) in the case of a contravention of the competition rule—for each contravention:

(i) if the contravention continued for more than 21 days—the sum of $31 million and $3 million for each day in excess of 21 that the contravention continued; or

(ii) otherwise—the sum of $10 million and $1 million for each day that the contravention continued; or

(b) in the case of a contravention of a tariff filing direction—$10 million for each contravention; or

(c) in the case of a contravention of a record-keeping rule or of a disclosure direction—$250,000 for each contravention.

(4) The pecuniary penalty payable under subsection (1) by a person other than a body corporate is not to exceed:

(a) in the case of a contravention of a record-keeping rule or of a disclosure direction—$50,000 for each contravention; or

(b) in any other case—$500,000 for each contravention.

(5) If conduct constitutes a contravention of:

(a) 2 or more tariff filing directions; or

(b) 2 or more record-keeping rules; or

(c) 2 or more disclosure directions;

proceedings may be instituted under this Act against a person in relation to the contravention of any one or more of the tariff filing directions, record-keeping rules or disclosure directions. However, the person is not liable to more than one pecuniary penalty under this section in respect of the same conduct.

(6) If a person's conduct gives rise to a liability to pay a pecuniary penalty under:

(a) this Part; and

(b) Part VI;

proceedings relating to the conduct may be instituted against the person under this Part or under Part VI. However, the person is not liable to more than one pecuniary penalty in respect of the same conduct.

151BY Civil action for recovery of pecuniary penalties

(1) The Commission may institute a proceeding in the Federal Court for the recovery on behalf of the Commonwealth of a pecuniary penalty referred to in section 151BX.

(2) A proceeding under subsection (1) may be commenced within 6 years after the contravention.

(3) A proceeding under subsection (1) must not be instituted in relation to:

(a) a contravention of the competition rule; or

(b) attempting to contravene the competition rule; or

(c) aiding, abetting, counselling or procuring a person to contravene the competition rule; or

(d) inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene the competition rule; or

(e) being in any way, directly or indirectly, knowingly concerned in, or party to, a contravention by a person of the competition rule; or

(f) conspiring with others to contravene the competition rule;

unless:

(g) in a case where paragraph (a) applies—the alleged conduct is of a kind dealt with in a Part A competition notice that was in force in relation to the carrier or carriage service provider concerned at the time when the alleged conduct occurred; or

(h) in any other case—the alleged conduct is related to conduct of a kind dealt with in a Part A competition notice that was in force in relation to the carrier or carriage service provider concerned at the time when the alleged conduct occurred.

151BZ Criminal proceedings not to be brought for contraventions of the competition rule, tariff filing directions, record-keeping rules or disclosure directions

(1) Criminal proceedings do not lie against a person only because the person:

(a) has contravened the competition rule, a tariff filing direction, a record-keeping rule or a disclosure direction; or

(b) has attempted to contravene the competition rule, a tariff filing direction, a record-keeping rule or a disclosure direction; or

(c) has been involved in a contravention of the competition rule, a tariff filing direction, a record-keeping rule or a disclosure direction.

(2) To avoid doubt, this section does not affect the operation of Division 137 of the *Criminal Code* in respect of tariff information.

(3) To avoid doubt, subsection (1) does not apply in relation to proceedings for an offence against section 44ZZRF or 44ZZRG.

151CA Injunctions

(1) Subject to subsection (3), if the Federal Court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute:

(a) a contravention of the competition rule, a tariff filing direction, a record-keeping rule or a disclosure direction; or

(b) attempting to contravene the competition rule, a tariff filing direction, a record-keeping rule or a disclosure direction; or

(c) aiding, abetting, counselling or procuring a person to contravene the competition rule, a tariff filing direction, a record-keeping rule or a disclosure direction; or

(d) inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene the competition rule, a tariff filing direction, a record-keeping rule or a disclosure direction; or

(e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of the competition rule, a tariff filing direction, a record-keeping rule or a disclosure direction; or

(f) conspiring with others to contravene the competition rule, a tariff filing direction, a record-keeping rule or a disclosure direction;

the Court may, on the application of the Commission or any other person, grant an injunction in such terms as the Court determines to be appropriate.

(2) If:

(a) an application for an injunction under subsection (1) has been made; and

(b) the Court determines it to be appropriate to do so;

the Court may grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that a person has engaged, or is proposing to engage, in conduct of a kind mentioned in subsection (1).

(3) If, in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

(4) The Court may rescind or vary an injunction granted under subsection (1) or (3).

(5) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:

(a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and

(b) whether or not the person has previously engaged in conduct of that kind; and

(c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(6) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised:

(a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and

(b) whether or not the person has previously refused or failed to do that act or thing; and

(c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

(7) If the Commission makes an application to the Court for the grant of an injunction under this section, the Court must not require the applicant or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

151CB Orders to disclose information or publish an advertisement—breach of the competition rule

(1) If, on the application of the Commission, the Federal Court is satisfied that a person (the ***first person***) has engaged in conduct constituting a contravention of the competition rule, the Court may make either or both of the following orders:

(a) an order requiring the first person, or a person involved in the contravention, to disclose to the public, or to one or more specified persons, in such manner as is specified in the order, specified information, where the information is:

(i) in the possession of the first person; or

(ii) information to which the first person has access;

(b) an order requiring the first person, or a person involved in the contravention, to publish, at the person's own expense, in a manner and at times specified in the order, advertisements the terms of which are specified in, or are to be determined in accordance with, the order.

(2) Subsection (1) does not limit section 151CA.

(3) An application under subsection (1) must not be made in relation to a contravention of the competition rule unless the alleged conduct is of a kind dealt with in a Part A competition notice that was in force in relation to the carrier or carriage service provider concerned at the time when the alleged conduct occurred.

151CC Actions for damages—breach of the competition rule

(1) A person who suffers loss or damage by conduct of another person that was done in contravention of the competition rule may recover the amount of the loss or damage by action against:

(a) that other person; or

(b) any person involved in the contravention.

(2) An action under subsection (1) may be commenced at any time within 3 years after the date on which the cause of action accrued.

(3) An action under subsection (1) must not be brought in relation to a contravention of the competition rule unless the alleged conduct is of a kind dealt with in a Part A competition notice that was in force in relation to the carrier or carriage service provider concerned at the time when the alleged conduct occurred.

151CD Finding of fact in proceedings to be evidence

(1) This section applies to a finding of any fact by a court made in proceedings under section 151BY, 151CA or 151CB in which a person has been found to have contravened,

or to have been involved in a contravention of, the competition rule or a tariff filing direction.

(2) In:

(a) a proceeding under section 151CC against the person; or

(b) an application under subsection 151CE(1) for an order against the person;

the finding:

(c) is prima facie evidence of that fact; and

(d) may be proved by production of a document under the seal of the court from which the finding appears.

151CE Other orders—compensation for breach of the competition rule

(1) If, in a proceeding instituted under this Division in relation to a contravention of the competition rule, the Federal Court finds that a person who is a party to the proceeding has suffered, or is likely to suffer, loss or damage by conduct of another person that was engaged in in contravention of the competition rule, the Court may, on the application of a party to the proceedings, make such orders as it thinks appropriate against:

(a) the person who engaged in the conduct; or

(b) a person who was involved in the contravention;

if the Court considers that the orders concerned will:

(c) compensate the first-mentioned person, in whole or in part, for the loss or damage; or

(d) prevent or reduce the loss or damage.

(2) The Federal Court may make an order under subsection (1) whether or not it:

(a) grants an injunction under section 151CA; or

(b) makes an order under section 151BX, 151CB or 151CC.

(3) Subsection (1) does not, by implication, limit section 151CA.

(4) The Federal Court's orders include, but are not limited to, the following:

(a) an order declaring the whole or any part of:

(i) a contract made between the person who suffered, or is likely to suffer, the loss or damage and the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct; or

(ii) a collateral arrangement relating to such a contract;

to be void and, if the Court thinks fit, to have been void *ab initio* or at all times on and after such date before the date on which the order is made as is specified in the order;

(b) an order varying such a contract or arrangement in such manner as is specified in the order and, if the Court thinks fit, declaring the contract or arrangement to have had effect as so varied on and after such date before the date on which the order is made as is so specified;

(c) an order refusing to enforce any or all of the provisions of such a contract or collateral arrangement;

(d) an order directing:

(i) the person who engaged in the conduct; or

(ii) a person who was involved in the contravention constituted by the conduct;

to refund money or return property to the person who suffered the loss or damage;

(e) an order directing:

(i) the person who engaged in the conduct; or

(ii) a person who was involved in the contravention constituted by the conduct;

to pay to the person who suffered the loss or damage the amount of the loss or damage;

(f) an order directing:

(i) the person who engaged in the conduct; or

(ii) a person who was involved in the contravention constituted by the conduct;

at the person's own expense, to supply specified goods or services to the person who suffered, or is likely to suffer, the loss or damage.

(5) An application under subsection (1) must not be made in relation to a contravention of the competition rule unless the alleged conduct is of a kind dealt with in a Part A competition notice that was in force in relation to the carrier or carriage service provider concerned at the time when the alleged conduct occurred.

(6) The powers conferred on the Federal Court by this section in relation to a contract do not affect any powers that any other court may have in relation to the contract in proceedings instituted in that other court in respect of the contract.

151CF Conduct by directors, employees or agents

Part 32 of the *Telecommunications Act 1997* applies in relation to proceedings under this Division in a corresponding way to the way in which it applies to proceedings under that Act (as defined by section 574 of that Act).

Division 8—Disclosure of documents by Commission

151CG Disclosure of documents by Commission

(1) This section applies to a person if:

(a) the person makes an application to the Commission for an exemption order; or

(b) under section 151BG, the Commission gives the person an opportunity to make a submission to the Commission about a proposal to revoke an exemption order; or

(c) the Commission institutes a proceeding against the person under Division 7.

(2) The Commission must, at the request of the person and on payment of the fee (if any) specified in the regulations, give to the person:

(a) a copy of each document that has been given to, or obtained by, the Commission in connection with the matter to which the application, proposal or proceeding relates and tends to establish the person's case; and

(b) a copy of any other document in the possession of the Commission that comes to the attention of the Commission in connection with the matter and to which the application, proposal or proceeding relates and tends to establish the person's case;

so long as the document is not obtained from the person or prepared by an officer or professional adviser of the Commission.

(3) If the Commission does not comply with a request under subsection (2), the Federal Court must, upon application by the person, make an order directing the Commission to comply with the request. This rule has effect subject to subsection (4).

(4) The Federal Court may refuse to make an order under subsection (3) about a document or a part of a document if the Federal Court considers it inappropriate to make the order on the grounds that the disclosure of the contents of the document or part of the document would prejudice any person, or for any other reason.

(5) Before the Federal Court gives a decision on an application under subsection (3), the Federal Court may require any documents to be produced to it for inspection.

(6) An order under this section may be expressed to be subject to such conditions as are specified in the order.

Division 9—Treatment of partnerships

151CH Treatment of partnerships

This Part applies to a partnership as if the partnership was a person, but it applies with the following changes:

(a) obligations that would be imposed on the partnership are imposed instead on each partner, but may be discharged by any of the partners;

(b) any offence against this Part that would otherwise be committed by the partnership is taken to have been committed by each partner who:

(i) aided, abetted, counselled or procured the relevant act or omission; or

(ii) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner).

Division 10—Review of decisions

151CI Review by Tribunal

(1) If the Commission makes a decision under section 151BA to refuse to make an exemption order relating to conduct of a person, the person may apply to the Tribunal for a review of the decision.

(2) If the Commission makes a decision under section 151BG to revoke an exemption order relating to conduct of a person, the person may apply to the Tribunal for a review of the decision.

(3) If the Commission makes a decision under section 151BQ to make information obtained from a person available for inspection and purchase, the person may apply to the Tribunal for a review of the decision.

(3A) If the Commission:

(a) makes a decision under section 151BUA to make a report obtained from a person, or an extract from such a report, available for inspection and purchase; or

(b) makes a decision under section 151BUB or 151BUC to give a person a written direction to make a report or extract available for inspection and purchase;

the person may apply to the Tribunal for a review of the decision.

(4) An application under this section for a review of a decision must be:

(a) in writing; and

(b) in the case of an application under subsection (1) or (2)—made within 21 days after the Commission made the decision; and

(c) in the case of an application under subsection (3)—made within 7 days after the Commission made the decision; and

(d) in the case of an application under subsection (3A)—made within 28 days after the Commission made the decision.

(5) If the Tribunal receives an application under this section for a review of a decision, the Tribunal must review the decision.

151CJ Functions and powers of Tribunal

Decision on review

(1) On a review of a decision of the Commission of a kind mentioned in section 151CI, the Tribunal may make a decision:

(a) in any case—affirming the Commission's decision; or

(b) in the case of a review of a decision of the Commission under section 151BA refusing to make an exemption order—both:

(i) setting aside the Commission's decision; and

(ii) in substitution for the decision so set aside, making an exemption order; or

(c) in the case of a review of a decision of the Commission under section 151BG to revoke an exemption order—setting aside the Commission's decision; or

(d) in the case of a review of a decision of the Commission under section 151BQ, 151BUA, 151BUB or 151BUC—setting aside or varying the Commission's decision;

and, for the purposes of the review, the Tribunal may perform all the functions and exercise all the powers of the Commission.

(2) A decision by the Tribunal:

(a) affirming a decision of the Commission; or

(b) setting aside a decision of the Commission; or

(c) made in substitution for a decision of the Commission; or

(d) varying a decision of the Commission;

is taken, for the purposes of this Act (other than this Division), to be a decision of the Commission.

Conduct of review

(3) For the purposes of a review by the Tribunal, the member of the Tribunal presiding at the review may require the Commission to give such information, make such reports and provide such other assistance to the Tribunal as the member specifies.

(4) For the purposes of a review, the Tribunal may have regard to any information given, documents produced or evidence given to the Commission in connection with the making of the decision to which the review relates.

Note: Division 2 of Part IX applies to proceedings before the Tribunal.

151CK Provisions that do not apply in relation to a Tribunal review

Division 1 of Part IX does not apply in relation to a review by the Tribunal of a decision of the Commission of a kind mentioned in section 151CI.

Division 11—Reviews of competitive safeguards within the telecommunications industry

151CL Reviews of competitive safeguards within the telecommunications industry

(1) The Commission must review, and report each financial year to the Minister on, competitive safeguards within the telecommunications industry, including:

(a) matters relating to the operation of this Part and Part XIC; and

(b) such other matters relating to competition in the telecommunications industry as the Commission thinks appropriate.

(2) The Commission must give a report under subsection (1) to the Minister as soon as practicable after the end of the financial year concerned.

(3) The Commission must, if directed in writing to do so by the Minister, review, and report to the Minister on, specified matters relating to competitive safeguards within the telecommunications industry.

(4) The Commission must give a report under subsection (3) to the Minister before the end of the period specified in the direction.

(5) The Minister must cause a copy of a report under this section to be laid before each House of the Parliament within 15 sitting days of that House after receiving the report.

(6) This section applies to a financial year ending on or after 30 June 1998.

(7) In this section:

telecommunications industry has the same meaning as in the *Telecommunications Act 1997*.

Division 12—Monitoring of telecommunications charges paid by consumers

151CM Monitoring of telecommunications charges paid by consumers

(1) The Commission must monitor, and report each financial year to the Minister on:

(a) charges paid by consumers for the following goods and services:

(i) listed carriage services;

(ii) goods for use in connection with a listed carriage service;

(iii) services for use in connection with a listed carriage service; and

(b) the adequacy of Telstra's compliance with Part 9 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (which deals with price control arrangements for Telstra); and

(c) the adequacy of each universal service provider's compliance with Division 11 of Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (which deals with regulation of universal service charges); and

(d) the adequacy of each digital data service provider's compliance with its obligations under Division 12 of Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (which deals with regulation of digital data service charges).

(2) The Commission must give a report under subsection (1) to the Minister as soon as practicable after the end of the financial year concerned.

(3) The Minister must cause a copy of a report under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after receiving the report.

(4) This section applies to a financial year ending on or after 30 June 1998.

(5) In this section:

digital data service provider has the same meaning as in the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

listed carriage service has the same meaning as in the *Telecommunications Act 1997*.

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

Division 12A—Reports about competition in the telecommunications industry

151CMA Public reports about competition in the telecommunications industry

(1) The Commission must monitor, and report to the Minister on, such matters relating to competition in the telecommunications industry as are specified in a written determination made by the Minister for the purposes of this subsection.

Note: For examples of matters that may be specified in a determination under subsection (1), see section 151CMC.

(2) Reports under subsection (1) are to be given to the Minister in respect of such regular intervals as are specified in a written determination made by the Minister for the purposes of this subsection.

(3) Reports under subsection (1) must comply with such requirements in relation to the protection of confidential information as are specified in a written determination made by the Minister for the purposes of this subsection. For this purpose, information is ***confidential information*** if, and only if, the publication of the information could reasonably be expected to prejudice substantially the commercial interests of a person.

(4) The Commission must give a report under subsection (1) to the Minister as soon as practicable after the end of the regular interval to which the report relates.

(5) The Minister must cause a copy of a report under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after receiving the report.

(6) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(7) In this section:

telecommunications industry has the same meaning as in the *Telecommunications Act 1997*.

151CMB Confidential reports about competition in the telecommunications industry

(1) The Commission must monitor, and report to the Minister on, such matters relating to competition in the telecommunications industry as are specified in a written determination made by the Minister for the purposes of this subsection.

Note: For examples of matters that may be specified in a determination under subsection (1), see section 151CMC.

(2) Reports under subsection (1) are to be given to the Minister in respect of such regular intervals as are specified in a written determination made by the Minister for the purposes of this subsection.

(3) The Commission must give a report under subsection (1) to the Minister as soon as practicable after the end of the regular interval to which the report relates.

(4) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(5) In this section:

telecommunications industry has the same meaning as in the *Telecommunications Act 1997*.

151CMC Examples of matters that may be specified in a determination under section 151CMA or 151CMB

The following are examples of matters that may be specified in a determination under subsection 151CMA(1) or 151CMB(1):

(a) charges for:
  (i) carriage services; or
  (ii) goods for use in connection with a carriage service; or
  (iii) services for use in connection with a carriage service;

(b) carriers' and carriage service providers' respective shares of the total supply of:
  (i) carriage services; or
  (ii) goods for use in connection with a carriage service; or
  (iii) services for use in connection with a carriage service;

(c) carriers' and carriage service providers' revenues relating to their respective shares of the total supply of:
  (i) carriage services; or
  (ii) goods for use in connection with a carriage service; or
  (iii) services for use in connection with a carriage service;

(d) other indicators (whether quantitative or qualitative) relating to the supply of:
  (i) carriage services; or
  (ii) goods for use in connection with a carriage service; or
  (iii) services for use in connection with a carriage service.

Division 13—Review of operation of this Part

151CN Review of operation of this Part

(1) Before 1 July 2000, the Minister must cause to be conducted a review of the operation of this Part.

(2) In conducting the review, consideration must be given to the question whether any or all of the provisions of this Part should be repealed or amended.

(3) The Minister must cause to be prepared a report of the review.

(4) The Minister must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

Division 14—Operational separation for Telstra

151CP Operational separation for Telstra

(1) This section applies if Telstra has engaged in conduct in order to comply with a final operational separation plan in force under Part 8 of Schedule 1 to the *Telecommunications Act 1997*.

(2) In performing a function, or exercising a power, under this Part in relation to Telstra, the Commission must have regard to the conduct to the extent that the conduct is relevant.

Part XIC—Telecommunications access regime

Division 1—Introduction

152AA Simplified outline

The following is a simplified outline of this Part:

- This Part sets out a telecommunications access regime.
- The Commission may declare carriage services and related services to be ***declared services***.
- Carriers and carriage service providers who provide declared services are required to comply with ***standard access obligations*** in relation to those services.
- The ***standard access obligations*** facilitate the provision of access to declared services by service providers in order that service providers can provide carriage services and/or content services.
- The terms and conditions on which carriers and carriage service providers are required to comply with the ***standard access obligations*** are subject to agreement.
- If agreement cannot be reached, but the carrier or carriage service provider has given an ***access undertaking***, the terms and conditions are as set out in the access undertaking.
- If agreement cannot be reached, but no access undertaking is in operation, the terms and conditions are to be determined by the Commission acting as an arbitrator.
- An access undertaking (other than a special access undertaking) may adopt the terms and conditions set out in a ***telecommunications access code***.
- The Commission may conduct an arbitration of a dispute about access to declared services. The Commission's determination on the arbitration must not be inconsistent with the standard access obligations or an access undertaking.
- The Commission may register agreements about access to declared services.
- A carrier, carriage service provider or related body must not prevent or hinder the fulfilment of a standard access obligation.

152AB Object of this Part

Object

(1) The object of this Part is to promote the long-term interests of end-users of carriage services or of services provided by means of carriage services.

Promotion of the long-term interests of end-users

(2) For the purposes of this Part, in determining whether a particular thing promotes the long-term interests of end-users of either of the following services (the ***listed services***):

(a) carriage services;

(b) services supplied by means of carriage services;

regard must be had to the extent to which the thing is likely to result in the achievement of the following objectives:

(c) the objective of promoting competition in markets for listed services;

(d) the objective of achieving any-to-any connectivity in relation to carriage services that involve communication between end-users;

(e) the objective of encouraging the economically efficient use of, and the economically efficient investment in:

(i) the infrastructure by which listed services are supplied; and

(ii) any other infrastructure by which listed services are, or are likely to become, capable of being supplied.

Subsection (2) limits matters to which regard may be had

(3) Subsection (2) is intended to limit the matters to which regard may be had.

Promoting competition

(4) In determining the extent to which a particular thing is likely to result in the achievement of the objective referred to in paragraph (2)(c), regard must be had to the extent to which the thing will remove obstacles to end-users of listed services gaining access to listed services.

Subsection (4) does not limit matters to which regard may be had

(5) Subsection (4) does not, by implication, limit the matters to which regard may be had.

Encouraging efficient use of infrastructure etc.

(6) In determining the extent to which a particular thing is likely to result in the achievement of the objective referred to in paragraph (2)(e), regard must be had to the following matters:

(a) whether it is, or is likely to become, technically feasible for the services to be supplied and charged for, having regard to:

(i) the technology that is in use, available or likely to become available; and

(ii) whether the costs that would be involved in supplying, and charging for, the services are reasonable or likely to become reasonable; and

(iii) the effects, or likely effects, that supplying, and charging for, the services would have on the operation or performance of telecommunications networks;

(b) the legitimate commercial interests of the supplier or suppliers of the services, including the ability of the supplier or suppliers to exploit economies of scale and scope;

(c) the incentives for investment in:

(i) the infrastructure by which the services are supplied; and

(ii) any other infrastructure by which the services are, or are likely to become, capable of being supplied.

Subsection (6) does not limit matters to which regard may be had

(7) Subsection (6) does not, by implication, limit the matters to which regard may be had.

Investment risks

(7A) For the purposes of paragraph (6)(c), in determining incentives for investment, regard must be had to the risks involved in making the investment.

(7B) Subsection (7A) does not, by implication, limit the matters to which regard may be had.

Achieving any-to-any connectivity

(8) For the purposes of this section, the objective of any-to-any connectivity is achieved if, and only if, each end-user who is supplied with a carriage service that involves communication between end-users is able to communicate, by means of that service, with each other end-user who is supplied with the same service or a similar service, whether or not the end-users are connected to the same telecommunications network.

152AC Definitions

In this Part, unless the contrary intention appears:

ACMA means the Australian Communications and Media Authority.

access has the meaning given by section 152AF.

access seeker has the meaning given by section 152AG.

access undertaking means an ordinary access undertaking or a special access undertaking.

carriage service has the same meaning as in the *Telecommunications Act 1997*, and includes a proposed carriage service.

carriage service provider has the same meaning as in the *Telecommunications Act 1997*.

carrier has the same meaning as in the *Telecommunications Act 1997*.

carrier licence has the same meaning as in the *Telecommunications Act 1997*.

conditional-access customer equipment means customer equipment that:

(a) consists of or incorporates a conditional access system that allows a service provider to determine whether an end-user is able to receive a particular service; and

(b) either:

(i) is for use in connection with the supply of a content service; or

(ii) is of a kind specified in the regulations.

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

content service has the same meaning as in the *Telecommunications Act 1997*, and includes a proposed content service.

customer equipment has the same meaning as in the *Telecommunications Act 1997*.

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

declared service has the meaning given by section 152AL.

facility has the same meaning as in the *Telecommunications Act 1997.*

Federal Court means the Federal Court of Australia.

Ministerial pricing determination means a determination under section 152CH.

modifications includes additions, omissions and substitutions.

nominated carrier has the same meaning as in the *Telecommunications Act 1997.*

ordinary access undertaking means an undertaking under Subdivision A of Division 5.

person includes a partnership.

Note: Section 152EN sets out additional rules about partnerships.

Procedural Rules means Procedural Rules made under section 152ELA.

service provider has the same meaning as in the *Telecommunications Act 1997.*

special access undertaking means an undertaking under Subdivision B of Division 5.

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

telecommunications access code means a code made under section 152BJ.

telecommunications network has the same meaning as in the *Telecommunications Act 1997.*

152AD This Part binds the Crown

(1) The following provisions of this Act bind the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory:
   (a) this Part;
   (b) the other provisions of this Act so far as they relate to this Part.

(2) This Part does not make the Crown liable to be prosecuted for an offence.

(3) The protection in subsection (2) does not apply to an authority of the Commonwealth or an authority of a State or Territory.

152AE Extension to external Territories

This Part, and the other provisions of this Act so far as they relate to this Part, extend to each eligible Territory (within the meaning of the *Telecommunications Act 1997).*

152AF Access

(1) A reference in this Part to ***access***, in relation to a declared service, is a reference to access by a service provider in order that the service provider can provide carriage services and/or content services.

(2) For the purposes of this Part, anything done by a carrier or carriage service provider in fulfilment of a standard access obligation is taken to be an aspect of access to a declared service.

152AG Access seeker

(1) This section sets out the circumstances in which a person is taken to be an ***access seeker*** in relation to a declared service for the purposes of this Part.

(2) A service provider is an ***access seeker*** in relation to a declared service if the provider makes, or proposes to make, a request in relation to that service under section 152AR (which deals with the standard access obligations), whether or not:

(a) the request is refused; or

(b) the request is being complied with.

(3) A service provider is an ***access seeker*** in relation to a declared service if:

(a) the provider wants access to the service; or

(b) the provider wants to change some aspect of the provider's existing access to the service; or

(c) the supplier of the service wants to change some aspect of the provider's existing access to the service.

152AH Reasonableness—terms and conditions

(1) For the purposes of this Part, in determining whether particular terms and conditions are reasonable, regard must be had to the following matters:

(a) whether the terms and conditions promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services;

(b) the legitimate business interests of the carrier or carriage service provider concerned, and the carrier's or provider's investment in facilities used to supply the declared service concerned;

(c) the interests of persons who have rights to use the declared service concerned;

(d) the direct costs of providing access to the declared service concerned;

(e) the operational and technical requirements necessary for the safe and reliable operation of a carriage service, a telecommunications network or a facility;

(f) the economically efficient operation of a carriage service, a telecommunications network or a facility.

(2) Subsection (1) does not, by implication, limit the matters to which regard may be had.

152AJ Interpretation of Part IIIA not affected by this Part

In determining the meaning of a provision of Part IIIA, the provisions of this Part (other than section 152CK) are to be ignored.

152AK Operation of Parts IV and VII not affected by this Part

This Part does not affect the operation of Parts IV and VII.

Division 2—Declared services

152AL Declared services

Eligible service

(1) For the purposes of this section, an ***eligible service*** is:

(a) a listed carriage service (within the meaning of the *Telecommunications Act 1997*); or

(b) a service that facilitates the supply of a listed carriage service (within the meaning of that Act);

where the service is supplied, or is capable of being supplied, by a carrier or a carriage service provider (whether to itself or to other persons).

Declaration made after public inquiry

(3) The Commission may, by written instrument, declare that a specified eligible service is a ***declared service*** if:

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

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

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

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

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

Declaration has effect

(4) A declaration under this section has effect accordingly.

Gazettal of declaration

(5) A copy of a declaration under this section is to be published in the *Gazette*.

Related services

(6) A reference in paragraph (1)(b) to a service that facilitates the supply of a carriage service does not include a reference to the use of intellectual property except to the extent that it is an integral but subsidiary part of the first-mentioned service.

Services covered by special access undertakings

(7) If:

(a) a person gives the Commission a special access undertaking in relation to a service or a proposed service; and

(b) the undertaking is in operation; and

(c) the person supplies the service or proposed service (whether to itself or to other persons);

the service supplied by the person is a ***declared service***. To avoid doubt, if the undertaking is subject to limitations, the service supplied by the person is a ***declared service*** only to the extent to which the service falls within the scope of the limitations.

(8) The Commission may declare a service under subsection (3) even if the service is, to any extent, covered by subsection (7).

Declaration is not a legislative instrument

(9) A declaration under this section is not, and is taken never to have been, a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

(10) A variation of a declaration made under this section is not, and is taken never to have been, a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

(11) A revocation of a declaration made under this section is not, and is taken never to have been, a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

(12) If:

(a) a declaration was made under this section before the commencement of this subsection; and

(b) the declaration ceased to be in force before the commencement of this subsection;

then:

(c) the declaration is taken never to have been a legislative instrument for the purposes of the *Legislative Instruments Act 2003*; and

(d) if the declaration was varied or revoked before the commencement of this subsection—the variation or revocation is taken never to have been a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

(13) For the purposes of paragraph (12)(b), assume that the *Legislative Instruments Act 2003* had never been enacted.

(14) Subsections (9) to (12) are enacted for the avoidance of doubt.

152ALA Duration of declaration

Expiry date

(1) A declaration under section 152AL must specify an expiry date for the declaration.

(2) An expiry date must occur in the 5-year period beginning when the declaration was made.

(3) Subsection (2) has effect subject to subsection (4).

Extension of expiry date

(4) The Commission may, by notice published in the *Gazette*, extend or further extend the expiry date of a specified declaration under section 152AL, so long as the extension or further extension is for a period of not more than 5 years.

Duration of declaration

(5) Unless sooner revoked, a declaration under section 152AL ceases to be in force on the expiry date of the declaration.

Fresh declaration

(6) If a declaration under section 152AL expires, this Part does not prevent the Commission from making a fresh declaration under section 152AL in the same terms as the expired declaration.

Public inquiry during 12-month period ending on the expiry date of a declaration

(7) The Commission must:

(a) during the 12-month period ending on the expiry date of a declaration, hold a public inquiry under Part 25 of the *Telecommunications Act 1997* about:

(i) whether to extend or further extend the expiry date of the declaration; and

(ii) whether to revoke the declaration; and

(iii) whether to vary the declaration; and

(iv) whether to allow the declaration to expire without making a new declaration under section 152AL; and

(v) whether to allow the declaration to expire and then to make a new declaration under section 152AL; and

(b) prepare a report about the inquiry under section 505 of the *Telecommunications Act 1997*; and

(c) publish the report during the 180-day period ending on the expiry date of the first-mentioned declaration.

(8) If:

(a) after holding a public inquiry under subsection (7) in relation to a declaration, the Commission allows the declaration to expire and then makes a new declaration under section 152AL; and

(b) the report mentioned in paragraph (7)(b) was published during the 180-day period ending when the new declaration was made;

the Commission is taken to have complied with paragraphs 152AL(3)(a), (b) and (c) in relation to the new declaration.

(9) If:

(a) after holding a public inquiry under subsection (7) in relation to a declaration, the Commission revokes or varies the declaration; and

(b) the report mentioned in paragraph (7)(b) was published during the 180-day period ending at the time of the revocation or variation;

the Commission is taken to have complied with paragraphs 152AL(3)(a), (b) and (c) in relation to the revocation or variation (as those paragraphs apply to the power of revocation and variation because of subsection 152AO(1)).

Extension notice is not a legislative instrument

(10) A notice under subsection (4) is not, and is taken never to have been, a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

(11) If:

(a) a declaration was made under section 152AL before the commencement of this subsection; and

(b) a notice relating to the declaration was published under subsection (4) of this section before the commencement of this subsection; and

(c) the declaration ceased to be in force before the commencement of this subsection;

the notice is taken never to have been a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

(12) For the purposes of paragraph (11)(c), assume that the *Legislative Instruments Act 2003* had never been enacted.

(13) Subsections (10) and (11) are enacted for the avoidance of doubt.

152AM Inquiries about proposals to declare services

(1) This section applies to a public inquiry of a kind mentioned in paragraph 152AL(3)(a) or 152ALA(7)(a).

(2) The Commission may hold the inquiry:
  (a) on its own initiative; or
  (b) if requested in writing to do so by a person.

(3) If the Commission decides not to hold a public inquiry that a person has requested under paragraph (2)(b), the Commission must notify the person in writing of the decision and of the reasons for the decision.

(4) The Commission must give the ACMA a copy of the report about the inquiry prepared in accordance with section 505 of the *Telecommunications Act 1997*.

(5) If the inquiry is held at the request of a person, the Commission must give the person a copy of the report about the inquiry prepared under section 505 of the *Telecommunications Act 1997*.

152AN Combined inquiries about proposals to declare services

(1) The Commission may decide to combine 2 or more public inquiries of a kind mentioned in paragraph 152AL(3)(a) or 152ALA(7)(a).

(2) If the Commission makes such a decision:
  (a) the Commission may publish a single notice relating to the combined inquiry under section 498 of the *Telecommunications Act 1997*; and
  (b) the Commission may prepare a single discussion paper about the combined inquiry under section 499 of that Act; and
  (c) the Commission may hold hearings relating to the combined inquiry under section 501 of that Act; and
  (d) the Commission must ensure that each inquiry is covered by a report under section 505 of that Act, whether the report relates:
    (i) to a single one of those inquiries; or
    (ii) to any 2 or more of those inquiries.

152AO Variation or revocation of declaration

(1) Subsection 33(3) of the *Acts Interpretation Act 1901* applies to a power conferred on the Commission by section 152AL, but it applies with the following changes.

(1A) If:
  (a) a declaration under section 152AL relates to a particular service; and
  (b) in the Commission's opinion, the service is of minor importance;

the Commission is not required to hold a public inquiry under Part 25 of the *Telecommunications Act 1997* about a proposal to revoke the declaration.

(3) If a variation of a declaration under subsection 152AL(3) is a variation that, under the Procedural Rules, is taken to be a variation of a minor nature, the Commission is not required to hold a public inquiry under Part 25 of the *Telecommunications Act 1997* about the proposed variation.

152AQ Register of declared services

(1) The Commission must keep a Register in relation to declarations under section 152AL.

(2) The Register must include the following:
  (a) particulars of all such declarations (including declarations that have been revoked);
  (b) particulars of variations and revocations of such declarations;
  (c) copies of reports prepared in accordance with section 505 of the *Telecommunications Act 1997* in relation to inquiries mentioned in paragraph 152AL(3)(a) or 152ALA(7)(a) of this Act.

(3) The Register may be maintained by electronic means.

(4) A person may, on payment of the fee (if any) specified in the regulations:
  (a) inspect the Register; and
  (b) make a copy of, or take extracts from, the Register.

(5) For the purposes of this section, if the Register is maintained by electronic means, a person is taken to have made a copy of, or taken an extract from, the Register if the Commission gives the person a printout of, or of the relevant parts of, the Register.

(6) If a person requests that a copy be provided in an electronic form, the Commission may provide the relevant information:
  (a) on a data processing device; or
  (b) by way of electronic transmission.

152AQA Pricing principles

Determination

(1) The Commission must, by writing, determine principles relating to the price of access to a declared service.

Note: See subsection (6) for the effect of the determination.

(2) The determination may also contain price-related terms and conditions relating to access to the declared service.

Timing

(3) The Commission must make such a determination at the same time as, or as soon as practicable after:
  (a) the Commission declares a service to be a declared service; and
  (b) if the Commission varies a declared service—that variation.

Consultation

(4) Before making such a determination, the Commission must:
  (a) publish a draft of the determination and invite people to make submissions to the Commission on the draft determination; and

(b) consider any submissions that are received within the time limit specified by the Commission when it published the draft determination.

Publication

(5) The Commission must publish the determination in such manner as it considers appropriate (including in electronic form).

Arbitration

(6) The Commission must have regard to the determination if it is required to arbitrate an access dispute under Division 8 in relation to the declared service.

Ministerial pricing determinations prevail

(7) A determination under this section has no effect to the extent that it is inconsistent with any Ministerial pricing determination.

Other powers not limited

(7A) To avoid doubt, neither:

(a) this section; nor

(b) a determination under this section;

limits the Commission's powers under the following provisions:

(c) Division 4 (which deals with the telecommunications access code);

(d) Division 5 (which deals with access undertakings).

Definition

(8) In this section:

price-related terms and conditions means terms and conditions relating to price or a method of ascertaining price.

152AQB Model terms and conditions relating to access to core services

Core services

(1) For the purposes of this section, each of the following declared services is a ***core service***:

(a) the Domestic PSTN Originating Access Service (as described in the relevant declaration);

(b) the Domestic PSTN Terminating Access Service (as described in the relevant declaration);

(c) the Unconditioned Local Loop Service (as described in the relevant declaration);

(d) the Local Carriage Service (as described in the relevant declaration);

(e) a declared service specified in the regulations.

Determination setting out model terms and conditions

(2) The Commission must make a written determination setting out model terms and conditions relating to access to each core service.

Timing

(3) The Commission must take all reasonable steps to ensure that a determination relating to a core service referred to in paragraph (1)(a), (b), (c) or (d) is made within 6 months after the commencement of this section.

(4) The Commission must take all reasonable steps to ensure that a determination relating to a core service specified in the regulations is made within 6 months after the relevant regulation takes effect.

Public consultation

(5) Before making a determination under this section, the Commission must:
  (a) publish a draft of the determination and invite people to make submissions to the Commission on the draft determination; and
  (b) consider any submissions that are received within the time limit specified by the Commission when it published the draft determination.

Consultation with ACMA

(6) Before making a determination under this section, the Commission must consult the ACMA.

Publication

(7) The Commission must publish a determination under this section in such manner as it considers appropriate (including in electronic form).

Duration of determination

(8) Unless sooner revoked, a determination under this section relating to a particular core service ceases to be in force at the end of:
  (a) the period of 5 years beginning on the day on which the determination was made; or
  (b) if a longer period is specified in the regulations in relation to the determination—that longer period.

Arbitration

(9) The Commission must have regard to a determination under this section if it is required to arbitrate an access dispute under Division 8 in relation to a core service covered by the determination.

Ministerial pricing determinations prevail etc.

(10) A determination under this section has no effect to the extent that it is inconsistent with:
  (a) any Ministerial pricing determination; or
  (b) any determination under section 152AQA.

Other powers not limited

(11) To avoid doubt, neither:
  (a) this section; nor
  (b) a determination under this section;

limits the Commission's powers under the following provisions:

(c) Division 4 (which deals with the telecommunications access code);

(d) Division 5 (which deals with access undertakings).

152AQC Compensation for acquisition of property

(1) If the operation of any or all of the following provisions:

(a) subsection 152AL(9), (10), (11), (12), (13) or (14);

(b) subsection 152ALA(10), (11), (12) or (13);

would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

(3) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

Division 3—Standard access obligations

152AR Standard access obligations

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

Access provider and active declared services

(2) For the purposes of this section, if a carrier or a carriage service provider supplies declared services, whether to itself or to other persons:
  (a) the carrier or provider is an ***access provider***; and
  (b) the declared services are ***active declared services***.

Supply of active declared service to service provider

(3) An access provider must, if requested to do so by a service provider:
  (a) supply an active declared service to the service provider in order that the service provider can provide carriage services and/or content services; and
  (b) take all reasonable steps to ensure that the technical and operational quality of the active declared service supplied to the service provider is equivalent to that which the access provider provides to itself; and
  (c) take all reasonable steps to ensure that the service provider receives, in relation to the active declared service supplied to the service provider, fault detection, handling and rectification of a technical and operational quality and timing that is equivalent to that which the access provider provides to itself.

Limit on paragraph (3)(a) obligation

(4) Paragraph (3)(a) does not impose an obligation to the extent (if any) to which the imposition of the obligation would have any of the following effects:
  (a) preventing a service provider who already has access to the declared service from obtaining a sufficient amount of the service to be able to meet the service provider's reasonably anticipated requirements, measured at the time when the request was made;
  (b) preventing the access provider from obtaining a sufficient amount of the service to be able to meet the access provider's reasonably anticipated requirements, measured at the time when the request was made;
  (c) preventing a person from obtaining, by the exercise of a pre-request right, a sufficient level of access to the declared service to be able to meet the person's actual requirements;
  (d) depriving any person of a protected contractual right.

Ordering and provisioning—paragraph (3)(b)

(4A) To avoid doubt, ordering and provisioning are taken to be aspects of technical and operational quality referred to in paragraph (3)(b).

(4B) The regulations may provide that, for the purposes of subsection (4A), a specified act or thing is taken to be ordering.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

(4C) The regulations may provide that, for the purposes of subsection (4A), a specified act or thing is taken to be provisioning.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

Interconnection of facilities

(5) If an access provider:

(a) owns or controls one or more facilities; or

(b) is a nominated carrier in relation to one or more facilities;

the access provider must, if requested to do so by a service provider:

(c) permit interconnection of those facilities with the facilities of the service provider for the purpose of enabling the service provider to be supplied with active declared services in order that the service provider can provide carriage services and/or content services; and

(d) take all reasonable steps to ensure that:

(i) the technical and operational quality and timing of the interconnection is equivalent to that which the access provider provides to itself; and

(ii) if a standard is in force under section 384 of the *Telecommunications Act 1997*—the interconnection complies with the standard; and

(e) take all reasonable steps to ensure that the service provider receives, in relation to the interconnection, fault detection, handling and rectification of a technical and operational quality and timing that is equivalent to that which the access provider provides to itself.

Provision of billing information

(6) If a service provider uses active declared services supplied by an access provider in accordance with subsection (3), the access provider must, if requested to do so by the service provider, give the service provider billing information in connection with matters associated with, or incidental to, the supply of those active declared services.

Timing and content of billing information

(7) The billing information referred to in subsection (6) must:

(a) be given at such times or intervals as are ascertained in accordance with the regulations; and

(b) be given in a manner and form ascertained in accordance with the regulations; and

(c) set out such particulars as are ascertained in accordance with the regulations.

Conditional-access customer equipment

(8) If an access provider supplies an active declared service by means of conditional-access customer equipment, the access provider must, if requested to do so by a service provider who has made a request referred to in subsection (3), supply to the service provider any service that is necessary to enable the service provider to supply carriage services and/or content services by means of the active declared service and using the equipment.

Exceptions

(9) This section does not impose an obligation on an access provider if there are reasonable grounds to believe that:

(a) the access seeker would fail, to a material extent, to comply with the terms and conditions on which the access provider complies, or on which the access provider is reasonably likely to comply, with that obligation; or

(b) the access seeker would fail, in connection with that obligation, to protect:

(i) the integrity of a telecommunications network; or

(ii) the safety of individuals working on, or using services supplied by means of, a telecommunications network or a facility.

Examples—paragraph (9)(a) grounds

(10) Examples of grounds for believing as mentioned in paragraph (9)(a) include:

(a) evidence that the access seeker is not creditworthy; and

(b) repeated failures by the access seeker to comply with the terms and conditions on which the same or similar access has been provided (whether or not by the access provider).

Starting date for obligations

(11) An obligation imposed by this section does not arise before 1 July 1997.

Definitions

(12) In this section:

pre-request right, in relation to a request made for the purposes of paragraph (3)(a), means a right under a contract, or under a determination (within the meaning of Division 8), that was in force at the time when the request was made.

protected contractual right means a right under a contract that was in force at the beginning of 13 September 1996.

152AS Ordinary class exemptions from standard access obligations

(1) The Commission may, by written instrument, determine that each of the members of a specified class of carrier or of a specified class of carriage service provider are exempt from any or all of the obligations referred to in section 152AR.

(2) A determination under this section may be unconditional or subject to such conditions or limitations as are specified in the determination.

Note: For judicial enforcement of conditions and limitations, see section 152BBAA.

(3) A determination under this section has effect accordingly.

(4) The Commission must not make a determination under this section unless the Commission is satisfied that the making of the determination will promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services.

(5) If, in the Commission's opinion, the making of a determination under this section is likely to have a material effect on the interests of a person, then, before making the determination, the Commission must first:

(a) publish a draft of the determination and invite people to make submissions to the Commission on the question of whether the draft determination should be made; and

(b) consider any submissions that were received within the time limit specified by the Commission when it published the draft determination.

(6) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Note: For variation and revocation of instruments under subsection (1), see subsection 33(3) of the *Acts Interpretation Act 1901*.

152ASA Anticipatory class exemptions from standard access obligations

Determination providing for exemption

(1) The Commission may, by written instrument, determine that, in the event that a specified service or proposed service becomes an active declared service, each of the members of a specified class of carrier or of a specified class of carriage service provider are exempt from any or all of the obligations referred to in section 152AR, to the extent to which the obligations relate to the active declared service.

(2) A determination under this section may be unconditional or subject to such conditions or limitations as are specified in the determination.

Note: For judicial enforcement of conditions and limitations, see section 152BBAA.

(3) A determination under this section has effect accordingly.

Criteria for making determination

(4) The Commission must not make a determination under this section unless the Commission is satisfied that the making of the determination will promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services.

Expiry time of determination

(8) A determination under this section must specify the expiry time of the determination. If a determination expires, this Part does not prevent the Commission from making:

(a) a fresh determination under this section in the same terms as the expired determination; or

(b) if the service or proposed service has become an active declared service—a determination under section 152AS in relation to the service.

(9) The expiry time of the determination may be described by reference to the end of a period beginning when the service or proposed service becomes an active declared service.

(10) Subsection (9) does not, by implication, limit subsection (8).

Consultation

(11) If, in the Commission's opinion, the making of a determination under this section is likely to have a material effect on the interests of a person, then, before making the determination, the Commission must first:

(a) publish a draft of the determination and invite people to make submissions to the Commission on the question of whether the draft determination should be made; and

(b) consider any submissions that were received within the time limit specified by the Commission when it published the draft determination.

Disallowable instrument

(12) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Definition

(13) In this section:

active declared service has the same meaning as in section 152AR.

Note: For variation and revocation of instruments under subsection (1), see subsection 33(3) of the *Acts Interpretation Act 1901*.

152AT Ordinary individual exemptions from standard access obligations

Application for exemption order

(1) A carrier or a carriage service provider may apply to the Commission for a written order exempting the carrier or provider from all or any of the obligations referred to in section 152AR.

(2) An application under subsection (1) must be:
  (a) in writing; and
  (b) in a form approved in writing by the Commission for the purposes of this paragraph.

(2A) Before the Commission makes a decision under subsection (3) in relation to the application, the applicant may, by written notice given to the Commission within the time allowed by the Procedural Rules, modify the application, so long as the modification is a modification that, under the Procedural Rules, is taken to be a modification of a minor nature.

Commission must make exemption order or refuse application

(3) After considering the application, the Commission must:
  (a) make a written order exempting the applicant from one or more of the obligations referred to in section 152AR; or
  (b) refuse the application.

Criteria for making exemption order

(4) The Commission must not make an order under paragraph (3)(a) unless the Commission is satisfied that the making of the order will promote the long-term interests of end-users of carriage services or of services provided by means of carriage services.

Exemption orders

(5) An order under paragraph (3)(a) may be unconditional or subject to such conditions or limitations as are specified in the order.

Note: For judicial enforcement of conditions and limitations, see section 152BBAA.

(6) An order under paragraph (3)(a) has effect accordingly.

(7) An order under paragraph (3)(a) may be expressed to come into effect:
  (a) immediately after it is made; or
  (b) on a later date specified in the order.

Expiry date for exemption order

(8) An order under paragraph (3)(a) may specify an expiry date for the order. If an order expires, this Part does not prevent the Commission from making a fresh order under paragraph (3)(a) in the same terms as the expired order.

Consultation

(9) If, in the Commission's opinion, the making of an order under paragraph (3)(a) is likely to have a material effect on the interests of a person, then, before making the order, the Commission must first:

(a) publish the application for the order and invite people to make submissions to the Commission on the question of whether the order should be made; and

(b) consider any submissions that were received within the time limit specified by the Commission when it published the application.

Commission to make decision within 6 months

(10) If the Commission does not make a decision on an application under subsection (1) within 6 months after receiving the application, the Commission is taken to have made, at the end of that 6-month period, an order under paragraph (3)(a) in accordance with the terms of the application.

(11) In calculating the 6-month period referred to in subsection (10), disregard:

(a) if the Commission has published the application under subsection (9)—a day in the period:

(i) beginning on the date of publication; and

(ii) ending at the end of the time limit specified by the Commission when it published the application; and

(b) if the Commission has requested further information under section 152AU in relation to the application—a day during any part of which the request, or any part of the request, remains unfulfilled.

Extension of decision-making period

(12) The Commission may, by written notice given to the applicant, extend or further extend the 6-month period referred to in subsection (10), so long as:

(a) the extension or further extension is for a period of not more than 3 months; and

(b) the notice includes a statement explaining why the Commission has been unable to make a decision on the application within that 6-month period or that 6-month period as previously extended, as the case may be.

(13) As soon as practicable after the Commission gives a notice under subsection (12), the Commission must cause a copy of the notice to be made available on the Internet.

Notification of refusal of application

(14) If the Commission makes a decision refusing an application under subsection (1), the Commission must give the applicant a written statement setting out the reasons for the refusal.

Note: For variation and revocation of orders, see subsection 33(3) of the *Acts Interpretation Act 1901*.

152ATA Anticipatory individual exemptions from standard access obligations

Application for exemption order

(1) A person who is, or expects to be, a carrier or a carriage service provider may apply to the Commission for a written order that, in the event that a specified service or proposed service becomes an active declared service, the person is exempt from any or all of the obligations referred to in section 152AR, to the extent to which the obligations relate to the active declared service.

(2) An application under subsection (1) must be:
  (a) in writing; and
  (b) in a form approved in writing by the Commission for the purposes of this paragraph.

(2A) Before the Commission makes a decision under subsection (3) in relation to the application, the applicant may, by written notice given to the Commission within the time allowed by the Procedural Rules, modify the application, so long as the modification is a modification that, under the Procedural Rules, is taken to be a modification of a minor nature.

Commission must make exemption order or refuse application

(3) After considering the application, the Commission must:
  (a) make a written order that, in the event that the service or proposed service becomes an active declared service, the applicant is exempt from one or more of the obligations referred to in section 152AR, to the extent to which the obligations relate to the active declared service; or
  (b) refuse the application.

(4) An order under paragraph (3)(a) may be unconditional or subject to such conditions or limitations as are specified in the order.

Note: For judicial enforcement of conditions and limitations, see section 152BBAA.

(5) An order under paragraph (3)(a) has effect accordingly.

Criteria for making exemption order

(6) The Commission must not make an order under paragraph (3)(a) unless the Commission is satisfied that the making of the order will promote the long-term interests of end-users of carriage services or of services provided by means of carriage services.

Expiry time for exemption order

(10) An order under paragraph (3)(a) must specify the expiry time for the order. If an order expires, this Part does not prevent the Commission from making:
  (a) a fresh order under paragraph (3)(a) in the same terms as the expired order; or
  (b) if the service or proposed service has become an active declared service—an order under section 152AT in relation to the service.

(10A) The expiry time for the order may be described by reference to the end of a period beginning when the service or proposed service becomes an active declared service.

(10B) Subsection (10A) does not, by implication, limit subsection (10).

Consultation

(11) If, in the Commission's opinion, the making of an order under paragraph (3)(a) is likely to have a material effect on the interests of a person, then, before making the order, the Commission must first:

(a) publish the application for the order and invite people to make submissions to the Commission on the question of whether the order should be made; and

(b) consider any submissions that were received within the time limit specified by the Commission when it published the application.

Commission to make decision within 6 months

(12) If the Commission does not make a decision on an application under this section within 6 months after receiving the application, the Commission is taken to have made, at the end of that 6-month period, an order under paragraph (3)(a) in accordance with the terms of the application.

(13) In calculating the 6-month period referred to in subsection (12), disregard:

(a) if the Commission has published the application under subsection (11)—a day in the period:

(i) beginning on the date of publication; and

(ii) ending at the end of the time limit specified by the Commission when it published the application; and

(b) if the Commission has requested further information under section 152AU in relation to the application—a day during any part of which the request, or any part of the request, remains unfulfilled.

Extension of decision-making period

(14) The Commission may, by written notice given to the applicant, extend or further extend the 6-month period referred to in subsection (12), so long as:

(a) the extension or further extension is for a period of not more than 3 months; and

(b) the notice includes a statement explaining why the Commission has been unable to make a decision on the application within that 6-month period or that 6-month period as previously extended, as the case may be.

(15) As soon as practicable after the Commission gives a notice under subsection (14), the Commission must cause a copy of the notice to be made available on the Internet.

Notification of refusal of application

(16) If the Commission makes a decision refusing an application under subsection (1), the Commission must give the applicant a written statement setting out the reasons for the refusal.

Definition

(18) In this section:

active declared service has the same meaning as in section 152AR.

Note: For variation and revocation of orders, see subsection 33(3) of the *Acts Interpretation Act 1901*.

152AU Individual exemptions—request for further information

(1) This section applies to an application under subsection 152AT(1) or 152ATA(1).

(2) The Commission may request the applicant to give the Commission further information about the application.

(2A) If:

(a) the Procedural Rules make provision for or in relation to a time limit for giving the information; and

(b) the applicant does not give the Commission the information within the time limit allowed by the Procedural Rules;

the Commission may, by written notice given to the applicant, refuse the application.

(2B) Subsection (2A) has effect despite anything in this Division.

(3) If the Procedural Rules do not make provision for or in relation to a time limit for giving the information, the Commission may refuse to consider the application until the applicant gives the Commission the information.

(4) The Commission may withdraw its request for further information, in whole or in part.

152AV Review by Tribunal of exemption order decision

(1) A person whose interests are affected by a decision of the Commission under section 152AT or 152ATA may apply in writing to the Tribunal for a review of the decision.

(2) The application must be made within 21 days after the Commission made the decision.

(3) The Tribunal must review the decision.

152AW Functions and powers of Tribunal

Decision on review

(1) On a review of a decision of the Commission under section 152AT or 152ATA, the Tribunal may make a decision:

(a) in any case—affirming the Commission's decision; or

(b) in the case of a review of a decision of the Commission to make an order under paragraph 152AT(3)(a) or paragraph 152ATA(3)(a)—setting aside or varying the Commission's decision; or

(c) in the case of a review of a decision of the Commission under section 152AT refusing an application for an order—both:

(i) setting aside the Commission's decision; and

(ii) in substitution for the decision so set aside, making an order under paragraph 152AT(3)(a); or

(d) in the case of a review of a decision of the Commission under section 152ATA refusing an application for an order—both:

(i) setting aside the Commission's decision; and

(ii) in substitution for the decision so set aside, making an order under paragraph 152ATA(3)(a); or

(e) in the case of a review of a decision of the Commission under section 152AT or 152ATA varying an order—setting aside or varying the Commission's decision; or

(f) in the case of a review of a decision of the Commission under section 152AT or 152ATA refusing to vary an order—both:

(i) setting aside the Commission's decision; and

(ii) in substitution for the decision so set aside, varying the order; or

(g) in the case of a review of a decision of the Commission under section 152AT or 152ATA revoking an order—a decision setting aside the Commission's decision; or

(h) in the case of a review of a decision of the Commission under section 152AT or 152ATA refusing to revoke an order—both:

(i) setting aside the Commission's decision; and

(ii) in substitution for the decision so set aside, revoking the order;

and, for the purposes of the review, the Tribunal may perform all the functions and exercise all the powers of the Commission.

(2) A decision by the Tribunal:

(a) affirming a decision of the Commission; or

(b) varying a decision of the Commission; or

(c) setting aside a decision of the Commission; or

(d) made in substitution for a decision of the Commission;

is taken, for the purposes of this Act (other than section 152AV or this section), to be a decision of the Commission.

Conduct of review

(3) For the purposes of a review by the Tribunal, the member of the Tribunal presiding at the review may require the Commission to give such information, make such reports and provide such other assistance to the Tribunal as the member specifies.

(4) For the purposes of a review, the Tribunal may have regard only to:

(a) any information given, documents produced or evidence given to the Commission in connection with the making of the decision to which the review relates; and

(b) any other information that was referred to in the Commission's reasons for making the decision to which the review relates.

Tribunal to make decision within 6 months

(5) If:

(a) a person applies to the Tribunal for a review of a decision of the Commission under section 152AT or 152ATA; and

(b) the Tribunal does not make a decision under subsection (1) of this section on the review within 6 months after receiving the application for review;

the Tribunal is taken to have made, at the end of that 6-month period, whichever of the following decisions is applicable:

(c) in the case of a review of a decision of the Commission to make an order under paragraph 152AT(3)(a) or paragraph 152ATA(3)(a), where the applicant for review is seeking to have the Tribunal set aside the Commission's decision—a decision setting aside the Commission's decision;

(d) in the case of a review of a decision of the Commission to make an order under paragraph 152AT(3)(a) or paragraph 152ATA(3)(a), where the applicant for review is seeking to have the Tribunal vary the Commission's decision—a decision varying the Commission's decision in accordance with the terms of the application for review;

(e) in the case of a review of a decision of the Commission under section 152AT refusing an application for an order—both:

(i) a decision setting aside the Commission's decision; and

(ii) in substitution for the decision so set aside, a decision to make an order under paragraph 152AT(3)(a) in accordance with the terms of the application;

(f) in the case of a review of a decision of the Commission under section 152ATA refusing an application for an order—both:

(i) a decision setting aside the Commission's decision; and

(ii) in substitution for the decision so set aside, a decision to make an order under paragraph 152ATA(3)(a) in accordance with the terms of the application;

(g) in the case of a review of a decision of the Commission under section 152AT or 152ATA varying an order, where the applicant for review is seeking to have the Tribunal set aside the Commission's decision—a decision setting aside the Commission's decision;

(h) in the case of a review of a decision of the Commission under section 152AT or 152ATA varying an order, where the applicant for review is seeking to have the Tribunal vary the Commission's decision—a decision varying the Commission's decision in the manner sought by the applicant for review;

(i) in the case of a review of a decision of the Commission under section 152AT or 152ATA refusing to vary an order—both:

(i) a decision setting aside the Commission's decision; and

(ii) in substitution for the decision so set aside, a decision to vary the order in accordance with the terms of the application for variation;

(j) in the case of a review of a decision of the Commission under section 152AT or 152ATA revoking an order—a decision setting aside the Commission's decision;

(k) in the case of a review of a decision of the Commission under section 152AT or 152ATA refusing to revoke an order—both:

(i) a decision setting aside the Commission's decision; and

(ii) in substitution for the decision so set aside, a decision to revoke the order.

Extension of decision-making period

(6) The Tribunal may, by written notice given to the applicant for review, extend or further extend the 6-month period referred to in subsection (5), so long as:

(a) the extension or further extension is for a period of not more than 3 months; and

(b) the notice includes a statement explaining why the Tribunal has been unable to make a decision on the review within that 6-month period or that 6-month period as previously extended, as the case may be.

(7) As soon as practicable after the Tribunal gives a notice under subsection (6), the Tribunal must cause a copy of the notice to be made available on the Internet.

Note: Division 2 of Part IX applies to proceedings before the Tribunal.

152AX Provisions that do not apply in relation to a Tribunal review

Division 1 of Part IX does not apply in relation to a review by the Tribunal of a decision made by the Commission under section 152AT or 152ATA.

152AXA Statement of reasons for reviewable decision—specification of documents

(1) If the Commission:

(a) makes a decision under section 152AT or 152ATA; and

(b) gives a person a written statement setting out the reasons for the decision;

the statement must specify the documents that the Commission examined in the course of making the decision.

(2) If a document is specified under subsection (1), information in the document is taken, for the purposes of paragraph 152AW(4)(b), to be referred to in the Commission's reasons for making the decision.

152AY Compliance with standard access obligations

(1) This section applies if a carrier or carriage service provider is required to comply with any or all of the standard access obligations.

(2) The carrier or carriage service provider must comply with the obligations:

(a) on such terms and conditions as are agreed between the following parties:

(i) the carrier or carriage service provider, as the case requires;

(ii) the access seeker; or

(b) failing agreement:

(i) if an access undertaking given by the carrier or carriage service provider is in operation and specifies terms and conditions about a particular matter—on such terms and conditions relating to that matter as are set out in the undertaking; or

(ii) if an access undertaking given by the carrier or carriage service provider is in operation, but the undertaking does not specify terms and conditions about a particular matter—on such terms and conditions relating to that matter as are determined by the Commission under Division 8 (which deals with arbitration of disputes about access); or

(iii) if there is no such undertaking—on such terms and conditions as are determined by the Commission under Division 8 (which deals with arbitration of disputes about access).

Note: An agreement mentioned in paragraph (a) may be registered under Division 9.

152AYA Ancillary obligations—confidential information

If:

(a) a carrier or carriage service provider is required to comply with a standard access obligation that arose because of a request made by an access seeker; and

(b) at or after the time when the request was made, the access seeker gives particular information to the carrier or carriage service provider to enable the carrier or carriage service provider to comply with the standard access obligation; and

(c) at or before the time when the information was given, the access seeker gave the carrier or carriage service provider a written notice to the effect that:

(i) that information; or

(ii) a class of information that includes that information;

is to be regarded as having been given on a confidential basis for the purpose of enabling the carrier or carriage service provider to comply with the standard access obligation;

the carrier or carriage service provider must not, without the written consent of the access seeker, use that information for a purpose other than enabling the carrier or carriage service provider to comply with:

(d) the standard access obligation; or

(e) any other standard access obligation that arose because of a request made by the access seeker; or

(f) any other obligation imposed by a law.

152AZ Carrier licence condition

A carrier licence held by a carrier is subject to a condition that the carrier must comply with:

(a) any standard access obligations that are applicable to the carrier; and

(b) any obligations under section 152AYA that are applicable to the carrier.

152BA Service provider rule

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

(2) A carriage service provider must comply with:

(a) any standard access obligations that are applicable to the provider; and

(b) any obligations under section 152AYA that are applicable to the provider.

152BB Judicial enforcement of standard access obligations

(1) If the Federal Court is satisfied that a carrier or carriage service provider has contravened any of the standard access obligations that are applicable to the carrier or provider, the Court may, on the application of:

(a) the Commission; or

(b) any person whose interests are affected by the contravention;

make all or any of the following orders:

(c) an order directing the carrier or provider to comply with the obligation;

(d) an order directing the carrier or provider to compensate any other person who had suffered loss or damage as a result of the contravention;

(e) any other order that the Court thinks appropriate.

(1A) If the Federal Court is satisfied that a carrier or carriage service provider has contravened an obligation imposed by section 152AYA, the Court may, on the application of:

(a) the Commission; or

(b) the access seeker who gave the information concerned;

make all or any of the following orders:

(c) an order directing the carrier or carriage service provider to comply with the obligation;

(d) an order directing the carrier or carriage service provider to compensate any other person who has suffered loss or damage as a result of the contravention;

(e) any other order that the Court thinks appropriate.

(2) The Federal Court may discharge or vary an order granted under this section.

(3) This section does not limit section 152BBAA.

152BBAA Judicial enforcement of conditions and limitations of exemption determinations and orders

(1) If the Federal Court is satisfied that a person has contravened any of the conditions or limitations of:

(a) a determination under section 152AS or 152ASA; or

(b) an order under section 152AT or 152ATA;

the Court may, on the application of:

(c) the Commission; or

(d) any person whose interests are affected by the contravention;

make all or any of the following orders:

(e) an order directing the person to comply with the condition or limitation;

(f) an order directing the person to compensate any other person who had suffered loss or damage as a result of the contravention;

(g) any other order that the Court thinks appropriate.

(2) The Federal Court may discharge or vary an order granted under this section.

(3) This section does not limit section 152BB.

152BBA Commission may give directions in relation to negotiations

(1) This section applies if a carrier or carriage service provider is required to comply with any or all of the standard access obligations.

(2) If the following parties:

(a) the carrier or carriage service provider, as the case requires;

(b) the access seeker;

propose to negotiate, or are negotiating, with a view to agreeing on terms and conditions as mentioned in paragraph 152AY(2)(a), the Commission may, for the purposes of facilitating those negotiations, if requested in writing to do so by either party, give a party a written procedural direction requiring the party to do, or refrain from doing, a specified act or thing relating to the conduct of those negotiations.

(3) The following are examples of the kinds of procedural directions that may be given under subsection (2):

(a) a direction requiring a party to give relevant information to the other party;

(b) a direction requiring a party to carry out research or investigations in order to obtain relevant information;

(c) a direction requiring a party not to impose unreasonable procedural conditions on the party's participation in negotiations;

(d) a direction requiring a party to respond in writing to the other party's proposal or request in relation to the time and place of a meeting;

(e) a direction requiring a party, or a representative of a party, to attend a mediation conference;

(f) a direction requiring a party, or a representative of a party, to attend a conciliation conference.

(4) For the purposes of paragraph (3)(c), if a party (the ***first party***) imposes, as a condition on the first party's participation in negotiations, a requirement that the other party must not disclose to the Commission any or all information, or the contents of any or all documents, provided in the course of negotiations, that condition is taken to be an unreasonable procedural condition on the first party's participation in those negotiations.

(5) A person must not contravene a direction under subsection (2).

(6) A person must not:

(a) aid, abet, counsel or procure a contravention of subsection (5); or

(b) induce, whether by threats or promises or otherwise, a contravention of subsection (5); or

(c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (5); or

(d) conspire with others to effect a contravention of subsection (5).

(7) In deciding whether to give a direction under subsection (2), the Commission must have regard to:

(a) any guidelines in force under subsection (8); and

(b) such other matters as the Commission considers relevant.

(8) The Commission may, by written instrument, formulate guidelines for the purposes of subsection (7).

(9) In addition to its effect apart from this subsection, this section also has the effect it would have if:

(a) each reference to a carrier were, by express provision, confined to a carrier that is a constitutional corporation; and

(b) each reference to a carriage service provider were, by express provision, confined to a carriage service provider that is a constitutional corporation; and

(c) each reference to an access seeker were, by express provision, confined to an access seeker that is a constitutional corporation.

152BBB Enforcement of directions

(1) If the Federal Court is satisfied that a person has contravened subsection 152BBA(5) or (6), the Court may order the person to pay to the Commonwealth such pecuniary penalty, in respect of each contravention, as the Court determines to be appropriate.

(2) In determining the pecuniary penalty, the Court must have regard to all relevant matters, including:

(a) the nature and extent of the contravention; and

(b) the nature and extent of any loss or damage suffered as a result of the contravention; and

(c) the circumstances in which the contravention took place; and

(d) whether the person has previously been found by the Court in proceedings under this Act to have engaged in any similar conduct.

(3) The pecuniary penalty payable under subsection (1) by a body corporate is not to exceed $250,000 for each contravention.

(4) The pecuniary penalty payable under subsection (1) by a person other than a body corporate is not to exceed $50,000 for each contravention.

(5) The Commission may institute a proceeding in the Federal Court for the recovery on behalf of the Commonwealth of a pecuniary penalty referred to in subsection (1).

(6) A proceeding under subsection (5) may be commenced within 6 years after the contravention.

(7) Criminal proceedings do not lie against a person only because the person has contravened subsection 152BBA(5) or (6).

152BBC Commission's role in negotiations

(1) This section applies if a carrier or carriage service provider is required to comply with any or all of the standard access obligations.

(2) If the following parties:

(a) the carrier or carriage service provider, as the case requires;

(b) the access seeker;

propose to negotiate, or are negotiating, with a view to agreeing on terms and conditions as mentioned in paragraph 152AY(2)(a), the parties may jointly request the Commission in writing to arrange for a representative of the Commission to attend, or mediate at, those negotiations.

(3) The Commission may comply with the request if the Commission considers that compliance with the request would be likely to facilitate those negotiations.

(4) For the purposes of this section, each of the following persons may be a representative of the Commission:

(a) a member, or associate member, of the Commission; or

(b) a person referred to in subsection 27(1); or

(c) a person engaged under section 27A.

(5) A member of the Commission is not disqualified from constituting the Commission (with other members) for the purposes of an arbitration under Division 8 of a dispute about a particular matter, merely because the member or another person attended, or mediated at, negotiations in relation to the matter in accordance with a request under this section.

152BBD Reaching agreement on terms and conditions of access

The Commission must, in exercising its powers under sections 152BBA and 152BBC, have regard to the desirability of access providers (within the meaning of section 152AR) and access seekers agreeing on terms and conditions as mentioned in paragraph 152AY(2)(a) in a timely manner.

Division 4—Telecommunications access code

152BJ Telecommunications access code

Commission may make code

(1) The Commission may, by writing, make a telecommunications access code.

Disallowable instrument

(2) A telecommunications access code is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Only one code

(3) The Commission must ensure that not more than one code is in force at a particular time.

152BK Content of telecommunications access code

(1) A telecommunications access code must set out model terms and conditions:
  (a) relating to compliance with the standard access obligations; and
  (b) that are capable of being adopted by ordinary access undertakings.

(2) Different sets of model terms and conditions may be set out for:
  (a) different kinds of obligations; or
  (b) the same kind of obligation in so far as it applies to different kinds of declared services.

(3) The Commission must not make a telecommunications access code unless the Commission is satisfied that:
  (a) the code is consistent with the standard access obligations; and
  (b) if any part of the code deals with price or a method of ascertaining price—the code is consistent with any Ministerial pricing determination; and
  (c) each set of model terms and conditions set out in the code is reasonable.

Note: Section 152AH contains a list of matters to be taken into account in determining whether terms and conditions are reasonable.

152BL Commission must invite public submissions on telecommunications access code

The Commission must not make a telecommunications access code unless the Commission has first:
  (a) published the code and invited people to make submissions to the Commission on the code; and
  (b) considered any submissions that were received within the time limit specified by the Commission when it published the code.

152BM Commission must consult the ACMA about code

Before making a telecommunications access code, the Commission must consult the ACMA.

152BN Copy of code to be given to the ACMA

If the Commission makes a telecommunications access code, the Commission must give the ACMA a copy of the code.

152BR Register of telecommunications access codes

(1) The Commission must maintain a Register that includes:

(a) all telecommunications access codes (including those that are no longer in force); and

(b) all variations of telecommunications access codes.

(2) The Register may be maintained by electronic means.

(3) A person may, on payment of the fee (if any) specified in the regulations:

(a) inspect the Register; and

(b) make a copy of, or take extracts from, the Register.

(4) For the purposes of this section, if the Register is maintained by electronic means, a person is taken to have made a copy of, or taken an extract from, the Register if the Commission gives the person a printout of, or of the relevant parts of, the Register.

(5) If a person requests that a copy be provided in an electronic form, the Commission may provide the relevant information:

(a) on a data processing device; or

(b) by way of electronic transmission.

Division 5—Access undertakings

Subdivision A—Ordinary access undertakings

152BS What is an *ordinary access undertaking*?

(1) For the purposes of this Part, an ***ordinary access undertaking*** is a written undertaking given by a carrier or a carriage service provider to the Commission under which the carrier or provider undertakes to comply with the terms and conditions specified in the undertaking in relation to the applicable standard access obligations.

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

(2) For the purposes of subsection (1), the ***applicable standard access obligations*** are the standard access obligations that are applicable to the carrier or provider.

(3) The text of the terms and conditions may be specified in the undertaking.

(4) Alternatively, the terms and conditions may be specified by adopting a set of model terms and conditions set out in the telecommunications access code, as in force from time to time.

(5) The terms and conditions must not be specified by a combination of the methods described in subsections (3) and (4). However, this rule does not prevent the carrier or provider from giving 2 separate undertakings in relation to the same declared service, where one undertaking specifies some of the terms and conditions using the method described in subsection (3) and the other undertaking specifies other terms and conditions using the method described in subsection (4).

(6) The undertaking must be in a form approved in writing by the Commission.

(6A) The undertaking may be without limitations or may be subject to such limitations as are specified in the undertaking.

(7) If the undertaking specifies terms and conditions using the method described in subsection (3), the undertaking must specify the expiry time of the undertaking.

(8) The expiry time of the undertaking may be described by reference to the end of a period beginning when the undertaking comes into operation.

(9) Subsection (8) does not, by implication, limit subsection (7).

(9A) If an undertaking expires, this Part does not prevent the carrier or provider from giving a fresh undertaking in the same terms as the expired undertaking.

(10) The terms and conditions specified in an undertaking may be expressed to come into effect:

(a) immediately after the undertaking is accepted by the Commission; or

(b) at a later time ascertained in accordance with the undertaking.

152BT Further information about undertaking

(1) This section applies if an ordinary access undertaking is given to the Commission by a carrier or a carriage service provider.

(2) The Commission may request the carrier or provider to give the Commission further information about the undertaking.

(2A) If:

(a) the Procedural Rules make provision for or in relation to a time limit for giving the information; and

(b) the carrier or provider does not give the Commission the information within that time limit;

the Commission may, by written notice given to the carrier or provider, reject the undertaking.

(2B) Subsection (2A) has effect despite anything in this Division.

(2C) If the Commission makes a decision under subsection (2A) to reject the undertaking, subsection 152BU(5) has effect as if the decision had been made under subsection 152BU(2).

(3) If the Procedural Rules do not make provision for or in relation to a time limit for giving the information, the Commission may refuse to consider the undertaking until the carrier or provider gives the Commission the information.

(4) The Commission may withdraw its request for further information, in whole or in part.

152BU Commission to accept or reject access undertaking

(1) This section applies if an ordinary access undertaking is given to the Commission by a carrier or carriage service provider.

(1A) Before the Commission makes a decision under subsection (2) in relation to the undertaking, the carrier or provider may, by written notice given to the Commission within the time allowed by the Procedural Rules, modify the undertaking, so long as the modification is a modification that, under the Procedural Rules, is taken to be of a minor nature.

Decision to accept or reject undertaking

(2) After considering the undertaking, the Commission must:

(a) accept the undertaking; or

(b) reject the undertaking.

Notice of decision

(3) If the Commission accepts the undertaking, the Commission must give the carrier or provider a written notice stating that the undertaking has been accepted.

(4) If the Commission rejects the undertaking, the Commission must give the carrier or provider a written notice:

(a) stating that the undertaking has been rejected; and

(b) setting out the reasons for the rejection.

Commission to make decision within 6 months

(5) If the Commission does not make a decision under subsection (2) about the undertaking within 6 months after receiving the undertaking, the Commission is taken to have made, at the end of that 6-month period, a decision under subsection (2) to accept the undertaking.

(6) In calculating the 6-month period referred to in subsection (5), disregard:

(a) if the Commission has published the undertaking under paragraph 152BV(2)(a)—a day in the period:
(i) beginning on the date of publication; and
(ii) ending at the end of the time limit specified by the Commission when it published the undertaking; and
(b) if the Commission has requested further information under section 152BT in relation to the undertaking—a day during any part of which the request, or any part of the request, remains unfulfilled.

Extension of decision-making period

(7) The Commission may, by written notice given to the carrier or provider, extend or further extend the 6-month period referred to in subsection (5), so long as:
(a) the extension or further extension is for a period of not more than 3 months; and
(b) the notice includes a statement explaining why the Commission has been unable to make a decision on the undertaking within that 6-month period or that 6-month period as previously extended, as the case may be.

(8) As soon as practicable after the Commission gives a notice under subsection (7), the Commission must cause a copy of the notice to be made available on the Internet.

152BV Acceptance of access undertaking—model terms and conditions in access code not adopted

(1) This section applies if:
(a) an ordinary access undertaking is given to the Commission by a carrier or a carriage service provider; and
(b) the undertaking does not adopt a set of model terms and conditions set out in the telecommunications access code.

(2) The Commission must not accept the undertaking unless:
(a) the Commission has:
(i) published the undertaking and invited people to make submissions to the Commission on the undertaking; and
(ii) considered any submissions that were received within the time limit specified by the Commission when it published the undertaking; and
(b) the Commission is satisfied that the undertaking is consistent with the standard access obligations that are applicable to the carrier or provider; and
(c) if the undertaking deals with price or a method of ascertaining price—the Commission is satisfied that the undertaking is consistent with any Ministerial pricing determination; and
(d) the Commission is satisfied that the terms and conditions specified in the undertaking are reasonable; and
(e) the expiry time of the undertaking occurs within 3 years after the date on which the undertaking comes into operation.

Note: Section 152AH contains a list of matters to be taken into account in determining whether terms and conditions are reasonable.

152BW Acceptance of access undertaking—model terms and conditions in access code adopted

(1) This section applies if:

(a) an ordinary access undertaking is given to the Commission by a carrier or a carriage service provider; and

(b) the undertaking adopts a set of model terms and conditions set out in the telecommunications access code.

(2) The Commission must accept the undertaking.

152BX Duration of access undertaking

(1) This section applies if an ordinary access undertaking is given to the Commission.

(2) If the Commission accepts the undertaking:

(a) the undertaking comes into operation:

(i) if the terms and conditions specified in the undertaking are expressed to come into effect immediately after the undertaking is accepted by the Commission—at the time of acceptance; or

(ii) if the terms and conditions specified in the undertaking are expressed to come into effect at a later time ascertained in accordance with the undertaking—at that later time; and

(b) the undertaking continues in operation until:

(i) in the case of an undertaking that specifies an expiry time—the expiry time; or

(ii) in the case of an undertaking that adopts a set of model terms and conditions set out in the telecommunications access code—the code is revoked or is varied so as to omit that set of terms and conditions; or

(iii) in any case—the undertaking is withdrawn as mentioned in section 152CA or 152CB.

152BY Variation of access undertakings

(1) This section applies if an ordinary access undertaking given by a carrier or a carriage service provider is in operation.

(2) The carrier or provider may give the Commission a variation of the undertaking.

(2A) Before the Commission makes a decision under subsection (3) in relation to the variation, the carrier or provider may, by written notice given to the Commission within the time allowed by the Procedural Rules, modify the variation, so long as the modification is a modification that, under the Procedural Rules, is taken to be a modification of a minor nature.

Decision to accept or reject variation

(3) After considering the variation, the Commission must decide to:

(a) accept the variation; or

(b) reject the variation.

(4) Sections 152BV and 152BW apply to the variation in a corresponding way to the way in which they apply to an undertaking. However, if the variation is a variation that, under the Procedural Rules, is taken to be a variation of a minor nature, the Commission is not required to comply with paragraph 152BV(2)(a) in relation to the variation.

Notice of decision

(5) If the Commission accepts the variation, the Commission must give the carrier or provider a written notice:

(a) stating that the variation has been accepted; and

(b) setting out the terms of the variation.

(6) If the Commission rejects the variation, the Commission must give the carrier or provider a written notice:

(a) stating that the variation has been rejected; and

(b) setting out the reasons for the rejection.

Commission to make decision within 6 months

(7) If the Commission does not make a decision under subsection (3) about the variation within 6 months after receiving the variation, the Commission is taken to have made, at the end of that 6-month period, a decision under subsection (3) to accept the variation.

(8) In calculating the 6-month period referred to in subsection (7), disregard:

(a) if the Commission has published the variation under paragraph 152BV(2)(a)—a day in the period:

(i) beginning on the date of publication; and

(ii) ending at the end of the time limit specified by the Commission when it published the variation; and

(b) if the Commission has requested further information under section 152BZ in relation to the variation—a day during any part of which the request, or any part of the request, remains unfulfilled.

Extension of decision-making period

(9) The Commission may, by written notice given to the person, extend or further extend the 6-month period referred to in subsection (7), so long as:

(a) the extension or further extension is for a period of not more than 3 months; and

(b) the notice includes a statement explaining why the Commission has been unable to make a decision on the variation within that 6-month period or that 6-month period as previously extended, as the case may be.

(10) As soon as practicable after the Commission gives a notice under subsection (9), the Commission must cause a copy of the notice to be made available on the Internet.

152BZ Further information about variation of access undertaking

(1) This section applies if the carrier or carriage service provider gives the Commission a variation of an ordinary access undertaking.

(2) The Commission may request the carrier or provider to give the Commission further information about the variation.

(2A) If:

(a) the Procedural Rules make provision for or in relation to a time limit for giving the information; and

(b) the carrier or provider does not give the Commission the information within the time limit allowed by the Procedural Rules;

the Commission may, by written notice given to the carrier or provider, reject the variation.

(2B) Subsection (2A) has effect despite anything in this Division.

(2C) If the Commission makes a decision under subsection (2A) to reject the variation, subsection 152BY(7) has effect as if the decision had been made under subsection 152BY(3).

(3) If the Procedural Rules do not make provision for or in relation to a time limit for giving the information, the Commission may refuse to consider the variation until the carrier or provider gives the Commission the information.

(4) The Commission may withdraw its request for further information, in whole or in part.

152CA Voluntary withdrawal of undertaking

(1) This section applies if an ordinary access undertaking given by a carrier or a carriage service provider is in operation.

(2) The carrier or provider may, by written notice given to the Commission, withdraw the undertaking.

152CB Replacement of access undertaking

(1) This section applies if an ordinary access undertaking (the ***current undertaking***) given by a carrier or a carriage service provider is in operation.

(2) The carrier or provider may give to the Commission an ordinary access undertaking that is expressed to replace the current undertaking.

(3) If the Commission accepts the replacement undertaking under section 152BU, the current undertaking is taken to have been withdrawn immediately before the time when the replacement undertaking comes into operation.

Subdivision B—Special access undertakings

152CBA What is a *special access undertaking*?

Scope

(1) This section applies to a person who is, or expects to be, a carrier or a carriage service provider supplying:

(a) a listed carriage service (within the meaning of the *Telecommunications Act 1997*); or

(b) a service that facilitates the supply of a listed carriage service (within the meaning of that Act);

whether to itself or to other persons, so long as the service is not an active declared service.

Undertaking

(2) The person may give a written undertaking (a ***special access undertaking***) to the Commission in connection with the provision of access to the service.

(3) The undertaking must state that, in the event that the person supplies the service (whether to itself or to other persons), the person:

(a) agrees to be bound by the obligations referred to in section 152AR, to the extent that those obligations would apply to the person in relation to the service if the service were treated as an active declared service; and

(b) undertakes to comply with the terms and conditions specified in the undertaking in relation to the obligations referred to in paragraph (a).

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

(4) The undertaking must be in a form approved in writing by the Commission.

(5) The undertaking may be without limitations or may be subject to such limitations as are specified in the undertaking.

Expiry time

(6) The undertaking must specify the expiry time of the undertaking.

(7) The expiry time of the undertaking may be described by reference to the end of a period beginning:

(a) when the undertaking comes into operation; or

(b) when the person begins to supply the service (whether to itself or to other persons).

(8) Subsection (7) does not, by implication, limit subsection (6).

(9) The undertaking may provide for the person to extend, or further extend, the expiry time of the undertaking, so long as:

(a) the extension or further extension is approved by the Commission; and

(b) the undertaking sets out criteria that are to be applied by the Commission in deciding whether to approve the extension or further extension.

(10) If the undertaking expires, this Part does not prevent the person from giving:

(a) a fresh special access undertaking in the same terms as the expired undertaking; or

(b) an ordinary access undertaking that deals with the same service as the expired undertaking.

Related services

(11) A reference in paragraph (1)(b) to a service that facilitates the supply of a carriage service does not include a reference to the use of intellectual property except to the extent that it is an integral but subsidiary part of the first-mentioned service.

Definition

(12) In this section:

active declared service has the same meaning as in section 152AR (disregarding subsection 152AL(7)).

Note: A service includes a proposed service—see section 152CBJ.

152CBB Further information about undertaking

(1) This section applies if a person gives a special access undertaking to the Commission.

(2) The Commission may request the person to give the Commission further information about the undertaking.

(2A) If:

(a) the Procedural Rules make provision for or in relation to a time limit for giving the information; and

(b) the person does not give the Commission the information within the time limit allowed by the Procedural Rules;

the Commission may, by written notice given to the person, reject the undertaking.

(2B) Subsection (2A) has effect despite anything in this Division.

(2C) If the Commission makes a decision under subsection (2A) to reject the undertaking, subsection 152CBC(5) has effect as if the decision had been made under subsection 152CBC(2).

(3) If the Procedural Rules do not make provision for or in relation to a time limit for giving the information, the Commission may refuse to consider the undertaking until the person gives the Commission the information.

(4) The Commission may withdraw its request for further information, in whole or in part.

152CBC Commission to accept or reject access undertaking

(1) This section applies if a person gives a special access undertaking to the Commission.

(1A) Before the Commission makes a decision under subsection (2) in relation to the undertaking, the person may, by written notice given to the Commission within the time allowed by the Procedural Rules, modify the undertaking, so long as the modification is a modification that, under the Procedural Rules, is taken to be of a minor nature.

Decision to accept or reject undertaking

(2) After considering the undertaking, the Commission must:

(a) accept the undertaking; or

(b) reject the undertaking.

Notice of decision

(3) If the Commission accepts the undertaking, the Commission must give the person a written notice stating that the undertaking has been accepted.

(4) If the Commission rejects the undertaking, the Commission must give the person a written notice:

(a) stating that the undertaking has been rejected; and

(b) setting out the reasons for the rejection.

Commission to make decision within 6 months

(5) If the Commission does not make a decision under subsection (2) about the undertaking within 6 months after receiving the undertaking, the Commission is taken to have made, at the end of that 6-month period, a decision under subsection (2) to accept the undertaking.

(6) In calculating the 6-month period referred to in subsection (5), disregard:

(a) if the Commission has published the undertaking under paragraph 152CBD(2)(d)—a day in the period:
  (i) beginning on the date of publication; and
  (ii) ending at the end of the time limit specified by the Commission when it published the undertaking; and
(b) if the Commission has requested further information under section 152CBB in relation to the undertaking—a day during any part of which the request, or any part of the request, remains unfulfilled.

Extension of decision-making period

(7) The Commission may, by written notice given to the person, extend or further extend the 6-month period referred to in subsection (5), so long as:
(a) the extension or further extension is for a period of not more than 3 months; and
(b) the notice includes a statement explaining why the Commission has been unable to make a decision on the undertaking within that 6-month period or that 6-month period as previously extended, as the case may be.

(8) As soon as practicable after the Commission gives a notice under subsection (7), the Commission must cause a copy of the notice to be made available on the Internet.

152CBD Criteria for accepting access undertaking

(1) This section applies if a person gives the Commission a special access undertaking relating to a service.

(2) The Commission must not accept the undertaking unless:
(a) the Commission is satisfied that the terms and conditions referred to in paragraph 152CBA(3)(b) would be consistent with the obligations referred to in paragraph 152CBA(3)(a); and
(b) the Commission is satisfied that those terms and conditions are reasonable; and
(c) the Commission is satisfied that the undertaking is consistent with any Ministerial pricing determination; and
(d) the Commission has:
  (i) published the undertaking and invited people to make submissions to the Commission on the undertaking; and
  (ii) considered any submissions that were received within the time limit specified by the Commission when it published the undertaking.

Note: Section 152AH contains a list of matters to be taken into account in determining whether terms and conditions are reasonable.

152CBE Extension of access undertaking

(1) This section applies if:
(a) a special access undertaking is given by a person; and
(b) the undertaking is in operation; and
(c) the undertaking provides for the person to extend the expiry time of the undertaking, so long as the extension is approved by the Commission; and
(d) the undertaking sets out criteria that are to be applied by the Commission in deciding whether to approve the extension.

(2) The person may apply to the Commission for approval of the extension. The application must be made in the 12-month period ending at the expiry time.

(3) An application under subsection (2) must be:
(a) in writing; and
(b) in a form approved in writing by the Commission.

(4) After considering the application, the Commission must decide whether to:
(a) approve the extension; or
(b) refuse to approve the extension.

(5) The Commission must approve the extension if the Commission is satisfied that the criteria referred to in paragraph (1)(d) have been met.

(6) If the Commission approves the extension, the Commission must give the person a written notice stating that the extension has been approved.

(7) If the Commission refuses to approve the extension, the Commission must give the person a written notice:
(a) stating that the Commission has refused to approve the extension; and
(b) setting out the reasons for the refusal.

(8) In this section, a reference to an ***extension*** includes a reference to a further extension.

152CBF Duration of access undertaking

(1) This section applies if a person gives the Commission a special access undertaking relating to a service.

(2) If the Commission accepts the undertaking:
(a) the undertaking comes into operation at the time of acceptance; and
(b) the undertaking continues in operation until:
(i) it expires; or
(ii) it is withdrawn as mentioned in section 152CBI;
even if the service becomes an active declared service.

(3) In this section:

active declared service has the same meaning as in section 152AR (disregarding subsection 152AL(7)).

152CBG Variation of access undertakings

(1) This section applies if a special access undertaking given by a person is in operation.

(2) The person may give the Commission a variation of the undertaking.

(2A) Before the Commission makes a decision under subsection (3) in relation to the variation, the person may, by written notice given to the Commission within the time allowed by the Procedural Rules, modify the variation, so long as the modification is a modification that, under the Procedural Rules, is taken to be a modification of a minor nature.

Decision to accept or reject variation

(3) After considering the variation, the Commission must decide to:
(a) accept the variation; or
(b) reject the variation.

(4) Section 152CBD applies to the variation in a corresponding way to the way in which it applies to an undertaking. However, if the variation is a variation that, under the Procedural Rules, is taken to be a variation of a minor nature, the Commission is not required to comply with paragraph 152CBD(2)(d) in relation to the variation.

Notice of decision

(5) If the Commission accepts the variation, the Commission must give the person a written notice:
  (a) stating that the variation has been accepted; and
  (b) setting out the terms of the variation.

(6) If the Commission rejects the variation, the Commission must give the person a written notice:
  (a) stating that the variation has been rejected; and
  (b) setting out the reasons for the rejection.

Commission to make decision within 6 months

(7) If the Commission does not make a decision under subsection (3) about the variation within 6 months after receiving the variation, the Commission is taken to have made, at the end of that 6-month period, a decision under subsection (3) to accept the variation.

(8) In calculating the 6-month period referred to in subsection (7), disregard:
  (a) if the Commission has published the variation under paragraph 152CBD(2)(d)—a day in the period:
    (i) beginning on the date of publication; and
    (ii) ending at the end of the time limit specified by the Commission when it published the variation; and
  (b) if the Commission has requested further information under section 152CBH in relation to the variation—a day during any part of which the request, or any part of the request, remains unfulfilled.

Extension of decision-making period

(9) The Commission may, by written notice given to the person, extend or further extend the 6-month period referred to in subsection (7), so long as:
  (a) the extension or further extension is for a period of not more than 3 months; and
  (b) the notice includes a statement explaining why the Commission has been unable to make a decision on the variation within that 6-month period or that 6-month period as previously extended, as the case may be.

(10) As soon as practicable after the Commission gives a notice under subsection (9), the Commission must cause a copy of the notice to be made available on the Internet.

152CBH Further information about variation of access undertaking

(1) This section applies if a person gives the Commission a variation of a special access undertaking.

(2) The Commission may request the person to give the Commission further information about the variation.

(2A) If:

(a) the Procedural Rules make provision for or in relation to a time limit for giving the information; and

(b) the person does not give the Commission the information within the time limit allowed by the Procedural Rules;

the Commission may, by written notice given to the person, reject the variation.

(2B) Subsection (2A) has effect despite anything in this Division.

(2C) If the Commission makes a decision under subsection (2A) to reject the variation, subsection 152CBG(7) has effect as if the decision had been made under subsection 152CBG(3).

(3) If the Procedural Rules do not make provision for or in relation to a time limit for giving the information, the Commission may refuse to consider the variation until the person gives the Commission the information.

(4) The Commission may withdraw its request for further information, in whole or in part.

152CBI Voluntary withdrawal of undertaking

(1) This section applies if a special access undertaking given by a person is in operation.

(2) The person may, by written notice given to the Commission, withdraw the undertaking if:

(a) the service to which the undertaking relates is a declared service when the notice is given; or

(b) both:

(i) the service to which the undertaking relates is not a declared service when the notice is given; and

(ii) at least 12 months before the notice is given, the person informed the Commission in writing that the person proposed to withdraw the undertaking.

(3) For the purposes of this section, in determining whether a service is a declared service, disregard subsection 152AL(7).

152CBJ Proposed service

In this Subdivision, a reference to a ***service*** includes a reference to a proposed service.

Subdivision C—General provisions

152CC Register of access undertakings

(1) The Commission is to maintain a Register in which the Commission includes:

(a) all access undertakings that have been accepted by the Commission (including those that are no longer in operation); and

(b) all variations of access undertakings.

(2) The Register may be maintained by electronic means.

(3) A person may, on payment of the fee (if any) specified in the regulations:

(a) inspect the Register; and

(b) make a copy of, or take extracts from, the Register.

(4) For the purposes of this section, if the Register is maintained by electronic means, a person is taken to have made a copy of, or taken an extract from, the Register if the Commission gives the person a printout of, or of the relevant parts of, the Register.

(5) If a person requests that a copy be provided in an electronic form, the Commission may provide the relevant information:

(a) on a data processing device; or

(b) by way of electronic transmission.

152CD Enforcement of access undertakings

(1) This section applies if an access undertaking given by a person (the ***first person***) is in operation.

(2) If:

(a) the Commission; or

(b) any person (the ***affected person***) whose interests are affected by the undertaking;

thinks that the first person has breached the access undertaking, the Commission or affected person may apply to the Federal Court for an order under subsection (3).

(3) If the Federal Court is satisfied that the first person has breached the undertaking, the Court may make all or any of the following orders:

(a) an order directing the first person to comply with the undertaking;

(b) an order directing the first person to compensate any other person who has suffered loss or damage as a result of the breach;

(c) any other order that the Court thinks appropriate.

(4) The Federal Court may discharge or vary an order granted under this section.

152CDA Deferral of consideration of an access undertaking etc.

(1) The Procedural Rules may authorise the Commission to defer consideration of:

(a) an access undertaking; or

(b) a variation of an access undertaking.

(2) Subsection (1) has effect despite anything in this Division.

152CE Review by Tribunal

(1) A person whose interests are affected by a decision of the Commission under subsection 152BU(2), 152BY(3), 152CBC(2) or 152CBG(3) may apply in writing to the Tribunal for a review of the decision.

(2) The application must be made within 21 days after the Commission made the decision.

(3) The Tribunal must review the decision.

152CF Functions and powers of Tribunal

Decision on review

(1) On a review of a decision of the Commission under subsection 152BU(2), 152BY(3), 152CBC(2) or 152CBG(3), the Tribunal may make a decision:

(a) in any case—affirming the Commission's decision; or

(b) in the case of a review of a decision of the Commission under subsection 152BU(2) or 152CBC(2) to accept an undertaking—setting aside the Commission's decision; or

(c) in the case of a review of a decision of the Commission under subsection 152BU(2) or 152CBC(2) to reject an undertaking—both:

(i) setting aside the Commission's decision; and

(ii) in substitution for the decision so set aside, to accept the undertaking; or

(d) in the case of a review of a decision of the Commission under subsection 152BY(3) or 152CBG(3) to accept a variation of an undertaking—setting aside the Commission's decision; or

(e) in the case of a review of a decision of the Commission under subsection 152BY(3) or 152CBG(3) to reject a variation of an undertaking—both:

(i) setting aside the Commission's decision; and

(ii) in substitution for the decision so set aside, to accept the variation;

and, for the purposes of the review, the Tribunal may perform all the functions and exercise all the powers of the Commission.

(2) A decision by the Tribunal:

(a) affirming a decision of the Commission; or

(b) setting aside a decision of the Commission; or

(c) made in substitution for a decision of the Commission;

is taken, for the purposes of this Act (other than section 152CE or this section), to be a decision of the Commission.

Conduct of review

(3) For the purposes of a review by the Tribunal, the member of the Tribunal presiding at the review may require the Commission to give such information, make such reports and provide such other assistance to the Tribunal as the member specifies.

(4) For the purposes of a review, the Tribunal may have regard only to:

(a) any information given, documents produced or evidence given to the Commission in connection with the making of the decision to which the review relates; and

(b) any other information that was referred to in the Commission's reasons for making the decision to which the review relates.

Tribunal to make decision within 6 months

(5) If:

(a) a person applies to the Tribunal for a review of a decision of the Commission under subsection 152BU(2), 152BY(3), 152CBC(2) or 152CBG(3); and

(b) the Tribunal does not make a decision under subsection (1) of this section on the review within 6 months after receiving the application for review;

the Tribunal is taken to have made, at the end of that 6-month period, whichever of the following decisions is applicable:

(c) in the case of a review of a decision of the Commission to accept an access undertaking—a decision setting aside the Commission's decision;

(d) in the case of a review of a decision of the Commission to reject an access undertaking:

(i) a decision setting aside the Commission's decision; and

(ii) in substitution for the decision so set aside, a decision to accept the undertaking;

(e) in the case of a review of a decision of the Commission to accept a variation of an access undertaking—a decision setting aside the Commission's decision;

(f) in the case of a review of a decision of the Commission to reject a variation of an access undertaking:

(i) a decision setting aside the Commission's decision; and

(ii) in substitution for the decision so set aside, a decision to accept the variation.

Extension of decision-making period

(6) The Tribunal may, by written notice given to the applicant for review, extend or further extend the 6-month period referred to in subsection (5), so long as:

(a) the extension or further extension is for a period of not more than 3 months; and

(b) the notice includes a statement explaining why the Tribunal has been unable to make a decision on the review within that 6-month period or that 6-month period as previously extended, as the case may be.

(7) As soon as practicable after the Tribunal gives a notice under subsection (6), the Tribunal must cause a copy of the notice to be made available on the Internet.

Time of acceptance of undertaking

(8) To avoid doubt, if the Tribunal makes a decision to accept an undertaking, the time of acceptance of the undertaking is the time when the Tribunal made its decision.

Note: Division 2 of Part IX applies to proceedings before the Tribunal.

152CG Provisions that do not apply in relation to a Tribunal review

Division 1 of Part IX does not apply in relation to a review by the Tribunal of a decision made by the Commission under subsection 152BU(2), 152BY(3), 152CBC(2) or 152CBG(3).

152CGA Statement of reasons for reviewable decision—specification of documents

(1) If the Commission:

(a) makes a decision referred to in section 152CE; and

(b) gives a person a written statement setting out the reasons for the decision;

the statement must specify the documents that the Commission examined in the course of making the decision.

(2) If a document is specified under subsection (1), information in the document is taken, for the purposes of paragraph 152CF(4)(b), to be referred to in the Commission's reasons for making the decision.

152CGB Access undertakings prevail over inconsistent arbitral determinations

A determination made by the Commission under Division 8 has no effect to the extent to which it is inconsistent with an access undertaking that is in operation.

Division 6—Ministerial pricing determinations

152CH Ministerial pricing determinations

(1) The Minister may make a written determination setting out principles dealing with price-related terms and conditions relating to the standard access obligations. The determination is to be known as a ***Ministerial pricing determination***.

Note 1A: Subsection 152AQA(7) provides that a determination under section 152AQA has no effect to the extent that the determination is inconsistent with any Ministerial pricing determination.

Note 1B: Subsection 152AQB(9) provides that a determination under section 152AQB has no effect to the extent that the determination is inconsistent with any Ministerial pricing determination.

Note 2: Subsection 152BK(3) provides that the Commission must not make a telecommunications access code unless the code is consistent with any Ministerial pricing determination.

Note 3: Subsection 152BV(2) provides that the Commission must not accept an ordinary access undertaking dealing with price or a method of ascertaining price unless the undertaking is consistent with any Ministerial pricing determination.

Note 3A: Subsection 152CBD(2) provides that the Commission must not accept a special access undertaking unless the undertaking is consistent with any Ministerial pricing determination.

Note 4: Subsection 152CI(1) provides that a provision of an access undertaking has no effect to the extent that the provision is inconsistent with any Ministerial pricing determination.

Note 5: Subsection 152CI(2) provides that a provision of the telecommunications access code has no effect to the extent that the provision is inconsistent with any Ministerial pricing determination.

Note 6: Subsection 152CQ(6) provides that the Commission must not make a determination under Division 8 that is inconsistent with any Ministerial pricing determination.

(2) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(3) In this section:

price-related terms and conditions means terms and conditions relating to price or a method of ascertaining price.

152CI Undertakings and codes that are inconsistent with Ministerial pricing determinations

(1) If a provision of an access undertaking is inconsistent with any Ministerial pricing determination, the provision has no effect to the extent of the inconsistency.

(2) If a provision of the telecommunications access code is inconsistent with any Ministerial pricing determination, the provision has no effect to the extent of the inconsistency.

152CJ Register of Ministerial pricing determinations

(1) The Commission must keep a Register of Ministerial pricing determinations.

(2) The Register may be maintained by electronic means.

(3) A person may, on payment of the fee (if any) specified in the regulations:
  (a) inspect the Register; and
  (b) make a copy of, or take extracts from, the Register.

(4) For the purposes of this section, if the Register is maintained by electronic means, a person is taken to have made a copy of, or taken an extract from, the Register if the Commission gives the person a printout of, or of the relevant parts of, the Register.

(5) If a person requests that a copy be provided in an electronic form, the Commission may provide the relevant information:

(a) on a data processing device; or

(b) by way of electronic transmission.

Division 7—Relationship between this Part and Part IIIA

152CK Relationship between this Part and Part IIIA

(1) A notification must not be given under section 44S in relation to an access dispute if:

(a) the dispute relates to one or more aspects of access to a declared service (within the meaning of this Part); and

(b) the third party referred to in that section is a service provider (within the meaning of this Part).

(2) The Commission must not accept an undertaking under section 44ZZA that relates to a declared service (within the meaning of this Part) if the terms and conditions set out in the undertaking relate to the provision of access to one or more service providers (within the meaning of this Part).

(3) If:

(a) an undertaking under section 44ZZA is in operation in relation to a particular service; and

(b) at a particular time, the service becomes a declared service (within the meaning of this Part);

the undertaking ceases to be in operation to the extent (if any) to which it sets out terms and conditions relating to the provision of access to one or more service providers (within the meaning of this Part).

(4) For the purposes of this section, if a special access undertaking is in operation, assume that subsection 152AL(7) has effect in relation to the undertaking as if paragraph 152AL(7)(c) had not been enacted.

Division 8—Resolution of disputes about access

Subdivision A—Introduction

152CL Definitions

In this Division, unless the contrary intention appears:

determination means a determination made by the Commission under this Division.

final determination means a determination other than an interim determination.

interim determination means a determination that is expressed to be an interim determination.

party means:

(a) in relation to an arbitration of an access dispute—a party to the arbitration, as mentioned in section 152CO; or

(b) in relation to a determination—a party to the arbitration in which the Commission made the determination.

152CLA Resolution of access disputes

(1) The Commission must, in exercising its powers under this Division, have regard to the desirability of access disputes being resolved in a timely manner (including through the use of alternative dispute resolution methods such as mediation and conciliation).

Note: The Commission must also have regard to the the matters set out in section 152CR, to any relevant pricing determination under section 152AQA and, in the case of core services, to any relevant determination under section 152AQB.

Deferral of consideration of access dispute

(2) If:

(a) the Commission receives an access undertaking that relates, in whole or in part, to a matter; and

(b) the matter is the subject of an access dispute that has been notified to the Commission;

the Commission may defer consideration of the access dispute, in whole or in part, while the Commission considers the access undertaking.

(3) Subsection (2) has effect despite anything in this Division (other than subsection (4)).

Guidelines about deferral

(4) In exercising the power conferred by subsection (2), the Commission must have regard to:

(a) the fact that the access undertaking will, if accepted, apply generally to access seekers whereas a determination relating to the access dispute will only apply to the parties to the determination; and

(b) any guidelines in force under subsection (5); and

(c) such other matters as the Commission considers relevant.

(5) The Commission must, by writing, formulate guidelines for the purposes of subsection (4).

(6) The Commission must take all reasonable steps to ensure that the first set of guidelines under subsection (5) is made within 6 months after the commencement of this subsection.

(7) Guidelines under subsection (5) are to be made available on the Internet.

Procedural Rules

(8) Subsections (2) to (7) may be displaced or modified by the Procedural Rules.

(9) The Procedural Rules may authorise the Commission to defer consideration of an access dispute, in whole or in part.

(10) Subsection (9) has effect despite anything in this Division.

Subdivision B—Notification of access disputes

152CM Notification of access disputes

(1) If:

(a) a declared service is supplied, or proposed to be supplied, by a carrier or a carriage service provider; and

(b) one or more standard access obligations apply, or will apply, to the carrier or provider in relation to the declared service; and

(c) an access seeker is unable to agree with the carrier or provider about the terms and conditions on which the carrier or provider is to comply with those obligations;

then:

(d) the access seeker; or

(e) the carrier or provider;

may notify the Commission in writing that an access dispute exists.

(2) If:

(a) a declared service is supplied, or proposed to be supplied, by a carrier or a carriage service provider; and

(b) one or more standard access obligations apply, or will apply, to the carrier or provider in relation to the declared service; and

(c) an access seeker is unable to agree with the carrier or provider about one or more aspects of access to the declared service;

then:

(d) the access seeker; or

(e) the carrier or provider;

may notify the Commission in writing that an access dispute exists.

(3) For the purposes of paragraph (2)(b), it is to be assumed that subsection 152AR(4) had not been enacted.

(4) Subsection (2) only authorises the notification of a dispute to the extent that the dispute cannot be notified under subsection (1).

(5) The following are examples of things on which an access seeker and a carrier or provider might disagree:

(a) the price, or the method of ascertaining the price, at which access is to be provided;

(b) whether a previous determination ought to be varied.

(6) On receiving the notification, the Commission must give written notice of the access dispute to:

(a) the carrier or provider, if the access seeker notified the access dispute; and

(b) the access seeker, if the carrier or provider notified the access dispute; and

(c) if the Commission is of the opinion that the resolution of the access dispute may involve requiring another person to do something—that other person; and

(d) any other person who the Commission thinks might want to become a party to the arbitration.

(7) Unless the contrary intention appears, for the purposes of the application of this Division to a particular access dispute, a reference in this Division to the carrier or to the provider is a reference to the carrier or to the provider, as the case may be, referred to in whichever of subsections (1) and (2) is applicable.

152CN Withdrawal of notifications

Withdrawal by carrier or provider

(1) If the carrier or provider notified the access dispute, the carrier or provider may withdraw the notification at any time before the Commission makes its final determination, but only with the consent of:

(a) the access seeker; or

(b) if the carrier or provider is unable to obtain the consent of the access seeker—the Commission.

Withdrawal by access seeker

(2) If the access seeker notified the access dispute, the access seeker may withdraw the notification at any time before the Commission makes its final determination, but only with the consent of:

(a) the carrier or provider (as the case may be); or

(b) if the access seeker is unable to obtain the consent of the carrier or provider—the Commission.

No other withdrawal

(2A) A notification may not be withdrawn in any other circumstances.

Consequences of withdrawal

(3) If the notification is withdrawn:

(a) the Commission must not make a final determination in relation to the access dispute; and

(b) if the Commission has not already made an interim determination in relation to the access dispute—the Commission must not make an interim determination in relation to the access dispute.

Subdivision C—Arbitration of access disputes

152CO Parties to the arbitration

The parties to the arbitration of an access dispute are as follows:

(a) the carrier or provider;

(b) the access seeker;

(c) if the Commission is of the opinion that the resolution of the access dispute may involve requiring another person to do something—that other person;

(d) any other person who applies in writing to be made a party and is accepted by the Commission as having a sufficient interest.

152CP Determination by Commission

(1) Unless the Commission terminates the arbitration under section 152CS, the Commission must make a written determination on access by the access seeker to the declared service.

(2) The determination may deal with any matter relating to access by the access seeker to the declared service including matters that were not the basis for notification of the dispute. For example, the determination may:

(a) require the carrier or provider to provide access to the declared service by the access seeker; or

(b) require the access seeker to accept, and pay for, access to the declared service; or

(c) specify the terms and conditions on which the carrier or provider is to comply with any or all of the standard access obligations applicable to the carrier or provider; or

(d) specify any other terms and conditions of the access seeker's access to the declared service; or

(e) require a party to extend or enhance the capability of a facility by means of which the declared service is supplied; or

(f) specify the extent to which the determination overrides an earlier determination relating to access to the declared service by the access seeker.

(3) The determination must not require the carrier or provider to provide access to the declared service by the access seeker if the requirement is already imposed by:

(a) Division 3 (which deals with the standard access obligations); or

(b) any other law of the Commonwealth.

(4) Before making a determination, the Commission must give a draft determination to the parties.

(5) When the Commission makes a determination, it must give the parties to the arbitration its reasons for making the determination.

(6) A determination does not take effect before 1 July 1997.

152CPA Interim determination by Commission

(1) A determination may be expressed to be an interim determination.

(2) The making of an interim determination does not terminate an arbitration or relieve the Commission from its duty to make a final determination.

Procedural fairness

(3) The Commission is not required to observe any requirements of procedural fairness in relation to the making of an interim determination if:

(a) both:

(i) the declared service is covered by a determination in force under section 152AQA; and

(ii) the price-related terms and conditions in the interim determination are consistent with the price-related terms and conditions in the section 152AQA determination; or

(b) both:

(i) the declared service is covered by a determination in force under section 152AQB; and

(ii) the price-related terms and conditions in the interim determination are consistent with the price-related terms and conditions in the section 152AQB determination.

For this purpose, ***price-related terms and conditions*** means terms and conditions relating to price or a method of ascertaining price.

Duration

(4) An interim determination has effect on the date specified in the determination.

(5) Unless sooner revoked, an interim determination remains in force until the end of the period specified in the determination. The period must not be longer than 12 months.

(5A) The Commission may extend the period specified in an interim determination, so long as:

(a) the extension is for a period of not more than 12 months; and

(b) there has been no previous extension.

(5B) The Commission is not required to observe any requirements of procedural fairness in relation to granting, or refusing to grant, an extension under subsection (5A).

Revocation

(6) The Commission may revoke an interim determination.

(7) The Commission must revoke an interim determination if requested to do so by the parties to the determination.

(8) If:

(a) an interim determination relating to an access dispute is in force; and

(b) the notification of the dispute is withdrawn under section 152CN;

the interim determination is taken to have been revoked when the withdrawal occurs.

(9) If:

(a) an interim determination relating to an access dispute is in force; and

(b) a final determination relating to the access dispute takes effect;

the interim determination is taken to have been revoked when the final determination takes effect.

Variation

(10) The Commission may vary an interim determination.

(11) Sections 152CQ and 152CR apply to a variation under subsection (10) as if:

(a) in a case where the interim determination was made in arbitration of an access dispute relating to an earlier final determination of an access dispute (the ***eligible access dispute***) between the access seeker and the carrier or provider:

(i) an access dispute (the ***notional access dispute***) arising out of the interim determination had been notified at the time when the eligible access dispute was notified; and

(ii) the notional access dispute were an access dispute relating to the earlier final determination; and

(iii) the variation were the making of an interim determination in the terms of the varied interim determination; or

(b) in any other case:

(i) an access dispute arising out of the interim determination had been notified at the time when the original access dispute was notified; and

(ii) the variation were the making of an interim determination in the terms of the varied interim determination.

(12) The Commission is not required to observe any requirements of procedural fairness in relation to the variation under subsection (10) of an interim determination if:

(a) both:

(i) the declared service is covered by a determination in force under section 152AQA; and

(ii) the price-related terms and conditions in the varied interim determination are consistent with the price-related terms and conditions in the section 152AQA determination; or

(b) both:

(i) the declared service is covered by a determination in force under section 152AQB; and

(ii) the price-related terms and conditions in the varied interim determination are consistent with the price-related terms and conditions in the section 152AQB determination.

For this purpose, ***price-related terms and conditions*** means terms and conditions relating to price or a method of ascertaining price.

152CQ Restrictions on access determinations

(1) The Commission must not make a determination that would have any of the following effects:

(a) preventing a service provider who already has access to the declared service from obtaining a sufficient amount of the service to be able to meet the service provider's reasonably anticipated requirements, measured at the time when the access seeker made a request in relation to the service under section 152AR;

(b) preventing the carrier or provider from obtaining a sufficient amount of the service to be able to meet the carrier's or provider's reasonably anticipated requirements, measured at the time when the access seeker made a request in relation to the service under section 152AR;

(c) preventing a person from obtaining, by the exercise of a pre-notification right, a sufficient level of access to the declared service to be able to meet the person's actual requirements;

(d) depriving any person of a protected contractual right;

(e) resulting in the access seeker becoming the owner (or one of the owners) of any part of a facility without the consent of the owner of the facility;

(f) requiring a party (other than the access seeker) to bear an unreasonable amount of the costs of:

(i) extending or enhancing the capability of a facility; or

(ii) maintaining extensions to or enhancements of the capability of a facility;

(g) requiring the carrier or provider to provide the access seeker with access to a declared service if there are reasonable grounds to believe that:

(i) the access seeker would fail, to a material extent, to comply with the terms and conditions on which the carrier or provider provides, or is reasonably likely to provide, that access; or

(ii) the access seeker would fail, in connection with that access, to protect the integrity of a telecommunications network or to protect the safety of individuals working on, or using services supplied by means of, a telecommunications network or a facility.

(2) Paragraphs (1)(a), (b), (c) and (d) do not apply in relation to the requirements and rights of the access seeker and the carrier or provider when the Commission is making a determination in arbitration of an access dispute relating to an earlier determination of an access dispute between the access seeker and the carrier or provider.

(3) Examples of grounds for believing as mentioned in subparagraph (1)(g)(i) include:

(a) evidence that the access seeker is not creditworthy; and

(b) repeated failures by the access seeker to comply with the terms and conditions on which the same or similar access has been provided (whether or not by the carrier or provider).

(4) The Commission must not make a determination that is inconsistent with any of the standard access obligations that are, or will be, applicable to the carrier or provider.

(5) If an access undertaking given by the carrier or provider is in operation, the Commission must not make a determination that is inconsistent with the undertaking.

(6) The Commission must not make a determination that is inconsistent with a Ministerial pricing determination.

(7) A determination is of no effect if it is made in contravention of subsection (1), (4), (5) or (6).

(8) If the Commission makes a determination that has the effect of depriving a person (the ***second person***) of a pre-notification right to require the carrier or provider to provide access to the declared service to the second person, the determination must also require the access seeker:

(a) to pay to the second person such amount (if any) as the Commission considers is fair compensation for the deprivation; and

(b) to reimburse the carrier or provider and the Commonwealth for any compensation that the carrier or provider or the Commonwealth agrees, or is required by a court order, to pay to the second person as compensation for the deprivation.

(9) In this section:

pre-notification right means a right under a contract, or under a determination, that was in force at the time when the dispute was notified.

protected contractual right means a right under a contract that was in force at the beginning of 13 September 1996.

152CR Matters that the Commission must take into account

(1) The Commission must take the following matters into account in making a final determination:

(a) whether the determination will promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services;

(b) the legitimate business interests of the carrier or provider, and the carrier's or provider's investment in facilities used to supply the declared service;
(c) the interests of all persons who have rights to use the declared service;
(d) the direct costs of providing access to the declared service;
(e) the value to a party of extensions, or enhancement of capability, whose cost is borne by someone else;
(f) the operational and technical requirements necessary for the safe and reliable operation of a carriage service, a telecommunications network or a facility;
(g) the economically efficient operation of a carriage service, a telecommunications network or a facility.

(2) The Commission may take into account any other matters that it thinks are relevant.

(3) The Commission may take the following matters into account in making an interim determination:
(a) a matter referred to in a paragraph of subsection (1);
(b) any other matters that it thinks are relevant.

(4) In making an interim determination, the Commission does not have a duty to consider whether to take into account a matter referred to in a paragraph of subsection (1).

152CRA Publication of determinations

Publication

(1) The Commission may publish, in whole or in part, a determination and the reasons for making the determination. It may do so in such manner as it considers appropriate (including in electronic form).

Consultation

(2) Before doing so, the Commission must give each party to the determination a notice in writing:
(a) specifying what the Commission is proposing to publish; and
(b) inviting the party to make a written submission to the Commission within 14 days after the notice is given:
(i) identifying any part of what the Commission is proposing to publish that the party considers should not be published; and
(ii) setting out the party's reasons for that view.

(3) In deciding whether to do so, the Commission must have regard to the following matters:
(a) any such submission received within that 14 day period;
(b) whether publication would be likely to promote competition in markets for listed carriage services (within the meaning of the *Telecommunications Act 1997*);
(c) whether publication would be likely to facilitate the operation of this Part;
(d) such other matters as the Commission considers relevant.

152CS Commission may terminate arbitration in certain cases

(1) The Commission may at any time terminate an arbitration (without making a determination) if it thinks that:
(a) the notification of the dispute was vexatious; or
(b) the subject matter of the dispute is trivial, misconceived or lacking in substance; or

(c) a party to the arbitration of the dispute has not engaged in negotiations in good faith; or

(d) access to the declared service should continue to be governed by an existing contract between the carrier or provider and the access seeker; or

(e) in the case of a dispute notified under subsection 152CM(2)—the arbitration should be terminated on the grounds that:

(i) the arbitration is not likely to make a significant contribution to competition in a market (whether or not in Australia); or

(ii) the access seeker's carriage service or content service is not of significant social and/or economic importance.

(2) In addition, if the dispute is about varying an existing determination, the Commission may terminate the arbitration if it thinks there is no sufficient reason why the existing determination should not continue to have effect in its present form.

152CT Commission may give directions in relation to negotiations

(1) If the Commission considers that it would be likely to facilitate negotiations relating to an access dispute if a person who is or was a party to the arbitration of the access dispute were to be given a direction under this subsection, the Commission may, for the purposes of facilitating those negotiations, give the person a written procedural direction requiring the person to do, or refrain from doing, a specified act or thing relating to the conduct of those negotiations.

(2) The following are examples of the kinds of procedural directions that may be given under subsection (1):

(a) a direction requiring a party to give relevant information to one or more other parties;

(b) a direction requiring a party to carry out research or investigations in order to obtain relevant information;

(c) a direction requiring a party not to impose unreasonable procedural conditions on the party's participation in negotiations;

(d) a direction requiring a party to respond in writing to another party's proposal or request in relation to the time and place of a meeting;

(e) a direction requiring a party, or a representative of a party, to attend a mediation conference;

(f) a direction requiring a party, or a representative of a party, to attend a conciliation conference.

If the arbitration has been terminated, a reference in this subsection to a ***party*** is a reference to a former party.

(2A) For the purposes of paragraph (2)(c), if a party (the ***first party***) imposes, as a condition on the first party's participation in negotiations, a requirement that the other party must not disclose to the Commission any or all information, or the contents of any or all documents, provided in the course of negotiations, that condition is taken to be an unreasonable procedural condition on the first party's participation in those negotiations.

(3) A person must not contravene a direction under subsection (1).

(4) A person must not:

(a) aid, abet, counsel or procure a contravention of subsection (3); or

(b) induce, whether by threats or promises or otherwise, a contravention of subsection (3); or

(c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (3); or

(d) conspire with others to effect a contravention of subsection (3).

(5) In deciding whether to give a direction under subsection (1), the Commission must have regard to:

(a) any guidelines in force under subsection (6); and

(b) such other matters as the Commission considers relevant.

(6) The Commission may, by written instrument, formulate guidelines for the purposes of subsection (5).

(7) In addition to its effect apart from this subsection, subsection (1) also has the effect it would have if each reference to a person were, by express provision, confined to a person who is a constitutional corporation.

152CU Enforcement of directions

(1) If the Federal Court is satisfied that a person has contravened subsection 152CT(3) or (4), the Court may order the person to pay to the Commonwealth such pecuniary penalty, in respect of each contravention, as the Court determines to be appropriate.

(2) In determining the pecuniary penalty, the Court must have regard to all relevant matters, including:

(a) the nature and extent of the contravention; and

(b) the nature and extent of any loss or damage suffered as a result of the contravention; and

(c) the circumstances in which the contravention took place; and

(d) whether the person has previously been found by the Court in proceedings under this Act to have engaged in any similar conduct.

(3) The pecuniary penalty payable under subsection (1) by a body corporate is not to exceed $250,000 for each contravention.

(4) The pecuniary penalty payable under subsection (1) by a person other than a body corporate is not to exceed $50,000 for each contravention.

(5) The Commission may institute a proceeding in the Federal Court for the recovery on behalf of the Commonwealth of a pecuniary penalty referred to in subsection (1).

(6) A proceeding under subsection (5) may be commenced within 6 years after the contravention.

(7) Criminal proceedings do not lie against a person only because the person has contravened subsection 152CT(3) or (4).

Subdivision D—Procedure in arbitrations

152CV Constitution of Commission for conduct of arbitration

(1) For the purposes of a particular arbitration, the Commission is to be constituted by 1 or more members of the Commission nominated in writing by the Chairperson.

(2) To avoid doubt, a member of the Commission is not disqualified from constituting the Commission (with other members) for the purposes of an arbitration of a dispute about a

particular matter merely because the member has performed functions, or exercised powers, in relation to the matter or a related matter.

(3) Subsection (2) has effect in addition to subsection 152BBC(5).

(4) In determining the operation of a provision of this Act other than this Division or section 152BBC, subsection (2) of this section and subsection 152BBC(5) are to be disregarded.

152CW Member of the Commission presiding at an arbitration

2 or more members—Chairperson part of arbitration

(1) If:

(a) the Commission is constituted under section 152CV by 2 or more members of the Commission; and

(b) the Chairperson is one of those members;

then the Chairperson is to preside at the arbitration.

2 or more members—Chairperson not part of arbitration

(2) If:

(a) the Commission is constituted under section 152CV by 2 or more members of the Commission; and

(b) the Chairperson is not one of those members;

then the Chairperson must nominate one of those members to preside at the arbitration.

152CWA Exercise of procedural powers by Commission members

2 or more members—Chairperson part of arbitration

(1) If:

(a) the Commission is constituted under section 152CV by 2 or more members of the Commission; and

(b) the Chairperson is one of those members;

then the procedural powers of the Commission in relation to the arbitration may be exercised by either or both of the following:

(c) the Chairperson;

(d) any other of those members nominated in writing by the Chairperson for the purposes of this paragraph.

2 or more members—Chairperson not part of arbitration

(2) If:

(a) the Commission is constituted under section 152CV by 2 or more members of the Commission; and

(b) the Chairperson is not one of those members;

then the procedural powers of the Commission in relation to the arbitration may be exercised by either or both of the following:

(c) the member nominated under subsection 152CW(2) to preside at the arbitration;

(d) any other of those members nominated in writing by the Chairperson for the purposes of this paragraph.

Procedural powers

(3) For the purposes of this section, a ***procedural power*** of the Commission in relation to an arbitration is a power of the Commission in relation to the arbitration other than:

(a) a power conferred by this Division to make, vary or revoke a determination; or

(b) a power conferred by this Division to give a draft determination to the parties.

152CX Reconstitution of Commission

Single member

(1) If:

(a) the Commission is constituted under section 152CV by one member of the Commission; and

(b) that member stops being a member of the Commission or for any reason is not available for the purposes of the arbitration;

then the Chairperson must direct that the Commission is to be constituted for the purposes of finishing the arbitration by one or more members nominated by the Chairperson.

2 or more members

(2) If:

(a) the Commission is constituted under section 152CV by 2 or more members of the Commission; and

(b) one of those members stops being a member of the Commission or for any reason is not available for the purposes of the arbitration;

then the Chairperson must either:

(c) direct that the Commission is to be constituted for the purposes of finishing the arbitration by the remaining member or members; or

(d) direct that the Commission is to be constituted for that purpose by the remaining member or members together with one or more other members nominated by the Chairperson.

Previous record of proceedings

(3) If a direction under subsection (1) or (2) is given, the Commission as constituted in accordance with the direction must continue and finish the arbitration and may, for that purpose, have regard to any record of the proceedings of the arbitration made by the Commission as previously constituted.

152CY Determination of questions

If the Commission is constituted for an arbitration by 2 or more members of the Commission, any question before the Commission is to be decided:

(a) unless paragraph (b) applies—according to the opinion of the majority of those members; or

(b) if the members are evenly divided on the question—according to the opinion of the member who is presiding.

152CZ Hearing to be in private

(1) Subject to subsection (2), an arbitration hearing for an access dispute is to be in private.

Note 1: The Commission may publish a determination made in relation to the arbitration: see section 152CRA.

Note 2: Information or documents given to the Commission in the course of the arbitration hearing may be given to a person for the purposes of another arbitration: see section 152DBA.

(2) If the parties agree, an arbitration hearing or part of an arbitration hearing may be conducted in public.

(3) The member of the Commission who is presiding at an arbitration hearing that is conducted in private may give written directions as to the persons who may be present.

(4) In giving directions under subsection (3), the member presiding must have regard to the wishes of the parties and the need for commercial confidentiality.

152DA Right to representation

In an arbitration hearing before the Commission under this Part, a party may appear in person or be represented by someone else.

152DB Procedure of Commission

(1) In an arbitration hearing about an access dispute, the Commission:

(a) is not bound by technicalities, legal forms or rules of evidence; and

(b) must act as speedily as a proper consideration of the dispute allows, having regard to the need to carefully and quickly inquire into and investigate the dispute and all matters affecting the merits, and fair settlement, of the dispute; and

(c) may inform itself of any matter relevant to the dispute in any way it thinks appropriate.

Note: The Commission may conduct a joint arbitration hearing in relation to more than 1 access dispute: see section 152DMA.

(2) The Commission may determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the parties to an access dispute, and may require that the cases be presented within those periods.

(3) The Commission may require evidence or argument to be presented in writing, and may decide the matters on which it will hear oral evidence or argument.

(4) The Commission may determine that an arbitration hearing is to be conducted by:

(a) telephone; or

(b) closed circuit television; or

(c) any other means of communication.

(5) Paragraph (1)(c) and subsections (2), (3) and (4) may be displaced or modified by the Procedural Rules.

152DBA Using information from one arbitration in another arbitration

(1) For the purposes of an arbitration (the ***current arbitration***) of an access dispute, the Commission may give any of the following:

(a) a party to the current arbitration;

(b) a representative of a party to the current arbitration;

(c) any other person who provides advice or assistance to a party to the current arbitration or to the Commission;

any information, or any document or part of a document, given to the Commission by a person (the ***contributor***) in the course of any other arbitration under this Division.

(2) The Commission may do so only if it considers this would be likely to result in the current arbitration being conducted in a more efficient and timely manner.

Consultation

(3) Before making a decision under subsection (1) to give information or a document or part of a document to a person (the ***recipient***), the Commission must give the contributor a notice in writing:

(a) specifying what the Commission is proposing to give the recipient; and

(b) inviting the contributor to make a written submission to the Commission within 14 days after the notice is given:

(i) identifying any part of what the Commission is proposing to give the recipient that the contributor considers should not be given; and

(ii) setting out the contributor's reasons for that view.

(4) In making a decision under subsection (1), the Commission must have regard to the following matters:

(a) any such submission received within that 14 day period;

(b) any order or direction of the Commission under section 152DC in relation to particular information or a particular document;

(c) any decision of the Commission under section 152DK not to give a party to another arbitration under this Division a part of a document;

(d) such other matters as the Commission considers relevant.

152DC Particular powers of Commission

(1) The Commission may do any of the following things for the purpose of arbitrating an access dispute:

(a) give a direction in the course of, or for the purposes of, an arbitration hearing;

(b) hear and determine the arbitration in the absence of a person who has been summoned or served with a notice to appear;

(c) sit at any place;

(d) adjourn to any time and place;

(e) refer any matter to an expert and accept the expert's report as evidence;

(f) generally give all such directions, and do all such things, as are necessary or expedient for the speedy hearing and determination of the access dispute.

(2) Subsection (1) has effect subject to any other provision of this Part and subject to the regulations.

(3) The Commission may give an oral or written order to a person not to divulge or communicate to anyone else specified information that was given to the person in the course of an arbitration unless the person has the Commission's permission.

(4) A person who contravenes:

(a) a direction under paragraph (1)(a) or (f); or

(b) an order under subsection (3);

is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 6 months.

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

152DD Power to take evidence on oath or affirmation

(1) The Commission may take evidence on oath or affirmation and for that purpose a member of the Commission may administer an oath or affirmation.

(2) The member of the Commission who is presiding may summon a person to appear before the Commission to give evidence and to produce such documents (if any) as are referred to in the summons.

(3) The powers in this section may be exercised only for the purposes of arbitrating an access dispute.

152DE Failing to attend as a witness

(1) A person who is served, as prescribed, with a summons to appear as a witness before the Commission must not:

(a) fail to attend as required by the summons; or

(b) fail to appear and report himself or herself from day to day unless excused, or released from further attendance, by a member of the Commission.

Penalty: Imprisonment for 6 months.

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

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

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

152DF Failing to answer questions etc.

(1) A person appearing as a witness before the Commission must not:

(a) refuse or fail to be sworn or to make an affirmation; or

(b) refuse or fail to answer a question that the person is required to answer by the Commission; or

(c) refuse or fail to produce a document that he or she was required to produce by a summons under this Part served on him or her as prescribed.

Penalty: Imprisonment for 6 months.

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

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

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

(2) It is a reasonable excuse for the purposes of subsection (1A) for an individual to refuse or fail to answer a question or produce a document on the ground that the answer or the production of the document might tend to incriminate the individual or to expose the individual to a penalty. This subsection does not limit what is a reasonable excuse for the purposes of subsection (1A).

152DG Giving false or misleading evidence

A person appearing before the Commission to give evidence under section 152DD must not give evidence that is false or misleading in a material particular.

Penalty: Imprisonment for 12 months.

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

152DH Provision of false or misleading document

(1) A person must not, in complying with a summons under section 152DD, produce a document that, to the knowledge of the person, is false or misleading in a material particular.

(2) Subsection (1) does not apply to a person who produces a document that, to the knowledge of the person, is false or misleading in a material particular if the document is accompanied by a written statement signed by the person:

(a) stating that the document is, to the knowledge of the person, false or misleading in a material particular; and

(b) setting out, or referring to, the material particular in which the document is false or misleading.

Penalty: Imprisonment for 12 months.

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

152DI Intimidation etc.

A person must not:

(a) threaten, intimidate or coerce another person; or

(b) cause or procure damage, loss or disadvantage to another person;

because that other person:

(c) proposes to produce, or has produced, documents to the Commission; or

(d) proposes to appear or has appeared as a witness before the Commission.

Penalty: Imprisonment for 12 months.

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

152DJ Disturbing an arbitration hearing etc.

(1) A person must not, in relation to the arbitration of an access dispute:

(a) insult or disturb a member of the Commission in the exercise of the member's powers or the performance of the member's functions or duties as a member of the Commission; or

(b) interrupt an arbitration hearing; or

(c) use insulting language towards a member of the Commission exercising powers, or performing functions, as such a member; or

(d) create a disturbance, or take part in creating or continuing a disturbance, in a place where the Commission is holding an arbitration hearing.

(2) A person who intentionally contravenes subsection (1) is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 6 months.

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

152DK Party may request Commission to treat material as confidential

(1) A party to an arbitration hearing may:
  (a) inform the Commission that, in the party's opinion, a specified part of a document contains confidential commercial information; and
  (b) request the Commission not to give a copy of that part to another party.

(2) On receiving a request, the Commission must:
  (a) inform the other party or parties that the request has been made and of the general nature of the matters to which the relevant part of the document relates; and
  (b) ask the other party or parties whether there is any objection to the Commission complying with the request.

(3) If there is an objection to the Commission complying with a request, the party objecting may inform the Commission of its objection and of the reasons for it.

(4) After considering:
  (a) a request; and
  (b) any objection; and
  (c) any further submissions that any party has made in relation to the request;

the Commission may decide not to give to the other party or parties a copy of so much of the document as contains confidential commercial information that the Commission thinks should not be so given.

(5) Subsections (1), (2), (3) and (4) may be displaced or modified by the Procedural Rules.

152DL Sections 18 and 19 do not apply to the Commission in an arbitration

Sections 18 and 19 do not apply to the Commission, as constituted for an arbitration.

152DM Parties to pay costs of an arbitration

The regulations may provide for the Commission to:
  (a) charge the parties to an arbitration for its costs in conducting the arbitration; and
  (b) apportion the charge between the parties.

152DMA Joint arbitration hearings

Joint hearing

(1) If:
  (a) the Commission is arbitrating 2 or more access disputes at a particular time; and
  (b) one or more matters are common to those disputes;

the Chairperson may, by writing, determine that the Commission is to hold a joint arbitration hearing in respect of such of those disputes (the ***nominated disputes***) as are specified in the determination.

(2) The Chairperson may do so only if he or she considers this would be likely to result in the nominated disputes being resolved in a more efficient and timely manner.

(3) The Chairperson may, for the purposes of the conduct of the joint arbitration hearing, give written directions to the member of the Commission presiding at that hearing.

Constitution of Commission

(4) Sections 152CV to 152CY apply in relation to the joint arbitration hearing in a corresponding way to the way in which they apply to a particular arbitration.

Note: For example, the Chairperson would be required to nominate in writing 1 or more members of the Commission to constitute the Commission for the purposes of the joint arbitration hearing.

Procedure of Commission

(5) Sections 152CZ to 152DM apply in relation to the joint arbitration hearing in a corresponding way to the way in which they apply to an arbitration hearing of a particular access dispute.

Record of proceedings etc.

(6) The Commission as constituted for the purposes of the joint arbitration hearing may, for the purposes of that hearing, have regard to any record of the proceedings of the arbitration of any nominated dispute.

(7) The Commission as constituted for the purposes of the arbitration of each nominated dispute may, for the purposes of making a determination in relation to that arbitration:

(a) have regard to any record of the proceedings of the joint arbitration hearing; and

(b) adopt any findings of fact made by the Commission as constituted for the purposes of the joint arbitration hearing.

Procedural Rules

(8) Subsections (1) to (7) may be displaced or modified by the Procedural Rules.

Subdivision E—Effect of determinations

152DN Operation of determinations

(1) A final determination has effect 21 days after the determination is made.

152DNA Backdating of final determinations

(1) Any or all of the provisions of a final determination may be expressed to have taken effect on a specified date that is earlier than the date on which the determination took effect.

(2) The specified date must not be earlier than the date on which the parties to the determination commenced negotiations with a view to agreeing on the terms and conditions as mentioned in paragraph 152AY(2)(a).

Note: See subsection 152CP(3) for the limits on a final determination.

(3) For the purposes of subsection 152CPA(9), in determining the time when a final determination takes effect, a provision covered by subsection (1) of this section is to be disregarded.

(4) A provision of a final determination may be expressed to cease to have effect on a specified date.

(5) This section has effect despite anything in section 152DN.

Interest

(6) If:

(a) a provision of a determination is covered by subsection (1); and

(b) the provision requires a party to the determination (the ***first party***) to pay money to another party;

the determination may require the first party to pay interest to the other party, at the rate specified in the determination, on the whole or a part of the money, for the whole or a part of the period:

(c) beginning on the date on which the parties began negotiations with a view to agreeing on the terms and conditions as mentioned in paragraph 152AY(2)(a); and

(d) ending on the date on which the determination would have taken effect if no provision of the determination had been covered by subsection (1) of this section.

Guidelines

(7) In exercising the powers conferred by subsection (1) or (6), the Commission must have regard to:

(a) any guidelines in force under subsection (8); and

(b) such other matters as the Commission considers relevant.

(8) The Commission must, by writing, formulate guidelines for the purposes of subsection (7).

(9) The Commission must take all reasonable steps to ensure that the first set of guidelines under subsection (8) is made within 6 months after the commencement of this subsection.

(10) Guidelines under subsection (8) are to be made available on the Internet.

152DNB Stay of determinations

(1) Paragraphs 15(1)(a) and (b) and 15A(1)(a) and (b) of the *Administrative Decisions (Judicial Review) Act 1977* do not apply to a decision of the Commission to make a determination.

(2) If a person applies to the Federal Court under subsection 39B(1) of the *Judiciary Act 1903* for a writ or injunction in relation to a decision of the Commission to make a determination, the Court must not make any orders staying or otherwise affecting the operation or implementation of the decision pending the finalisation of the application.

152DNC Continuity of final determination not affected by expiry of declaration relating to declared service

(1) This section applies if:

(a) a declaration under section 152AL expires; and

(b) immediately before the expiry of the declaration, a final determination was in force in relation to the declared service concerned; and

(c) the determination does not have an indefinite duration.

(2) Despite the expiry of the declaration, the declaration continues in force for the purposes of:

(a) ascertaining whether the determination remains in force; and

(b) ascertaining whether a party to the determination has any obligations under section 152AR to any other party to the determination while the determination remains in force; and

(c) exercising the Commission's power to vary the determination under section 152DT.

(3) A party to the determination is not entitled to notify an access dispute in relation to the declared service.

Subdivision G—Variation of determinations

152DT Variation of determinations

(1) The Commission may vary a final determination on the application of any party to the final determination. However, it cannot vary the final determination if any other party objects.

Note: If the parties cannot agree on a variation, a new access dispute can be notified under section 152CM.

(2) Sections 152CQ and 152CR apply to a variation under this section as if:

(a) an access dispute arising out of the final determination had been notified when the application was made to the Commission for the variation of the final determination; and

(b) the variation were the making of a final determination in the terms of the varied final determination.

Subdivision H—Enforcement of determinations

152DU Enforcement of determinations

(1) If the Federal Court is satisfied, on the application of a party to a determination, that another party to the determination has engaged, is engaging, or is proposing to engage in conduct that constitutes a contravention of the determination, the Court may make all or any of the following orders:

(a) an order granting an injunction on such terms as the Court thinks appropriate:

(i) restraining the other party from engaging in the conduct; or

(ii) if the conduct involves refusing or failing to do something—requiring the other party to do that thing;

(b) an order directing the other party to compensate the applicant for loss or damage suffered as a result of the contravention;

(c) any other order that the Court thinks appropriate.

(1A) The revocation of a determination does not affect any remedy under subsection (1) in respect of a contravention of the determination that occurred when the determination was in force.

(2) If the Federal Court has power under subsection (1) to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do anything, the Court may make any other orders (including granting an injunction) that it thinks appropriate against any other person who was involved in the contravention concerned.

(3) A reference in this section to a person involved in the contravention is a reference to a person who has:

(a) aided, abetted, counselled or procured the contravention; or

(b) induced the contravention, whether through threats or promises or otherwise; or

(c) been in any way (directly or indirectly) knowingly concerned in or a party to the contravention; or

(d) conspired with others to effect the contravention.

152DV Consent injunctions

On an application for an injunction under section 152DU, the Federal Court may grant an injunction by consent of all of the parties to the proceedings, whether or not the Court is satisfied that the section applies.

152DW Interim injunctions

The Federal Court may grant an interim injunction pending determination of an application under section 152DU.

152DX Factors relevant to granting a restraining injunction

The power of the Federal Court to grant an injunction under section 152DU restraining a person from engaging in conduct may be exercised whether or not:

(a) it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(b) the person has previously engaged in conduct of that kind; or

(c) there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

152DY Factors relevant to granting a mandatory injunction

The power of the Federal Court to grant an injunction under section 152DU requiring a person to do a thing may be exercised whether or not:

(a) it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that thing; or

(b) the person has previously refused or failed to do that thing; or

(c) there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that thing.

152DZ Discharge or variation of injunction or other order

The Federal Court may discharge or vary an injunction or order granted under this Subdivision.

Subdivision I—Miscellaneous

152EA Register of determinations

(1) The Commission must maintain a Register that specifies the following information for each determination:

(a) the names of the parties to the determination;

(b) the declared service to which the determination relates;

(c) the date on which the determination was made.

(2) The Register may be maintained by electronic means.

(3) A person may, on payment of the fee (if any) specified in the regulations:

(a) inspect the Register; and

(b) make a copy of, or take extracts from, the Register.

(4) For the purposes of this section, if the Register is maintained by electronic means, a person is taken to have made a copy of, or taken an extract from, the Register if the Commission gives the person a printout of, or of the relevant parts of, the Register.

(5) If a person requests that a copy be provided in an electronic form, the Commission may provide the relevant information:

(a) on a data processing device; or

(b) by way of electronic transmission.

152EAA Commission's powers under Division 6 of Part XIB not limited

Nothing in this Division limits the Commission's powers under Division 6 of Part XIB (about record-keeping rules and disclosure directions).

152EB Compensation for acquisition of property

(1) If:

(a) a determination would result in an acquisition of property; and

(b) the determination would not be valid, apart from this section, because a particular person has not been sufficiently compensated;

the Commonwealth must pay that person:

(c) a reasonable amount of compensation agreed on between the person and the Commonwealth; or

(d) failing agreement—a reasonable amount of compensation determined by a court of competent jurisdiction.

(2) In assessing compensation payable in a proceeding begun under this section, the following must be taken into account if they arise out of the same event or transaction:

(a) any damages or compensation recovered, or other remedy, in a proceeding begun otherwise than under this section;

(b) compensation awarded under a determination.

(3) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

Division 9—Registered agreements for access to declared services

152EC Agreements to which this Division applies

This Division applies to an agreement if:

(a) the agreement embodies any or all of the terms or conditions on which a carrier or carriage service provider is to comply with any or all of the standard access obligations applicable to the carrier or provider; or

(b) all of the following conditions are satisfied in relation to the agreement:

(i) the agreement provides for access to a declared service;

(ii) the agreement was made after the service was declared;

(iii) the parties to the agreement are an access seeker and the carrier or carriage service provider who supplies, or proposes to supply, the service.

152ED Registration of agreement

(1) On application by all the parties to an agreement, the Commission must:

(a) register the agreement by entering the following details on a Register:

(i) the names of the parties to the agreement;

(ii) the declared service to which the agreement relates;

(iii) the date on which the agreement was made; or

(b) decide not to register the agreement.

(2) In deciding whether to register an agreement, the Commission must take into account:

(a) the public interest, including the public interest in having competition in markets (whether or not in Australia); and

(b) the interests of all persons who have rights to use the declared service to which the agreement relates.

(3) The Commission must publish a decision not to register an agreement.

(4) If the Commission publishes a decision not to register an agreement, it must give the parties to the agreement reasons for the decision when it publishes the decision.

(5) If:

(a) an agreement is registered; and

(b) all the parties to the agreement apply in writing to the Commission for the deregistration of the agreement;

the Commission must deregister the agreement by removing details of the agreement from the Register.

(6) The Register may be maintained by electronic means.

(7) A person may, on payment of the fee (if any) specified in the regulations:

(a) inspect the Register; and

(b) make a copy of, or take extracts from, the Register.

(8) For the purposes of this section, if the Register is maintained by electronic means, a person is taken to have made a copy of, or taken an extract from, the Register if the Commission gives the person a printout of, or of the relevant parts of, the Register.

(9) If a person requests that a copy be provided in an electronic form, the Commission may provide the relevant information:

(a) on a data processing device; or

(b) by way of electronic transmission.

152EE Effect of registration of agreement

(1) The parties to an agreement that is registered:

(a) may enforce the agreement under Subdivision H of Division 8 as if the agreement were a determination of the Commission under section 152CP and they were parties to the determination; and

(b) cannot enforce the agreement by any other means.

(2) Subsection (1) does not have effect before 1 July 1997.

Division 10—Hindering the fulfilment of a standard access obligation etc.

152EF Prohibition on hindering the fulfilment of a standard access obligation etc.

(1) A person must not engage in conduct for the purpose of preventing or hindering the fulfilment of:

(a) a standard access obligation; or

(b) an obligation imposed by a determination made by the Commission under Division 8;

if the person is:

(c) a carrier or a carriage service provider who supplies a declared service; or

(d) a service provider to whom a declared service is being supplied by a carrier or carriage service provider; or

(e) a body corporate that is related to a carrier or provider referred to in paragraph (c) or (d).

(2) A person may be taken to have engaged in conduct for the purpose referred to in subsection (1) even though, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from the conduct of the person or from other relevant circumstances. This subsection does not limit the manner in which the purpose of a person may be established for the purposes of subsection (1).

(3) Subsection (1) does not have effect before 1 July 1997.

152EG Enforcement of prohibition on hindering the fulfilment of a standard access obligation etc.

(1) If the Federal Court is satisfied, on the application of any person, that another person (the ***obstructor***) has engaged, is engaging, or is proposing to engage in conduct constituting a contravention of section 152EF, the Court may make all or any of the following orders:

(a) an order granting an injunction on such terms as the Court thinks appropriate:

(i) restraining the obstructor from engaging in the conduct; or

(ii) if the conduct involves refusing or failing to do something—requiring the obstructor to do that thing;

(b) an order directing the obstructor to compensate a person who has suffered loss or damage as a result of the contravention;

(c) any other order that the Court thinks appropriate.

(2) If the Federal Court has power under subsection (1) to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do anything, the Court may make any other orders (including granting an injunction) that it thinks appropriate against any other person who was involved in the contravention concerned.

152EH Consent injunctions

On an application for an injunction under section 152EG, the Federal Court may grant an injunction by consent of all of the parties to the proceedings, whether or not the Court is satisfied that the section applies.

152EI Interim injunctions

(1) The Federal Court may grant an interim injunction pending determination of an application under section 152EG.

(2) If the Commission makes an application under section 152EG to the Federal Court for an injunction, the Court must not require the Commission or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

152EJ Factors relevant to granting a restraining injunction

The power of the Federal Court to grant an injunction under section 152EG restraining a person from engaging in conduct may be exercised whether or not:

(a) it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(b) the person has previously engaged in conduct of that kind; or

(c) there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

152EK Factors relevant to granting a mandatory injunction

The power of the Federal Court to grant an injunction under section 152EG requiring a person to do a thing may be exercised whether or not:

(a) it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that thing; or

(b) the person has previously refused or failed to do that thing; or

(c) there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that thing.

152EL Discharge or variation of injunction or other order

The Federal Court may discharge or vary an injunction or order granted under this Division.

Division 10A—Procedural Rules

152ELA Procedural Rules

(1) The Commission may, by written instrument, make rules:

(a) making provision for or in relation to the practice and procedure to be followed by the Commission in performing functions, or exercising powers, under this Part; or

(b) making provision for or in relation to all matters and things incidental to any such practice or procedure, or necessary or convenient to be prescribed for the conduct of any business of the Commission under this Part; or

(c) prescribing matters required or permitted by any other provision of this Part to be prescribed by the Procedural Rules.

(2) Rules under subsection (1) are to be known as Procedural Rules.

(3) The Procedural Rules may make provision for or in relation to any or all of the following:

(a) the confidentiality of information or documents given to the Commission by:

(i) an applicant for an order under subsection 152AT(1) or 152ATA(1); or

(ii) a person who gave the Commission an access undertaking or a variation of an access undertaking; or

(iii) a party to the arbitration of an access dispute under Division 8;

(b) matters to which the Commission must have regard in deciding whether to make an interim determination under Division 8;

(c) the form and content of applications, undertakings, variations or other documents given to the Commission under this Part;

(d) dispensing with the need for an oral hearing in relation to the arbitration of an access dispute under Division 8.

(4) Subsection (3) does not limit subsection (1).

(5) The Procedural Rules may make provision for or in relation to a matter by empowering the Commission to make decisions of an administrative character.

(6) The Procedural Rules may require a power conferred on the Commission by the Procedural Rules in relation to an arbitration under Division 8 to be exercised by the Commission as constituted under section 152CV for the purposes of that arbitration.

(7) Subsections (5) and (6) do not limit subsection (1).

(8) An instrument under subsection (1) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003.*

Note: For variation and revocation of instruments under subsection (1), see subsection 33(3) of the *Acts Interpretation Act 1901*.

152ELB Public consultation

(1) Before making any Procedural Rules, the Commission must:

(a) publish a draft of the Procedural Rules on the Commission's Internet site and invite people to make submissions to the Commission on the draft Procedural Rules; and

(b) consider any submissions that are received within the time limit specified by the Commission when it published the draft Procedural Rules.

(2) The time limit specified by the Commission must be at least 30 days after the day of publication of the draft Procedural Rules.

152ELC Plan for the development of Procedural Rules

(1) Within 6 months after the commencement of this section, the Commission must:

(a) prepare a written plan setting out:

(i) an outline of the Commission's proposals for making Procedural Rules; and

(ii) an indicative timetable for making those Procedural Rules; and

(b) make a copy of the plan available on the Commission's Internet site.

(2) A failure to comply with the plan does not affect the validity of an instrument under subsection 152ELA(1).

(3) The plan is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003.*

Division 11—Miscellaneous

152EM Continuity of partnerships

For the purposes of this Part, a change in the composition of a partnership does not affect the continuity of the partnership.

152EN Treatment of partnerships

This Part applies to a partnership as if the partnership were a person, but it applies with the following changes:

(a) obligations that would be imposed on the partnership are imposed instead on each partner, but may be discharged by any of the partners;

(b) any offence against this Part that would otherwise be committed by the partnership is taken to have been committed by each partner who:

(i) aided, abetted, counselled or procured the relevant act or omission; or

(ii) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner).

152EO Conduct by directors, servants or agents

(1) If, in a proceeding under this Part in respect of conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate in relation to particular conduct, it is sufficient to show:

(a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and

(b) that the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate:

(a) by a director, servant or agent of the body corporate within the scope of the person's actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;

is taken for the purposes of this Part to have been engaged in also by the body corporate, unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

(3) A reference in subsection (1) to the state of mind of a person includes a reference to:

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person's reasons for the intention, opinion, belief or purpose.

(4) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

152EP Regulations about fees for inspection etc. of registers

The regulations may make provision about the inspection of registers maintained under this Part (including provision about fees).

152EQ Operational separation for Telstra

(1) This section applies if Telstra has engaged in conduct in order to comply with a final operational separation plan in force under Part 8 of Schedule 1 to the *Telecommunications Act 1997*.

(2) In performing a function, or exercising a power, under this Part in relation to Telstra, the Commission must have regard to the conduct to the extent that the conduct is relevant.

Part XID—Search and seizure

Division 1—Preliminary

154 Simplified outline

The following is a simplified outline of this Part:

- This Part sets out an enforcement regime for the purposes of finding out whether there has been a contravention of this Act, Part 20 of the *Telecommunications Act 1997* or Part 9 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.
- Division 2 provides for the appointment of inspectors and the issue of identity cards.
- Division 3 deals with entry to premises with the consent of the occupier of the premises.
- Division 4 deals with entry to premises under a search warrant issued by a magistrate. It sets out the powers available under a search warrant, the obligations of persons entering the premises and the rights and responsibilities of the occupier of the premises.
- Division 5 contains some general provisions relating to the operation of electronic equipment at premises.

Note: See also section 155 (which deals with the obtaining of information, documents and evidence).

154A Definitions

In this Part:

consultant means a person engaged under section 27A.

contravention, in relation to a law, includes an offence against section 11.1, 11.4 or 11.5 of the *Criminal Code* that relates to an offence against that law.

data includes:

(a) information in any form; or

(b) any program (or part of a program).

data held in a computer includes:

(a) data held in any removable data storage device for the time being held in a computer; or

(b) data held in a data storage device on a computer network of which the computer forms a part.

data storage device means a thing containing, or designed to contain, data for use by a computer.

evidential material means a document or other thing that may afford evidence relating to:

(a) a contravention of this Act; or

(b) a contravention of Part 20 of the *Telecommunications Act 1997*; or

(c) a contravention of Part 9 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; or

(d) a contravention of section 137.1, 137.2 or 149.1 of the *Criminal Code* that relates to this Part.

executing officer, for a search warrant, means:

(a) the inspector named in the warrant as being responsible for executing the warrant; or

(b) if that inspector does not intend to be present at the execution of the warrant—another inspector whose name has been written in the warrant by the inspector so named; or

(c) another inspector whose name has been written in the warrant by the inspector last named in the warrant.

inspector means a person appointed as an inspector under section 154B.

occupier, in relation to premises, includes a person present at the premises who apparently represents the occupier.

officer assisting, for a search warrant, means:

(a) an inspector who is assisting in executing the warrant; or

(b) a person authorised under section 154K in relation to the warrant.

premises means:

(a) an area of land or any other place (whether or not it is enclosed or built on); or

(b) a building or other structure; or

(c) a vehicle, vessel or aircraft; or

(d) a part of any such premises.

search warrant means a warrant issued by a magistrate under section 154X or signed by a magistrate under section 154Y.

thing includes a thing in electronic or magnetic form.

Division 2—Appointment of inspectors and identity cards

154B Appointment of inspectors

(1) The Chairperson may, by writing, appoint a member of the staff assisting the Commission to be an inspector.

Staff member to have suitable qualifications and experience

(2) The Chairperson must not do so unless he or she is satisfied that the staff member has suitable qualifications and experience to properly exercise the powers of an inspector.

Inspector to comply with Chairperson's directions

(3) An inspector must comply with any directions of the Chairperson in exercising powers or performing functions as an inspector.

154C Identity cards

(1) The Chairperson must issue an identity card to an inspector.

Form of identity card

(2) The identity card must:
  (a) be in the form prescribed by the regulations; and
  (b) contain a recent photograph of the inspector.

Offence

(3) A person commits an offence if:
  (a) the person has been issued with an identity card; and
  (b) the person ceases to be an inspector; and
  (c) the person does not return the identity card to the Chairperson as soon as practicable.

Penalty: 1 penalty unit.

(4) An offence against subsection (3) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Card lost or destroyed

(5) Subsection (3) does not apply if the identity card was lost or destroyed.

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

Inspector must carry card

(6) An inspector must carry his or her identity card at all times when exercising powers or performing functions as an inspector.

Inspector must produce card on request

(7) An inspector is not entitled to exercise any powers under this Part in relation to premises if:

(a) the occupier of the premises has requested the inspector to produce the inspector's identity card for inspection by the occupier; and

(b) the inspector fails to comply with the request.

Division 3—Entry to premises with consent

154D Entry with consent

Entry

(1) An inspector may enter premises if:

(a) the Commission, the Chairperson or a Deputy Chairperson has reasonable grounds for suspecting that there may be evidential material on the premises; and

(b) the inspector obtains the consent of the occupier of the premises to enter the premises.

(2) The inspector may be accompanied by any one or more of the following persons (each of whom is an ***assistant***):

(a) another member of the staff assisting the Commission;

(b) a consultant.

Obtaining consent

(3) Before obtaining the consent of a person to enter premises under this Division, the inspector must inform the person that the person may refuse consent.

(4) A consent of a person is not effective for the purposes of this section unless it is voluntary.

154E Powers in relation to premises

(1) The inspector or an assistant may do any of the following after entering premises under this Division:

(a) search the premises, and any thing on the premises, for the evidential material;

(b) make copies of the evidential material found on the premises;

(c) operate electronic equipment at the premises to see whether the evidential material is accessible by doing so;

Note: See also Division 5 (which contains provisions relating to the operation of electronic equipment at the premises).

(d) remove the evidential material from the premises with the consent of the owner of the material;

Note: See also subsection (2).

(e) secure the evidential material, pending the obtaining of a search warrant to seize it;

(f) take equipment and material onto the premises, and use it, for any of the above purposes.

Obtaining consent to remove evidential material

(2) Before obtaining the consent of a person to remove evidential material from premises under paragraph (1)(d), the inspector or an assistant must inform the person of the purpose for which the material is required and that the person may refuse consent. A consent of a person is not effective for the purposes of that paragraph unless the consent is voluntary.

154F Operation of electronic equipment at premises

(1) If:

(a) an inspector or an assistant enters premises under this Division; and

(b) he or she believes on reasonable grounds that any data accessed by operating electronic equipment at the premises (including data not held at the premises) might constitute evidential material;

he or she may do only 1 of 2 things.

Removal of documents

(2) One thing he or she may do is operate the equipment or other facilities at the premises to put the data in documentary form and remove the documents so produced from the premises.

Removal of disk, tape or other storage device

(3) The other thing he or she may do is operate the equipment or other facilities at the premises to transfer the data to a disk, tape or other storage device that:

(a) is brought to the premises for the exercise of the power; or

(b) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;

and remove the disk, tape or other storage device from the premises.

Division 4—Entry to premises under a search warrant

Subdivision A—Powers available under a search warrant

154G The things that are authorised by a search warrant

(1) A search warrant that is in force in relation to premises authorises the executing officer or an officer assisting to do any of the following:

(a) enter the premises;

(b) search the premises, and any thing on the premises, for the kind of evidential material specified in the warrant, and seize things of that kind found on the premises;

(c) make copies of the kind of evidential material specified in the warrant found on the premises;

(d) operate electronic equipment at the premises to see whether the kind of evidential material specified in the warrant is accessible by doing so;

Note: See also Division 5 (which contains provisions relating to the operation of electronic equipment at the premises).

(e) take equipment and material onto the premises, and use it, for any of the above purposes.

(1A) In executing a search warrant that is in force in relation to premises, the executing officer or an officer assisting may:

(a) for a purpose incidental to the execution of the warrant; or

(b) with the written consent of the occupier of the premises;

take photographs, or make video recordings, of the premises or of anything at the premises.

(1B) If a search warrant in relation to premises is being executed, the executing officer and the officers assisting may, if the warrant is still in force, complete the execution of the warrant after all of them temporarily cease its execution and leave the premises:

(a) for not more than one hour; or

(b) for a longer period if the occupier of the premises consents in writing.

Seizing other evidence

(2) If:

(a) the executing officer or an officer assisting, in the course of searching for the kind of evidential material specified in the warrant, finds another thing that he or she believes on reasonable grounds to be evidence of:

(i) an indictable offence against this Act; or

(ii) an indictable offence against Part 20 of the *Telecommunications Act 1997*; or

(iii) an indictable offence against Part 9 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; or

(iv) an offence against section 137.1, 137.2 or 149.1 of the *Criminal Code* that relates to this Part; and

(b) he or she believes on reasonable grounds that it is necessary to seize the other thing in order to prevent its concealment, loss or destruction;

then he or she may seize that other thing.

154GA Removing things for examination or processing

(1) A thing found at the premises may be moved to another place for examination or processing in order to determine whether it may be seized under a search warrant if:

(a) both of the following subparagraphs apply:

(i) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance;

(ii) there are reasonable grounds to believe that the thing contains or constitutes evidential material; or

(b) the occupier of the premises consents in writing.

Notice to occupier

(2) If a thing is moved to another place for the purpose of examination or processing under subsection (1), the executing officer must, if it is practicable to do so:

(a) inform the occupier of the address of the place and the time at which the examination or processing will be carried out; and

(b) allow the occupier or his or her representative to be present during the examination or processing.

Period of removal

(3) The thing may be moved to another place for examination or processing for no longer than 72 hours.

Extensions

(4) An executing officer may apply to a magistrate for one or more extensions of that time if the executing officer believes on reasonable grounds that the thing cannot be examined or processed within 72 hours or that time as previously extended.

(5) The executing officer must give notice of the application to the occupier of the premises of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.

(6) The magistrate may order an extension for a period specified in the order if the magistrate is satisfied that the extension is necessary.

154H Operation of electronic equipment at premises

(1) If:

(a) a search warrant is in force in relation to premises; and

(b) the executing officer or an officer assisting believes on reasonable grounds that any data accessed by operating electronic equipment at the premises (including data not held at the premises) might constitute evidential material of the kind specified in the warrant;

he or she may do only 1 of 3 things.

Seizure

(2) One thing he or she may do is seize the equipment and any disk, tape or other associated device.

Note: Subsection (5) sets out limitations on seizure.

Removal of documents

(3) Another thing he or she may do is operate the equipment or other facilities at the premises to put the data in documentary form and remove the documents so produced from the premises.

Note: An executing officer can obtain an order requiring a person with knowledge of a computer or computer system to provide assistance—see section 154RA.

Removal of disk, tape or other storage device

(4) The final thing he or she may do is operate the equipment or other facilities at the premises to transfer the data to a disk, tape or other storage device that:

(a) is brought to the premises; or

(b) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;

and remove the disk, tape or other storage device from the premises.

Note: An executing officer can obtain an order requiring a person with knowledge of a computer or computer system to provide assistance—see section 154RA.

Limitation on seizure

(5) A person may seize a thing under subsection (2) only if:

(a) it is not practicable to put the data in documentary form as mentioned in subsection (3) or to transfer the data as mentioned in subsection (4); or

(b) possession of the thing by the occupier could constitute an offence against a law of the Commonwealth.

154J Securing electronic equipment for use by experts

(1) If a search warrant in relation to premises is being executed and the executing officer or an officer assisting believes on reasonable grounds that:

(a) the kind of evidential material specified in the warrant may be accessible by operating electronic equipment at the premises; and

(b) expert assistance is required to operate the equipment; and

(c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;

he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.

Notice to occupier

(2) The executing officer or officer assisting must give notice to the occupier of the premises of his or her intention to secure the equipment and of the fact that the equipment may be secured for up to 24 hours.

Period equipment may be secured

(3) The equipment may be secured:

(a) for a period not exceeding 24 hours; or

(b) until the equipment has been operated by the expert;

whichever happens first.

Extensions

(4) If the executing officer or officer assisting believes on reasonable grounds that the expert assistance will not be available within 24 hours, he or she may apply to a magistrate for an extension of that period.

(5) The executing officer or officer assisting must give notice to the occupier of the premises of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.

(6) The magistrate may order an extension for a period specified in the order if the magistrate is satisfied that the extension is necessary.

Subdivision B—Availability of assistance and use of force in executing a search warrant

154K Authorisation of officers assisting

The executing officer for a search warrant may, by writing, authorise a member of the Australian Federal Police, a member of the staff assisting the Commission, or a consultant, to assist in executing the warrant.

154L Availability of assistance and use of force in executing a search warrant

In executing a search warrant:

(a) the executing officer may obtain such assistance as is necessary and reasonable in the circumstances; and

(b) the executing officer, or another inspector who is an officer assisting, may use such force against persons and things as is necessary and reasonable in the circumstances; and

(ba) a member of the Australian Federal Police who is an officer assisting may use such force against persons and things as is necessary and reasonable in the circumstances; and

(c) a person who is not an inspector, but who is an officer assisting, may use such force against things as is necessary and reasonable in the circumstances.

Subdivision C—Obligations of executing officer and officers assisting

154M Announcement before entry

(1) Before any person enters premises under a search warrant, the executing officer must:

(a) announce that he or she is authorised to enter the premises; and

(b) give any person at the premises an opportunity to allow entry to the premises.

(2) However, the executing officer is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure that the effective execution of the warrant is not frustrated.

154N Details of warrant to be given to occupier

If a search warrant in relation to premises is being executed and the occupier of the premises is present at the premises, the executing officer or an officer assisting must make available to the occupier a copy of the warrant or a copy of the form of warrant.

Subdivision D—Occupier's rights and responsibilities

154P Occupier entitled to observe search being conducted

(1) If a search warrant in relation to premises is being executed and the occupier of the premises is present at the premises, the occupier is entitled to observe the search being conducted.

(2) The occupier's right to observe the search being conducted ends if the occupier impedes the search.

(3) This section does not prevent 2 or more areas of the premises being searched at the same time.

154Q Occupier to provide reasonable facilities and assistance

The occupier of premises in relation to which a search warrant is being executed must provide the executing officer and any officer assisting with all reasonable facilities and assistance for the effective exercise of their powers.

Penalty: 30 penalty units.

154R Answering of questions or producing evidential material

(1) If a search warrant in relation to premises is being executed, the executing officer or an officer assisting may:

(a) require a person at the premises to answer questions or produce evidential material to which the warrant relates; and

(b) seize that evidential material.

(2) A person commits an offence if the person fails to comply with a requirement under subsection (1).

Penalty: 30 penalty units or imprisonment for 12 months, or both.

Self-incrimination is no excuse

(3) An individual is not excused from answering a question or producing evidential material on the ground that the answer, or the production of the material, might tend to incriminate the individual or make the individual liable to a penalty.

(4) However, the answer is not admissible in evidence against the individual in any criminal proceedings, other than:

(a) proceedings for an offence against subsection (2); or

(b) proceedings for an offence against section 137.1 , 137.2 or 149.1 of the *Criminal Code* that relates to this Part.

154RA Person with computer knowledge to assist access etc.

(1) The executing officer for a search warrant may apply to a magistrate for an order requiring a specified person to provide any information or assistance that is reasonable and necessary to allow the officer to do one or more of the following:

(a) access data held in, or accessible from, a computer that is on premises to which the warrant relates;

(b) transfer the data to a disk, tape or other storage device;

(c) convert the data into documentary form.

(2) The magistrate may grant the order if the magistrate is satisfied that:

(a) there are reasonable grounds for suspecting that evidential material is held in, or is accessible from, the computer; and

(b) the specified person is:

(i) reasonably suspected of having committed the contravention, or one or more of the contraventions, stated in the search warrant; or

(ii) the owner or lessee of the computer; or

(iii) an employee of the owner or lessee of the computer; and

(c) the specified person has relevant knowledge of:

(i) the computer or a computer network of which the computer forms a part; or

(ii) measures applied to protect data held in, or accessible from, the computer.

(3) A person commits an offence if:

(a) the person is subject to an order under this section; and

(b) the person engages in conduct; and

(c) the person's conduct breaches the order.

Penalty for a contravention of this subsection: Imprisonment for 6 months.

Subdivision E—General provisions relating to seizure

154S Copies of seized things to be provided

(1) If, under a search warrant relating to premises, the executing officer or an officer assisting seizes:

(a) a document, film, computer file or other thing that can be readily copied; or

(b) a storage device the information in which can be readily copied;

then he or she must, if requested to do so by the occupier of the premises, give a copy of the thing or the information to the occupier as soon as practicable after the seizure.

(2) However, subsection (1) does not apply if possession of the document, film, computer file, thing or information by the occupier could constitute an offence against a law of the Commonwealth.

154T Receipts for things seized or moved under warrant

(1) If a thing is seized under a search warrant or moved under subsection 154GA(1), the executing officer or an officer assisting must provide a receipt for the thing.

(2) If 2 or more things are seized or moved, they may be covered in the one receipt.

154U Return of seized things

(1) Subject to any contrary order of a court, if a person (the ***seizer***) seizes a thing under this Division, the person must return it if:

(a) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or

(b) the period of 120 days after its seizure ends;

whichever first occurs, unless the thing is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.

(2) At the end of the 120 days specified in subsection (1), the seizer must take reasonable steps to return the thing to the person from whom it was seized (or to the owner if that person is not entitled to possess it), unless:

(a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 120 days and have not been completed (including an appeal to a court in relation to those proceedings); or

(b) an inspector may retain the thing because of an order under section 154V; or

(c) the seizer is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy or dispose of the thing.

154V Magistrate may permit a thing to be retained

Application for extension

(1) An inspector may apply to a magistrate for an order that he or she may retain the thing for a further period if:

(a) before the end of 120 days after the seizure; or

(b) before the end of a period previously specified in an order of a magistrate under this section;

proceedings in respect of which the thing may afford evidence have not commenced.

Grant of extension

(2) If the magistrate is satisfied that it is necessary for the inspector to continue to retain the thing for the purposes of an investigation as to whether there has been:

(a) a contravention of this Act; or

(b) a contravention of Part 20 of the *Telecommunications Act 1997*; or

(c) a contravention of Part 9 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; or

(d) a contravention of section 137.1, 137.2 or 149.1 of the *Criminal Code* that relates to this Part;

the magistrate may order that the inspector may retain the thing for a period (not exceeding 3 years) specified in the order.

Affect on interested parties

(3) Before making the application, the inspector must:

(a) take reasonable steps to discover who has an interest in the retention of the thing; and

(b) if it is practicable to do so, notify each person whom the inspector believes to have such an interest of the proposed application.

154W Disposal of things if there is no owner or owner cannot be located

If:

(a) a thing is seized under this Division; and

(b) a person would otherwise be required to return the thing to its owner; and

(c) there is no owner or the person cannot, despite making reasonable efforts, locate the owner;

the person may dispose of the thing in such manner as he or she thinks appropriate.

Subdivision F—Search warrants

154X Issue of search warrants

Application for warrant

(1) An inspector may apply to a magistrate for a warrant under this section in relation to premises.

Issue of warrant

(2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that there are reasonable grounds for suspecting that:

(a) there is evidential material on the premises; or

(b) there may be evidential material on the premises within the next 72 hours.

Note: A magistrate who holds office under a law of a State or Territory may issue a warrant in relation to premises even if those premises are not in that State or Territory.

(3) However, the magistrate must not issue the warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

Content of warrant

(4) The warrant must state:

(a) a description of the premises to which the warrant relates; and

(b) the kind of evidential material that is to be searched for under the warrant (including stating the contraventions to which the warrant relates); and

(c) the name of the inspector who is to be responsible for executing the warrant; and

(d) whether the warrant may be executed at any time of the day or night or during specified hours of the day or night; and

(e) the day (not more than one week after the issue of the warrant) on which the warrant ceases to have effect.

154Y Search warrants by telephone, fax etc.

Application for warrant

(1) If, in an urgent case, an inspector considers it necessary to do so, the inspector may apply to a magistrate by telephone, fax or other electronic means for a warrant under section 154X in relation to premises.

Voice communication

(2) The magistrate may require communication by voice to the extent that it is practicable in the circumstances.

Information

(3) Before applying for the warrant, the inspector must prepare an information of the kind mentioned in subsection 154X(2) in relation to the premises that sets out the grounds on which the warrant is sought. If it is necessary to do so, the inspector may apply for the warrant before the information is sworn or affirmed.

Issue of warrant

(4) If the magistrate is satisfied:

(a) after having considered the terms of the information; and

(b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought;

that there are reasonable grounds for issuing the warrant, the magistrate may complete and sign the same warrant that the magistrate would issue under section 154X if the application had been made under that section.

Notification

(5) If the magistrate completes and signs the warrant, the magistrate must inform the applicant, by telephone, fax or other electronic means, of:

(a) the terms of the warrant; and

(b) the day on which and the time at which the warrant was signed; and

(c) the day (not more than one week after the magistrate completes and signs the warrant) on which the warrant ceases to have effect.

Form of warrant

(6) The applicant must then complete a form of warrant in the same terms as the warrant completed and signed by the magistrate, stating on the form the name of the magistrate and the day on which and the time at which the warrant was signed.

Completed form of warrant to be given to magistrate

(7) The applicant must also, not later than the day after the day of expiry or execution of the warrant, whichever is the earlier, send to the magistrate:

(a) the form of warrant completed by the applicant; and

(b) the information referred to in subsection (3), which must have been duly sworn or affirmed.

Attachment

(8) The magistrate is to attach to the documents provided under subsection (7) the warrant completed by the magistrate.

Authority of warrant

(9) A form of warrant duly completed under subsection (6) is authority for the same powers as are authorised by the warrant signed by the magistrate.

(10) If:

(a) it is material, in any proceedings, for a court to be satisfied that an exercise of a power was authorised by this section; and

(b) the warrant signed by the magistrate authorising the exercise of the power is not produced in evidence;

the court must assume, unless the contrary is proved, that the exercise of the power was not authorised by such a warrant.

154Z Offences relating to warrants

(1) An inspector must not make, in an application for a warrant, a statement that the inspector knows to be false or misleading in a material particular.

Penalty: Imprisonment for 2 years.

(2) An inspector must not:

(a) state in a document that purports to be a form of warrant under section 154Y the name of a magistrate unless that magistrate issued the warrant; or

(b) state on a form of warrant under that section a matter that, to the inspector's knowledge, departs in a material particular from the form authorised by the magistrate; or

(c) purport to execute, or present to another person, a document that purports to be a form of warrant under that section that the inspector knows:

(i) has not been approved by a magistrate under that section; or

(ii) departs in a material particular from the terms authorised by a magistrate under that section; or

(d) give to a magistrate a form of warrant under that section that is not the form of warrant that the inspector purported to execute.

Penalty: Imprisonment for 2 years.

Subdivision G—Powers of magistrates

154ZA Powers conferred on magistrates

(1) A power conferred on a magistrate by this Division is conferred on the magistrate in a personal capacity and not as a court or a member of a court. The magistrate need not accept the power conferred.

(2) A magistrate exercising such a power has the same protection and immunity as if he or she were exercising that power as, or as a member of, the court of which the magistrate is a member.

Division 5—General provisions relating to electronic equipment

154ZB Operation of electronic equipment at premises

A person may operate electronic equipment at premises in order to exercise a power under this Part only if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

154ZC Compensation for damage to electronic equipment

(1) This section applies if:

(a) as a result of electronic equipment being operated as mentioned in section 154E, 154F, 154G, 154H or 154J:

(i) damage is caused to the equipment; or

(ii) the data recorded on the equipment is damaged; or

(iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and

(b) the damage or corruption occurs because:

(i) insufficient care was exercised in selecting the person who was to operate the equipment; or

(ii) insufficient care was exercised by the person operating the equipment.

(2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.

(3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court of Australia for such reasonable amount of compensation as the Court determines.

(4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

(5) Compensation is payable out of money appropriated by the Parliament.

(6) For the purposes of subsection (1):

damage, in relation to data, includes damage by erasure of data or addition of other data.

Part XII—Miscellaneous

155 Power to obtain information, documents and evidence

(1) Subject to subsection (2A), if the Commission, the Chairperson or a Deputy Chairperson has reason to believe that a person is capable of furnishing information, producing documents or giving evidence relating to a matter that constitutes, or may constitute, a contravention of this Act or Division 4A or 4B of Part 3.3 of the *Radiocommunications Act 1992*, or is relevant to a designated communications matter (as defined by subsection (9)) or a designated water matter (as defined by subsection (9A)) or is relevant to the making of a decision by the Commission under subsection 91B(4), 91C(4), 93(3) or (3A) or 93AC(1) or (2) or 95AS(7) or the making of an application under subsection 95AZM(6), a member of the Commission may, by notice in writing served on that person, require that person:

(a) to furnish to the Commission, by writing signed by that person or, in the case of a body corporate, by a competent officer of the body corporate, within the time and in the manner specified in the notice, any such information;

(b) to produce to the Commission, or to a person specified in the notice acting on its behalf, in accordance with the notice, any such documents; or

(c) to appear before the Commission, or before a member of the staff assisting the Commission who is an SES employee or an acting SES employee and who is specified in the notice, at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents.

(2A) A member of the Commission may not give a notice under subsection (1) merely because:

(a) a person has refused or failed to comply with a notice under subsection 95ZK(1) or (2) on the ground that complying with the notice would tend to incriminate the person, or to expose the person to a penalty; or

(b) a person has refused or failed to answer a question that the person was required to answer by the person presiding at an inquiry under Part VIIA, on the ground that the answer would tend to incriminate the person, or to expose the person to a penalty; or

(c) a person has refused or failed to produce a document referred to in a summons under subsection 95S(3), on the ground that production of the document would tend to incriminate the person, or to expose the person to a penalty.

(3) If a notice under subsection (1) requires a person to appear before the Commission to give evidence, the Commission may require the evidence to be given on oath or affirmation. For that purpose, any member of the Commission may administer an oath or affirmation.

(3A) If a notice under subsection (1) requires a person to appear before a member of the staff assisting the Commission to give evidence, the staff member may require the evidence to be given on oath or affirmation and may administer an oath or affirmation.

(4) A member of the Commission may exercise, or continue to exercise, a power under subsection (1) in relation to a matter referred to in that subsection until:

(a) the Commission commences proceedings in relation to the matter (other than proceedings for an injunction, whether interim or final); or

(b) the close of pleadings in relation to an application by the Commission for a final injunction in relation to the matter.

(5) A person shall not:

(a) refuse or fail to comply with a notice under this section;

(b) in purported compliance with such a notice, knowingly furnish information or give evidence that is false or misleading.

(5A) Paragraph (5)(a) does not apply to the extent that the person is not capable of complying with the notice.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5A), see subsection 13.3(3) of the *Criminal Code*.

(6A) A person who contravenes subsection (5) is guilty of an offence punishable on conviction by a fine not exceeding 20 penalty units or imprisonment for 12 months.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

(7) A person is not excused from furnishing information or producing a document in pursuance of this section on the ground that the information or document may tend to incriminate the person or expose the person to a penalty, but the answer by an individual to any question asked in a notice under this section or the furnishing by an individual of any information in pursuance of such a notice is not admissible in evidence against the individual in any criminal proceedings, other than:

(a) proceedings for an offence against this section; or

(b) proceedings for an offence against section 137.1, 137.2 or 149.1 of the *Criminal Code* that relates to this section.

(7A) This section does not require a person:

(a) to give information or evidence that would disclose the contents of a document prepared for the purposes of a meeting of the Cabinet of a State or Territory; or

(b) to produce a document prepared for the purposes of a meeting of the Cabinet of a State or Territory; or

(c) to give information or evidence, or to produce a document, that would disclose the deliberations of the Cabinet of a State or Territory.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7A), see subsection 13.3(3) of the *Criminal Code*.

(7B) This section does not require a person to produce a document that would disclose information that is the subject of legal professional privilege.

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

(8) Nothing in this section implies that notices may not be served under this section and section 155A in relation to the same conduct.

(9) A reference in this section to a ***designated communications matter*** is a reference to the performance of a function, or the exercise of a power, conferred on the Commission by or under:

(a) the *Telecommunications Act 1997*; or

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

(c) Part XIB or XIC of this Act; or

(d) Division 4A or 4B of Part 3.3 of the *Radiocommunications Act 1992*.

(9A) A reference in this section to a ***designated water matter*** is a reference to the performance of a function, or the exercise of a power, conferred on the Commission by or under:

(a) Part 4 or 4A of the *Water Act 2007*; or

(b) regulations made under that Act for the purposes of Part 4 of that Act; or

(c) water charge rules, or water market rules, made under Part 4 of that Act.

(10) In this section:

legal professional privilege includes privilege under Division 1 of Part 3.10 of the *Evidence Act 1995*.

155AAA Protection of certain information

(1) A Commission official must not disclose any protected information to any person except:

(a) when the Commission official is performing duties or functions as a Commission official; or

(b) when the Commission official or the Commission is required or permitted by:

(i) this Act or any other law of the Commonwealth; or

(ii) a prescribed law of a State or internal Territory;

to disclose the information.

(2) Subsection (1) does not allow a Commission official to disclose protected information when performing a function of the Commission described in section 28.

Disclosure to Ministers

(3) A Commission official may disclose protected information to the designated Minister.

(4) If protected information relates to a matter arising under:

(a) a provision of this Act; or

(b) a provision of another Act;

that is administered by a Minister other than the designated Minister, a Commission official may disclose the protected information to the other Minister.

(5) Subsection (4) does not limit subsection (3).

Disclosure to Secretaries etc.

(6) A Commission official may disclose protected information to:

(a) the Secretary of the designated Department; or

(b) an officer of the designated Department who is authorised by the Secretary of that Department, in writing, for the purposes of this subsection;

for the purpose of advising the designated Minister.

(7) If protected information relates to a matter arising under:

(a) a provision of this Act; or

(b) a provision of another Act;

that is administered by a Minister other than the designated Minister, a Commission official may disclose the protected information to:

(c) the Secretary of the Department that is administered by the other Minister; or

(d) an officer of that Department who is authorised by the Secretary of that Department, in writing, for the purposes of this subsection;

for the purpose of advising the other Minister.

(8) Subsection (7) does not limit subsection (6).

Disclosure to a Royal Commission

(9) A Commission official may disclose protected information to a Royal Commission.

(10) The Chairperson may, by writing, impose conditions to be complied with in relation to protected information disclosed under subsection (9).

(11) An instrument under subsection (10) is not a legislative instrument.

Disclosure to certain agencies, bodies and persons

(12) If the Chairperson is satisfied that particular protected information will enable or assist any of the following agencies, bodies or persons:

(a) the Australian Bureau of Statistics;
(b) the Australian Communications and Media Authority;
(c) the Australian Prudential Regulation Authority;
(d) the Australian Securities and Investments Commission;
(e) the National Competition Council;
(f) the Productivity Commission;
(g) any other agency within the meaning of the *Freedom of Information Act 1982*;
(h) the Australian Statistician;
(i) the Commissioner of Taxation;
(j) the Australian Competition Tribunal;
(k) the Director of Public Prosecutions;
(l) the Reserve Bank of Australia;
(m) a State/Territory government body;
(n) a foreign government body;

to perform or exercise any of the functions or powers of the agency, body or person, an authorised Commission official may disclose that protected information to the agency, body or person concerned.

(13) The Chairperson may, by writing, impose conditions to be complied with in relation to protected information disclosed under subsection (12).

(14) An instrument under subsection (13) is not a legislative instrument.

Disclosure with consent

(15) A Commission official may disclose protected information that relates to the affairs of a person if:

(a) the person has consented to the disclosure; and
(b) the disclosure is in accordance with that consent.

Disclosure of publicly available information

(16) A Commission official may disclose protected information if it is already publicly available.

Disclosure of summaries or statistics

(17) A Commission official may disclose:

(a) summaries of protected information; or

(b) statistics derived from protected information;

if those summaries or statistics, as the case may be, are not likely to enable the identification of a person.

Disclosure authorised by regulations

(18) The regulations may:

(a) authorise a Commission official to disclose protected information in specified circumstances; and

(b) provide that the Chairperson may, by writing, impose conditions to be complied with in relation to the disclosure of protected information in those circumstances.

(19) An instrument under regulations made for the purposes of paragraph (18)(b) is not a legislative instrument.

Delegation

(20) The Chairperson may, by writing, delegate any or all of his or her functions and powers under:

(a) this section; or

(b) regulations made for the purposes of subsection (18);

to a member of the Commission.

Definitions

(21) In this section:

authorised Commission official means a Commission official authorised by the Chairperson, in writing, for the purposes of this section.

Commission official means:

(a) a member, or associate member, of the Commission; or

(b) a person referred to in subsection 27(1); or

(c) a person engaged under section 27A.

core statutory provision means:

(a) a provision of Part IV, IVA, V, VA, VII, VIII, XIB or XIC (other than a provision of Division 1AA of Part V); or

(b) the remaining provisions of this Act so far as they relate to a provision covered by paragraph (a); or

(c) a provision of the regulations so far as it relates to a provision covered by paragraph (a) or (b).

designated Department means the Department that is responsible for the administration of this section (other than subsections (4) and (7)).

designated Minister means the Minister who is responsible for the administration of this section (other than subsections (4) and (7)).

disclose means divulge or communicate.

foreign country includes a region where:

(a) the region is a colony, territory or protectorate of a foreign country; or

(b) the region is part of a foreign country; or

(c) the region is under the protection of a foreign country; or

(d) a foreign country exercises jurisdiction or control over the region; or
(e) a foreign country is responsible for the region's international relations.

foreign government body means:
(a) the government of a foreign country; or
(b) an agency or authority of a foreign country; or
(c) the government of part of a foreign country; or
(d) an agency or authority of part of a foreign country.

information includes information in a document and information given in evidence.

protected information means:
(a) information that:
(i) was given in confidence to the Commission; and
(ii) relates to a matter arising under a core statutory provision; or
(b) information that:
(i) was obtained by the Commission under Part XID or section 155; and
(ii) relates to a matter arising under a core statutory provision; or
(c) information that:
(i) was obtained by the Commission under section 151AU, 152AU, 152BT, 152BZ, 152CBB or 152CBH or rules in force under section 151BU; and
(ii) relates to a matter arising under Part XIB or XIC; or
(d) information that was obtained by the Commission under section 118C, 118G, 118NE or 118NI of the *Radiocommunications Act 1992*; or
(e) information that:
(i) was given in confidence to the Commission by a foreign government body; and
(ii) relates to a matter arising under a provision of a law of a foreign country or of a part of a foreign country; or
(f) information that:
(i) was obtained by the Commission under section 155; and
(ii) relates to a designated water matter within the meaning of that section.

For the purposes of this definition, it is immaterial whether the information was given to or obtained by the Commission before, at or after the commencement of this section.

Royal Commission has the same meaning as in the *Royal Commissions Act 1902*.

State/Territory government body means:
(a) the government of a State or Territory; or
(b) an agency or authority of a State or Territory.

155AA Protection of Part VB information

(1) A Commission official must not disclose any protected Part VB information to any person, except:
(a) when the Commission official is performing duties or functions as a Commission official; or
(b) when the Commission official or the Commission is required or permitted by law to disclose the information.

(2) Subsection (1) does not allow a Commission official to disclose protected Part VB information when performing a function of the Commission described in section 28.

(3) In this section:

Commission official means:

(a) a member, or associate member, of the Commission;

(b) a person referred to in subsection 27(1);

(c) a person engaged under section 27A.

disclose means divulge or communicate.

information includes information in a document and information given in evidence.

protected Part VB information means:

(a) information that:

(i) was obtained by the Commission under Part XID or section 155; and

(ii) relates to a matter arising under Part VB; or

(b) information that was obtained by the Commission under section 75AY.

155A Power to obtain information and documents in New Zealand relating to trans-Tasman markets

(1) Where the Commission, the Chairperson or a Deputy Chairperson has reason to believe that a person is capable of furnishing information or producing documents relating to a matter that constitutes, or may constitute, a contravention of section 46A, a member of the Commission may, by written notice served on the person in New Zealand, require the person:

(a) to furnish to the Commission, by writing signed by the person or, in the case of a body corporate, by a competent officer of the body corporate, within the time and in the manner specified in the notice, any such information; or

(b) to produce to the Commission, or to a person specified in the notice acting on behalf of the Commission, in accordance with the notice, any such documents.

(2) The person may comply with the notice by providing the information or document to the New Zealand Commerce Commission for transmission to the Australian Competition and Consumer Commission.

(3) Nothing in this section implies that notices may not be served under this section and section 155 in relation to the same conduct.

(4) This section binds the Crown in all its capacities.

155B Australian Competition and Consumer Commission may receive information and documents on behalf of New Zealand Commerce Commission

(1) Where, by notice under section 98H of the Commerce Act 1986 of New Zealand, the New Zealand Commerce Commission requires a person to furnish any information or produce any document, the information or document may be provided to the Australian Competition and Consumer Commission for transmission to the New Zealand Commerce Commission.

(2) As soon as practicable after the information or document is provided to the Australian Competition and Consumer Commission, the Australian Competition and Consumer Commission is to transmit it to the New Zealand Commerce Commission.

(3) A person must not:

(a) contravene a notice under section 98H of the Commerce Act 1986 of New Zealand; or

(b) in purported compliance with such a notice, knowingly furnish information that is false or misleading in a material particular.

Penalty: 20 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

(3A) Paragraph (3)(a) does not apply if the person has a reasonable excuse.

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

(4) A person is not excused from furnishing information or producing a document under a notice under section 98H of the Commerce Act 1986 of New Zealand on the ground that the information, or the production of the document, may tend to incriminate the person, but:

(a) any information furnished or document produced under such a notice; and

(b) any information, document or thing obtained as a direct or indirect consequence of furnishing the information or producing the document;

is not admissible in evidence against the person in any criminal proceedings, other than proceedings for an offence against subsection (3).

(5) This section binds the Crown in all its capacities, but nothing in this section permits the Crown in any of its capacities to be prosecuted for an offence.

(6) This section applies in and outside Australia.

156 Inspection of documents by Commission

(1) A member of the Commission, or a person authorized by a member of the Commission, may inspect a document produced in pursuance of a notice under section 155 or 155A and may make copies of, or take extracts from, the document.

(2) The Commission may, for the purposes of this Act, take, and retain for as long as is necessary for those purposes, possession of a document produced in pursuance of a notice under section 155 or 155A but the person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by a member of the Commission under his or her hand to be a true copy and the certified copy shall be received in all courts as evidence as if it were the original.

(3) Until such a certified copy is supplied, the Commission shall, at such times and places as it thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorized by that person, to inspect and make copies of or take extracts from the document.

157 Disclosure of documents by Commission

(1) Subject to subsection (1A), if:

(a) a corporation makes an application to the Commission under section 88, 91A, 91B or 91C or Subdivision B of Division 3 of Part VII; or

(b) the Commission proposes the revocation of an authorization under subsection 91B(3) or the revocation of an authorization and the substitution of another authorization under subsection 91C(3); or

(ba) the Commission proposes to revoke, or to revoke and substitute, a clearance under section 95AS; or

(c) a proceeding is instituted against a corporation or other person under section 77, 80, 80AC, 81 or 81A; or

(d) an application is made under section 86C or 86D or subsection 87(1A) or 87A(1) for an order against a corporation or other person;

the Commission shall, at the request of the corporation or other person and upon payment of the prescribed fee (if any), furnish to the corporation or other person:

(e) a copy of every document that has been furnished to, or obtained by, the Commission in connexion with the matter to which the application, notice or proceeding relates and tends to establish the case of the corporation or other person; and

(f) a copy of any other document in the possession of the Commission that comes to the attention of the Commission in connexion with the matter to which the application, notice or proceeding relates and tends to establish the case of the corporation or other person;

not being a document obtained from the corporation or other person or prepared by an officer or professional adviser of the Commission.

Protected cartel information—Commission may refuse to comply with request

(1A) If a request under subsection (1) relates to a document containing protected cartel information, the Commission may refuse to comply with the request.

(1B) In exercising its powers under subsection (1A), the Commission must have regard to the following matters:

(a) the fact that the protected cartel information was given to the Commission in confidence;

(b) Australia's relations with other countries;

(c) the need to avoid disruption to national and international efforts relating to law enforcement, criminal intelligence and criminal investigation;

(d) in a case where the protected cartel information was given by an informant:

(i) the protection or safety of the informant or of persons associated with the informant; and

(ii) the fact that the production of a document containing protected cartel information, or the disclosure of protected cartel information, may discourage informants from giving protected cartel information in the future;

(e) the legitimate interests of the corporation which, or the person who, made the request under subsection (1);

(f) such other matters (if any) as the Commission considers relevant.

Court order

(2) If the Commission does not comply with a request under otherwise than because of a refusal under subsection (1A), the Court shall, subject to subsection (3), upon application by the corporation which, or other person who, made the request, make an order directing the Commission to comply with the request.

(3) The Court may refuse to make an order under subsection (2) in respect of a document or part of a document if the Court considers it inappropriate to make the order by reason that the disclosure of the contents of the document or part of the document would prejudice any person, or for any other reason.

(4) Before the Court gives a decision on an application under subsection (2), the Court may require any documents to be produced to it for inspection.

(5) An order under this section may be expressed to be subject to conditions specified in the order.

Definition

(6) In this section:

protected cartel information has the same meaning as in section 157B.

157AA Disclosure of documents by Tribunal in relation to merger authorisations

(1) If:

(a) a corporation makes an application to the Tribunal in relation to an authorisation under Subdivision C of Division 3 of Part VII; or

(b) the Tribunal proposes to revoke, or to revoke and substitute, an authorisation granted to the corporation under section 95AZM;

the Tribunal must, at the request of the corporation and upon payment of the prescribed fee (if any), give to the corporation:

(c) a copy of every document that has been given to, or obtained by, the Tribunal in relation to the application or revocation that tends to establish the corporation's case; and

(d) a copy of any other document in the Tribunal's possession that comes to the Tribunal's attention in relation to the application or revocation that tends to establish the corporation's case.

(2) However, subsection (1) does not require the Tribunal to give to the corporation a document that was:

(a) obtained from the corporation; or

(b) prepared by an officer or professional adviser of the Tribunal.

(3) If the Tribunal does not comply with a requirement under subsection (1), then, subject to subsection (4), the Court must, upon application by the corporation, make an order directing the Tribunal to comply with the requirement.

(4) The Court may refuse to make an order under subsection (3) in respect of a document or part of a document if the Court considers it inappropriate to make the order by reason that the disclosure of the contents of the document or part of the document would prejudice any person, or for any other reason.

(5) Before the Court gives a decision on an application under subsection (3), the Court may require any documents to be produced to it for inspection.

(6) An order under this section may be expressed to be subject to conditions specified in the order.

157A Disclosure of information by Commission

(1) The Commission or a Commission official may disclose to:

(a) the AER; or

(b) the AEMC; or

(c) any staff or consultant assisting the AER or the AEMC in performing its functions or exercising its powers;

any information that it obtains under this Act that is relevant to the functions or powers of the AER or the AEMC.

Note: The *Privacy Act 1988* also contains provisions relevant to the use and disclosure of information.

(2) The AER or a person mentioned in paragraph (1)(c) may use the information for any purpose connected with the performance of the AER's functions or the exercise of its powers.

(3) The AEMC or a person mentioned in paragraph (1)(c) may use the information for any purpose connected with the performance of the AEMC's functions or the exercise of its powers.

(4) The Commission or a Commission official may impose conditions to be complied with in relation to information disclosed.

(5) In this section:

Commission official means:

(a) a member, or associate member, of the Commission; or

(b) a person referred to in subsection 27(1); or

(c) a person engaged under section 27A.

157B Disclosure of protected cartel information to a court or tribunal

Commission or a Commission official not required to disclose protected cartel information

(1) The Commission or a Commission official is not to be required:

(a) to produce to a court or tribunal a document containing protected cartel information; or

(b) to disclose protected cartel information to a court or tribunal;

except with the leave of the court or tribunal.

(2) In exercising its powers to grant leave under subsection (1), the court or tribunal must have regard to the following matters:

(a) the fact that the protected cartel information was given to the Commission in confidence;

(b) Australia's relations with other countries;

(c) the need to avoid disruption to national and international efforts relating to law enforcement, criminal intelligence and criminal investigation;

(d) in a case where the protected cartel information was given by an informant:

(i) the protection or safety of the informant or of persons associated with the informant; and

(ii) the fact that the production of a document containing protected cartel information, or the disclosure of protected cartel information, may discourage informants from giving protected cartel information in the future;

(e) in the case of a court—the interests of the administration of justice;

(f) in the case of a tribunal—the interests of securing the effective performance of the tribunal's functions;

and must not have regard to any other matters.

(3) If:

(a) a document is produced; or

(b) information is disclosed;

to a court or tribunal in accordance with leave granted under subsection (1) in relation to particular proceedings, the document or information must not be adduced in other proceedings before the court or tribunal except:

(c) in accordance with leave granted under subsection (1) in relation to the other proceedings; or

(d) as a result of an exercise of power under subsection (4) in relation to the other proceedings.

Commission or a Commission official may disclose protected cartel information

(4) The Commission or a Commission official may:

(a) produce to the court or tribunal a document containing protected cartel information; or

(b) disclose protected cartel information to the court or tribunal.

(5) In exercising the powers conferred by subsection (4), the Commission or Commission official must have regard to the following matters:

(a) the fact that the protected cartel information was given to the Commission in confidence;

(b) Australia's relations with other countries;

(c) the need to avoid disruption to national and international efforts relating to law enforcement, criminal intelligence and criminal investigation;

(d) in a case where the protected cartel information was given by an informant:

(i) the protection or safety of the informant or of persons associated with the informant; and

(ii) the fact that the production of a document containing protected cartel information, or the disclosure of protected cartel information, may discourage informants from giving protected cartel information in the future;

(e) in the case of production or disclosure to a court—the interests of the administration of justice;

(f) in the case of production or disclosure to a tribunal—the interests of securing the effective performance of the tribunal's functions;

and must not have regard to any other matters.

(6) If:

(a) a document is produced; or

(b) information is disclosed;

to a court or tribunal as a result of an exercise of power under subsection (4) in relation to particular proceedings, the document or information must not be adduced in other proceedings before the court or tribunal except:

(c) in accordance with leave granted under subsection (1) in relation to the other proceedings; or

(d) as a result of an exercise of power under subsection (4) in relation to the other proceedings.

Definitions

(7) In this section:

Commission official means:

(a) a member, or associate member, of the Commission; or

(b) a person referred to in subsection 27(1); or

(c) a person engaged under section 27A.

disclose means divulge or communicate.

protected cartel information means information that:

(a) was given to the Commission in confidence; and

(b) relates to a breach, or a possible breach, of section 44ZZRF, 44ZZRG, 44ZZRJ or 44ZZRK.

157C Disclosure of protected cartel information to a party to court proceedings etc.

Commission or Commission official not required to make discovery of documents containing protected cartel information etc.

(1) If:

(a) a person is a party to proceedings before a court; and

(b) the Commission is not a party to the proceedings;

the Commission or a Commission official is not to be required, in connection with the proceedings, to:

(c) make discovery (however described) to the person of a document containing protected cartel information; or

(d) produce to the person a document containing protected cartel information.

(2) If:

(a) a person is considering instituting proceedings before a court; and

(b) the proceedings have not yet been instituted;

the Commission or a Commission official is not to be required, in connection with the prospective proceedings, to:

(c) make discovery (however described) to the person of a document containing protected cartel information; or

(d) produce to the person a document containing protected cartel information.

Commission or Commission official may disclose protected cartel information

(3) If:

(a) a person is a party to proceedings before a court; and

(b) the Commission is not a party to the proceedings;

the Commission or a Commission official may, on application by the person:

(c) make a copy of a document containing protected cartel information; and

(d) give the copy to the person.

(4) If:

(a) a person is considering instituting proceedings before a court; and

(b) the proceedings have not yet been instituted;

the Commission or a Commission official may, on application by the person:

(c) make a copy of a document containing protected cartel information; and

(d) give the copy to the person.

(5) In exercising the powers conferred by subsection (3) or (4), the Commission or Commission official must have regard to the following matters:

(a) the fact that the protected cartel information was given to the Commission in confidence;

(b) Australia's relations with other countries;

(c) the need to avoid disruption to national and international efforts relating to law enforcement, criminal intelligence and criminal investigation;

(d) in a case where the protected cartel information was given by an informant:

(i) the protection or safety of the informant or of persons associated with the informant; and

(ii) the fact that the production of a document containing protected cartel information, or the disclosure of protected cartel information, may discourage informants from giving protected cartel information in the future;

(e) the interests of the administration of justice;

and must not have regard to any other matters.

(6) If a copy of a document is given to a party, or prospective party, to proceedings before a court as a result of an exercise of power under subsection (3) or (4), the copy must not be adduced in other proceedings before:

(a) the court; or

(b) another court; or

(c) a tribunal;

except:

(d) as a result of an exercise of power under subsection (3) or (4) in relation to the other proceedings; or

(e) in accordance with leave granted under subsection 157B(1) in relation to the other proceedings; or

(f) as a result of an exercise of power under subsection 157B(4) in relation to the other proceedings.

Definitions

(7) In this section:

Commission official means:

(a) a member, or associate member, of the Commission; or

(b) a person referred to in subsection 27(1); or

(c) a person engaged under section 27A.

protected cartel information means information that:

(a) was given to the Commission in confidence; and

(b) relates to a breach, or a possible breach, of section 44ZZRF, 44ZZRG, 44ZZRJ or 44ZZRK.

157D General powers of a court

Power of a court in a criminal or civil proceeding

(1) The power of a court to control the conduct of a criminal or civil proceeding, in particular with respect to abuse of process, is not affected by section 157B or 157C, except so far as that section expressly or impliedly provides otherwise.

Stay order—criminal proceeding

(2) A refusal by a court to grant leave under subsection 157B(1) does not prevent the court from later ordering that a criminal proceeding be stayed on the ground that the refusal would have a substantial adverse effect on a defendant's right to receive a fair hearing.

Stay order—civil proceeding

(3) A refusal by a court to grant leave under subsection 157B(1) does not prevent the court from later ordering that a civil proceeding be stayed on the ground that the refusal would have a substantial adverse effect on the hearing in the proceeding.

(4) In deciding whether to order a stay of the civil proceeding, the court must consider:
   (a) the extent of any financial loss that a party would suffer as a result of the proceeding being stayed; and
   (b) whether a party has reasonable prospects of obtaining a remedy in the proceeding; and
   (c) any other matter the court considers relevant.

158 Protection of members of Tribunal, counsel and witnesses

(1) A member of the Tribunal has, in the performance of his or her duty as a member, the same protection and immunity as a Justice of the High Court.

(2) A person appearing before the Tribunal on behalf of a person, or assisting the Tribunal as counsel, has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

(3) Subject to this Act, a person appearing before the Tribunal or the Commission to give evidence has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, in any civil or criminal proceedings as a witness in proceedings in the High Court.

159 Incriminating answers

(1) A person appearing before the Commission to give evidence or produce documents is not excused from answering a question, or producing a document, on the ground that the answer to the question, or the document, may tend to incriminate the person or expose the person to a penalty.

(2)Evidence given by an individual before the Commission is not admissible against the individual in any criminal proceedings, other than:
   (a) proceedings for an offence against this Part; or

(b) proceedings for an offence against section 137.1, 137.2 or 149.1 of the *Criminal Code* that relates to this Part.

160 Failure of witness to attend

(1) A person served, as prescribed, with a summons to appear as a witness before the Tribunal shall not:

(a) fail to attend as required by the summons; or

(b) fail to appear and report himself or herself from day to day unless excused, or released from further attendance, by a member of the Tribunal.

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

Note: A defendant bears an evidential burden in relation to the matters in subsection (1A), see subsection 13.3(3) of the *Criminal Code*.

(2) A person who contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 20 penalty units or imprisonment for 12 months.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

161 Refusal to be sworn or to answer questions

(1) A person appearing as a witness before the Tribunal shall not:

(a) refuse or fail to be sworn or to make an affirmation;

(b) refuse or fail to answer a question that he or she is required to answer by the member presiding at the proceedings; or

(c) refuse or fail to produce a document that he or she was required to produce by a summons under this Act served on him or her as prescribed.

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

Note: A defendant bears an evidential burden in relation to the matters in subsection (1A), see subsection 13.3(3) of the *Criminal Code*.

(2) It is a reasonable excuse for an individual to refuse or fail to answer a question that he or she is required to answer under this section that the answer to the question may tend to incriminate him or her.

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

(3) A person who contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 20 penalty units or imprisonment for 12 months.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

162 Contempt

(1) A person shall not:

(a) insult a member of the Tribunal, a member of the Commission or an AER member in the exercise of his or her powers or functions as a member;

(b) interrupt the proceedings of the Tribunal or a conference held by the Commission under section 65J, 65M, 90A, 93A or 151AZ;

(c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where the Tribunal is sitting or the Commission is holding such a conference; or

(d) do any other act or thing that would, if the Tribunal were a court of record, constitute a contempt of that court.

(2) A person who contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 20 penalty units or imprisonment for 12 months.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

162A Intimidation etc.

A person who:

(a) threatens, intimidates or coerces another person; or

(b) causes or procures damage, loss or disadvantage to another person;

for or on account of that other person proposing to furnish or having furnished information, or proposing to produce or having produced documents, to the Commission, the Tribunal or the AER, or for or on account of the other person proposing to appear or having appeared as a witness before the Tribunal is guilty of an offence punishable on conviction by a fine not exceeding 20 penalty units or imprisonment for 12 months.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

163 Prosecutions

(1) Prosecutions for offences against this Act may be brought in any court having jurisdiction in the matter.

(2) In so far as this section has effect as a law of the Commonwealth, the Federal Court has jurisdiction in any matter in respect of which a criminal proceeding is instituted for an offence to which subsection (1) applies, and that jurisdiction is exclusive of the jurisdiction of any other court other than:

(a) the jurisdiction of a Supreme Court of a State or Territory under section 68 of the *Judiciary Act 1903* with respect to any matter in respect of which a criminal proceeding is instituted for an offence against section 44ZZRF or 44ZZRG; and

(b) the jurisdiction of a court under section 68 of the *Judiciary Act 1903* with respect to the examination and commitment for trial on indictment of a person who is charged with an indictable offence; and

(c) the jurisdiction of the High Court under section 75 of the Constitution.

(4) Proceedings under this section, other than proceedings instituted by:

(a) the Commission; or

(aa) the Director of Public Prosecutions; or

(b) a person authorised in writing by the Commission; or

(c) a person authorised in writing by the Secretary to the Department;

shall not be instituted except with the consent in writing of the Minister or of a person authorised by the Minister in writing to give such consents.

(5) A prosecution for an offence against section 118, 154Q, 155 or 155B may be commenced at any time after the commission of the offence.

(6) Despite subsection (2), the Federal Court does not have jurisdiction in any matter in respect of which a criminal proceeding is instituted for an offence against section 44ZZRF or 44ZZRG if the proceeding is instituted before the commencement of Schedule 1 to the *Federal Court of Australia Amendment (Criminal Jurisdiction) Act 2009*.

163A Declarations and orders

Declarations and orders

(1) Subject to this section, a person may, in relation to a matter arising under this Act, institute a proceeding in a court having jurisdiction to hear and determine proceedings under this section seeking the making of:

(a) a declaration in relation to the operation or effect of any provision of this Act other than the following provisions:

(i) Division 2, 2A or 3 of Part V;

(ia) Part VB;

(ii) Part XIB;

(iii) Part XIC; or

(aa) a declaration in relation to the validity of any act or thing done, proposed to be done or purporting to have been done under this Act; or

(b) an order by way of, or in the nature of, prohibition, certiorari or mandamus;

or both such a declaration and such an order.

(1A) Subsection (1) does not apply in relation to a matter arising under Part IIIAA.

When Minister may institute, or intervene in, proceedings

(2) Subject to subsection (2A), the Minister may institute a proceeding under this section and may intervene in any proceeding instituted under this section or in a proceeding instituted otherwise than under this section in which a party is seeking the making of a declaration of a kind mentioned in paragraph (1)(a) or (aa) or an order of a kind mentioned in paragraph (1)(b).

(2A) Subsections (1) and (2) do not permit the Minister:

(a) to institute a proceeding seeking a declaration, or an order described in paragraph (1)(b), that relates to Part IV; or

(b) to intervene in a proceeding so far as it relates to a matter that arises under Part IV.

When Commission may institute proceedings

(3) The Commission may institute a proceeding in the Court seeking, in relation to a matter arising under this Act, the making of a declaration of the kind that may be made under paragraph (1)(a).

Jurisdiction of Federal Court

(3A) Subject to subsections (4B) and (4C), in so far as this section has effect as a law of the Commonwealth, the Federal Court has jurisdiction to hear and determine proceedings under this section.

(4) The jurisdiction of the Federal Court under subsection (3A) to make:

(a) a declaration in relation to the validity of any act or thing done, proposed to be done or purporting to have been done under this Act by the Tribunal; or

(b) an order of a kind mentioned in paragraph (1)(b) directed to the Tribunal;

shall be exercised by not less than 3 Judges.

Jurisdiction of State/Territory Supreme Courts etc.

(4A) In so far as this section has effect as a law of the Commonwealth, the Supreme Court of a State or Territory does not have jurisdiction to hear and determine proceedings under this section otherwise than in accordance with subsection (4B) or (4C). This subsection has effect despite any other law, including section 39 of the *Judiciary Act 1903*.

(4B) If a decision to prosecute a person for an offence against section 44ZZRF or 44ZZRG has been made and the prosecution is proposed to be commenced in the Supreme Court of a State or Territory:

(a) the Federal Court does not have jurisdiction with respect to any matter in which a person seeks the making of a paragraph (1)(aa) declaration, or a paragraph (1)(b) order, in relation to that decision; and

(b) if the Supreme Court is the Supreme Court of a State—in so far as this section has effect as a law of the Commonwealth, the Supreme Court is invested with federal jurisdiction with respect to any such matter; and

(c) if the Supreme Court is the Supreme Court of a Territory, then:

(i) in so far as this section has effect as a law of the Commonwealth; and

(ii) subject to the Constitution;

the Supreme Court is conferred with jurisdiction with respect to any such matter.

(4C) Subject to subsection (4D), at any time when:

(a) a prosecution for an offence against section 44ZZRF or 44ZZRG is before the Supreme Court of a State or Territory; or

(b) an appeal arising out of such a prosecution is before the Supreme Court of a State or Territory;

the following apply:

(c) the Federal Court does not have jurisdiction with respect to any matter in which the person who is or was the defendant in the prosecution seeks the making of a paragraph (1)(aa) declaration, or a paragraph (1)(b) order, in relation to a related criminal justice process decision;

(d) if the Supreme Court is the Supreme Court of a State—in so far as this section has effect as a law of the Commonwealth, the Supreme Court is invested with federal jurisdiction with respect to any such matter;

(e) if the Supreme Court is the Supreme Court of a Territory, then:

(i) in so far as this section has effect as a law of the Commonwealth; and

(ii) subject to the Constitution;

the Supreme Court is conferred with jurisdiction with respect to any such matter.

(4D) Subsection (4C) does not apply if, before the commencement of a prosecution for an offence against section 44ZZRF or 44ZZRG, a person seeks the making of a paragraph (1)(aa) declaration, or a paragraph (1)(b) order, in relation to a related criminal justice process decision.

(4E) If subsection (4D) applies, the prosecutor may apply to the Federal Court for a permanent stay of the paragraph (1)(aa) or (b) proceedings referred to in that subsection, and the Federal Court may grant such a stay if the Federal Court determines that:

(a) the matters the subject of the proceedings are more appropriately dealt with in the criminal justice process; and

(b) a stay of proceedings will not substantially prejudice the person.

Definitions

(5) In this section, ***proceeding*** includes a cross-proceeding.

(6) In this section:

related criminal justice process decision has the same meaning as in section 39B of the *Judiciary Act 1903*.

165 Inspection of, furnishing of copies of, and evidence of, documents

(1) A person may, on application in accordance with the regulations and on payment of the prescribed fee (if any):

(a) inspect any document contained in the register kept under subsection 89(3) or 95(1) or section 95AH; and

(b) obtain a copy of such a document (including, where the person so requests, a copy certified to be a true copy under the hand of a person authorized by the Commission to certify such copies).

(2) Subject to subsection (3) and to any direction under subsection 106(2), a person may, on application in accordance with the regulations and on payment of the prescribed fee (if any):

(a) inspect the document recording a declaration under section 50A or a determination of the Tribunal or any document furnished to, or recorded in the records of, the Tribunal in pursuance of this Act or the regulations; and

(b) obtain a copy of such a document (including, where the person so requests, a copy certified to be a true copy under the hand of the Registrar or of a Deputy Registrar).

(3) Unless the Tribunal in a particular case otherwise directs, subsection (2) does not apply in relation to a document furnished to the Tribunal if the person by whom the document was furnished claims, as prescribed, that the document contains matter of a confidential nature.

(3A) Subject to any direction under subsection 106(2), a person may, on application in accordance with the regulations and on payment of the prescribed fee (if any):

(a) inspect any document contained in the register kept under section 95AZ; and

(b) obtain a copy of such a document (including, where the person so requests, a copy certified to be a true copy by the Registrar or a Deputy Registrar).

(4) A copy of a determination of the Commission, certified to be a true copy by a person authorized by the Commission to certify copies of determinations of the Commission, shall be received in all courts as evidence of the determination.

(5) A document purporting to be a copy of a determination of the Commission and to be certified to be a true copy in accordance with subsection (4) shall, unless the contrary is established, be deemed to be such a copy and to be so certified.

(6) A copy of a declaration under section 50A or a determination of, or undertaking given to, the Tribunal, certified to be a true copy under the hand of the Registrar or of a Deputy Registrar, shall be received in all courts as evidence of the declaration, determination or undertaking.

166 Certificates as to furnishing of particulars to Commission

(1) Where particulars of, or of a provision of, a contract, arrangement or understanding have been furnished to the Commission for the purposes of paragraph 51(2)(g), the Commission shall, on application by a party to the contract or to the arrangement or understanding, cause to be furnished to the party a certificate signed by a member of the Commission specifying the particulars so furnished and the date on which the particulars were furnished.

(2) A certificate referred to in subsection (1) shall be received in all courts as evidence that the particulars specified in the certificate were furnished to the Commission on the date so specified.

(3) A person is not entitled to inspect any particulars of, or of a provision of, a contract, arrangement or understanding that have been furnished to the Commission for the purposes of paragraph 51(2)(g), but the Commission may make those particulars available to the Minister or to an officer acting on behalf of, and with the authority of, the Minister or to a court.

167 Judicial notice

(1) All courts shall take judicial notice of:

(a) the official signature of any person who holds or has held the office of President, Deputy President, member of the Tribunal, Chairperson, Deputy Chairperson, member of the Commission, Registrar, Deputy Registrar, AER Chair or AER member and of the fact that that person holds or has held that office; and

(b) the official seal of the Tribunal, of the Commission or of the AER;

if the signature or seal purports to be attached or appended to an official document.

(1A) All courts must take judicial notice of:

(a) the official signature of a person who holds or has held the office of Chairman, Deputy Chairman, or member (including associate member) of the New Zealand Commerce Commission and of the fact that the person holds or has held the office; and

(b) the imprint of the common seal of the New Zealand Commerce Commission;

if the signature or imprint purports to be attached or appended to an official document.

(2) In this section, ***court*** includes a Federal Court or a court of a State or Territory and all persons authorized by law or by consent of parties to receive evidence.

170 Legal and financial assistance

(1) A person:

(a) who has instituted, or proposes to institute, a proceeding before the Commission or the Tribunal, or a proceeding before the Court under Part IVB, Part VA, Part VI or section 163A;

(b) who is entitled to participate, or has been permitted to intervene, in a proceeding before the Commission or the Tribunal; or

(c) against whom a proceeding before the Court has been instituted under Part IVB, Part VA, Part VI or section 163A;

may apply to the Attorney-General for a grant of assistance under this section in respect of the proceeding.

(2) Where an application is made by a person under subsection (1), the Attorney-General, or a person appointed or engaged under the *Public Service Act 1999* (the ***public servant***) authorized in writing by the Attorney-General, may, if he or she is satisfied that it would involve hardship to that person to refuse the application and that, in all the circumstances, it is reasonable that the application should be granted, authorize the grant by the Commonwealth to the person, either unconditionally or subject to such conditions as the Attorney-General or public servant determines, of such legal or financial assistance in relation to the proceeding as the Attorney-General or public servant determines.

(3) In this section:

(a) a reference to a proceeding before the Commission is a reference to a proceeding in relation to an application for, or in relation to the revocation of, an authorisation under Division 1 of Part VII or a clearance under Division 3 of Part VII; and

(b) a reference to a proceeding before the Tribunal is a reference to:

(i) an application to the Tribunal for a declaration under subsection 50A(1); or

(ii) a proceeding in relation to an application for, or the revocation of, an authorisation under Division 3 of Part VII; or

(iii) an application for a review of a determination, or of the giving of a notice, by the Commission.

171 Annual report by Commission

(1) The Commission shall, within 60 days after each year ending on 30 June, furnish to the Minister, for presentation to the Parliament, a report with respect to its operations in that year.

(2) The report must include a cumulative list of all Commonwealth, State and Territory laws that the Commission knows about that authorise things for the purposes of subsection 51(1) of this Act or subsection 51(1) of the Competition Code (as defined in section 150A).

(3) The report must also include:

(aa) details of the time taken by the Commission to:

(i) make final determinations under section 44V in relation to access disputes; and

(ii) make decisions on access undertaking applications (within the meaning of section 44B) or access code applications (within the meaning of that section); and

(iii) make decisions on applications under subsection 44PA(1) (about government tendering); and

(a) the number of:

(i) notices given by the Commission under section 155; and

(iii) notices given by the Commission under section 155A; and

(b) a general description of the nature of the matters in respect of which the notices were given; and

(c) the number of proceedings brought to challenge the validity of the notices; and

(d) the number of search warrants issued by a magistrate under section 154X or signed by a magistrate under section 154Y; and

(da) a general description of the nature of the matters in respect of which the search warrants were issued or signed; and

(db) the number of proceedings brought to challenge the validity of the search warrants; and

(dc) the number of entries onto premises under Part XID; and

(e) the number of complaints received by the Commission; and

(f) a general summary of the kinds of complaints received by the Commission and how it dealt with them; and

(g) a general description of the major matters investigated by the Commission; and

(h) the number of times the Commission has intervened in proceedings and a general description of the reasons for doing so.

171A Charges by the Commission

(1) The Commission may make a charge of an amount, or at a rate, determined by the Commission for:

(a) supplying a person with material published by the Commission in the course of carrying out its functions or exercising its powers; or

(b) permitting a person to attend or take part in a prescribed activity arranged by or on behalf of the Commission for the purpose of carrying out any of its functions.

(2) Where:

(a) the Commission provides a discretionary service for a person; and

(b) this Act does not otherwise provide for a charge for the service;

the Commission may make a charge of such amount, or at such a rate, as is agreed between the Commission and the person.

(3) In this section, a reference to the provision by the Commission of a discretionary service for a person is a reference to the doing of an act by the Commission, being a prescribed act that:

(a) the Commission has power to do but is not required to do by or under any law; and

(b) the Commission does at the person's request.

171B Division 3 of Part IIIA and Division 8 of Part XIC do not confer judicial power on the Commission

(1) Division 3 of Part IIIA and Division 8 of Part XIC have no effect to the extent (if any) to which they purport to confer judicial power on the Commission.

(2) In this section:

judicial power means the judicial power of the Commonwealth referred to in section 71 of the Constitution.

172 Regulations

(1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, prescribing:

(a) matters in connexion with the procedure of the Tribunal, the Commission and the AER; and

(b) the fees and expenses of witnesses in proceedings before the Tribunal and the Commission; and

(c) matters for and in relation to the costs, if any, that may be awarded by the Court in proceedings before the Court under this Act; and

(d) the fees payable to the Commission on making a prescribed application, or giving a prescribed notice, to the Commission under this Act or the regulations.

(1A) Without limiting subsection (1), that subsection includes the power to make regulations enabling a person who is alleged to have contravened section 65R to pay to the Commonwealth, as an alternative to prosecution, a specified penalty, not exceeding one-fifth of the maximum penalty that could be imposed on the person under that section.

(1B) Regulations made for the purposes of paragraph (1)(a) or (b) do not apply in relation to the functions of the Tribunal under a State/Territory energy law or a designated Commonwealth energy law.

Note: See section 44ZZR.

(2) The regulations may, either unconditionally or subject to such conditions as are specified in the regulations, exempt from the application of this Act (other than Part IV) or of specified provisions of this Act (other than Part IV):

(a) conduct engaged in by a specified organization or body that performs functions in relation to the marketing of primary products;

(b) a prescribed contract or proposed contract, contracts included in a prescribed class of contracts, or prescribed conduct, being a contract, proposed contract or class of contracts made, or conduct engaged in, in pursuance of or for the purposes of a specified agreement, arrangement or understanding between the Government of Australia and the Government of a country outside Australia; or

(c) prescribed conduct engaged in in the course of a business carried on by the Commonwealth or by a prescribed authority of the Commonwealth.

(2A) The regulations may prescribe the circumstances in which the Commission may, on behalf of the Commonwealth, wholly or partly waive the fee that would otherwise be payable for an application referred to in subsection 89(1).

(2B) Subsection (2A) does not apply to an application for an authorisation under subsection 88(9), a minor variation of such an authorisation, a revocation of such an authorisation or a revocation of such an authorisation and the substitution of another authorisation.

(3) Strict compliance with a form of application or notice prescribed for the purposes of this Act is not, and shall be deemed never to have been, required and substantial compliance is, and shall be deemed always to have been, sufficient.

173 Authorisation for the purposes of subsection 51(1)

(1) In deciding whether a person (including a corporation) has contravened section 50 of this Act, the vesting of ownership of primary products in the person by legislation is to be taken, for the purposes of subparagraph 51(1)(a)(i), to be specified in, and specifically authorised by, this section.

(2) In this section:

primary products means:

(a) agricultural or horticultural produce, including produce that has been subjected to a manufacturing process; or

(b) crops, whether on or attached to the land or not; or

(c) animals (whether dead or alive); or

(d) the bodily produce (including natural increase) of animals.

Note: An example of agricultural produce that has been subjected to a manufacturing process is sugar cane that has been transformed into raw sugar.

Part XIII—Application and transitional provisions relating to the competition provisions

Division 1—Cartel conduct

174 Definitions

In this Division:

commencement time means the commencement of Division 1 of Part IV.

175 Giving effect after the commencement time to a cartel provision in existence before that time

The following provisions of this Act:

(a) paragraph 88(1A)(b);

(b) paragraph 93AB(1A)(c);

(c) paragraph 93AB(1A)(d);

apply in relation to a contract or arrangement made, or an understanding arrived at, before, at or after the commencement time.

176 Proceedings relating to price-fixing contraventions taking place before the commencement time

Despite the repeal of section 76D by the *Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009*, that section continues to apply, in relation to proceedings (whether instituted before or after the commencement time) in relation to a contravention that took place before the commencement time, as if that repeal had not happened.

177 Authorisations in force before the commencement time

(1) This section applies if:

(a) an authorisation (the ***pre-commencement authorisation***) was granted to a person to give effect to a provision of a contract, arrangement or understanding; and

(b) the provision is a cartel provision; and

(c) the authorisation was in force immediately before the commencement time.

(2) This Act has effect, after the commencement time, as if:

(a) the Commission had, at the commencement time, granted to the person an authorisation under subsection 88(1A) to give effect to the cartel provision; and

(b) the day specified in the subsection 88(1A) authorisation as the day the authorisation comes into force were the day on which Division 1 of Part IV commenced; and

(c) if, immediately before the commencement time, the pre-commencement authorisation was expressed to be in force for a period (the ***initial period***) specified in that authorisation—the subsection 88(1A) authorisation were expressed to be in force for a period specified in the subsection 88(1A) authorisation, and that period were the period:

(i) starting at the commencement time; and

(ii) ending at the end of the initial period; and

(d) any requirements for the granting of the subsection 88(1A) authorisation were satisfied.

(3) Subsection (2) does not prevent the subsection 88(1A) authorisation from being varied, revoked or set aside in accordance with this Act.

178 Notifications in force before the commencement time

(1) This section applies if:

(a) a person gave the Commission a collective bargaining notice under subsection 93AB(1) in relation to a proposal to give effect to a provision of a contract, arrangement or understanding; and

(b) the provision is a cartel provision of the kind referred to in paragraph 93AB(1A)(c) or (d); and

(c) the subsection 93AB(1) notice is in force immediately before the commencement time.

(2) This Act has effect, after the commencement time, as if:

(a) the person had, at the commencement time, given the Commission a collective bargaining notice under subsection 93AB(1A) in relation to a proposal to give effect to the cartel provision; and

(b) despite subsections 93AD(1) and (2), the subsection 93AB(1A) notice had come into force at the commencement time; and

(c) despite paragraph 93AD(3)(c), the period applicable to the subsection 93AB(1A) notice for the purposes of paragraph 93AD(3)(c) were the period:

(i) starting at the commencement time; and

(ii) ending at the end of the period of 3 years starting on the day the person gave the subsection 93AB(1) notice to the Commission; and

(d) any requirements for the giving of the subsection 93AB(1A) notice were satisfied.

(3) Subsection (2) does not prevent the subsection 93AB(1A) notice from ceasing to be in force in accordance with this Act.

Schedule—The Schedule versions of Parts IV and VB

Part 1—Schedule version of Part IV

Note: See section 150A.

Division 1—Cartel conduct

Subdivision A—Introduction

44ZZRA Simplified outline

The following is a simplified outline of this Division:

- This Division sets out parallel offences and civil penalty provisions relating to cartel conduct.
- A person must not make, or give effect to, a contract, arrangement or understanding that contains a cartel provision.
- A cartel provision is a provision relating to:
    (a) price-fixing; or
    (b) restricting outputs in the production and supply chain; or
    (c) allocating customers, suppliers or territories; or
    (d) bid-rigging;

  by parties that are, or would otherwise be, in competition with each other.

44ZZRB Definitions

In this Division:

annual turnover, of a body corporate during a 12-month period, means the sum of the values of all the supplies that the body corporate, and any body corporate related to the body corporate, have made, or are likely to make, during the 12-month period, other than:

(a) supplies made from any of those bodies corporate to any other of those bodies corporate; or
(b) supplies that are input taxed; or
(c) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the *A New Tax System (Goods and Services Tax) Act 1999*); or
(d) supplies that are not made in connection with an enterprise that the body corporate carries on; or
(e) supplies that are not connected with Australia.

Expressions used in this definition that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as in that Act.

benefit includes any advantage and is not limited to property.

bid includes:

(a) tender; and

(b) the taking, by a potential bidder or tenderer, of a preliminary step in a bidding or tendering process.

evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

knowledge has the same meaning as in the *Criminal Code*.

likely, in relation to any of the following:

(a) a supply of goods or services;

(b) an acquisition of goods or services;

(c) the production of goods;

(d) the capacity to supply services;

includes a possibility that is not remote.

obtaining includes:

(a) obtaining for another person; and

(b) inducing a third person to do something that results in another person obtaining.

party has a meaning affected by section 44ZZRC.

production includes manufacture, processing, treatment, assembly, disassembly, renovation, restoration, growing, raising, mining, extraction, harvesting, fishing, capturing and gathering.

44ZZRC Extended meaning of *party*

For the purposes of this Division, if a body corporate is a party to a contract, arrangement or understanding (otherwise than because of this section), each body corporate related to that body corporate is taken to be a ***party*** to that contract, arrangement or understanding.

44ZZRD Cartel provisions

(1) For the purposes of this Act, a provision of a contract, arrangement or understanding is a ***cartel provision*** if:

(a) either of the following conditions is satisfied in relation to the provision:

(i) the purpose/effect condition set out in subsection (2);

(ii) the purpose condition set out in subsection (3); and

(b) the competition condition set out in subsection (4) is satisfied in relation to the provision.

Purpose/effect condition

(2) The purpose/effect condition is satisfied if the provision has the purpose, or has or is likely to have the effect, of directly or indirectly:

(a) fixing, controlling or maintaining; or

(b) providing for the fixing, controlling or maintaining of;

the price for, or a discount, allowance, rebate or credit in relation to:

(c) goods or services supplied, or likely to be supplied, by any or all of the parties to the contract, arrangement or understanding; or

(d) goods or services acquired, or likely to be acquired, by any or all of the parties to the contract, arrangement or understanding; or

(e) goods or services re-supplied, or likely to be re-supplied, by persons or classes of persons to whom those goods or services were supplied by any or all of the parties to the contract, arrangement or understanding; or

(f) goods or services likely to be re-supplied by persons or classes of persons to whom those goods or services are likely to be supplied by any or all of the parties to the contract, arrangement or understanding.

Note 1: The purpose/effect condition can be satisfied when a provision is considered with related provisions—see subsection (8).

Note 2: ***Party*** has an extended meaning—see section 44ZZRC.

Purpose condition

(3) The purpose condition is satisfied if the provision has the purpose of directly or indirectly:

(a) preventing, restricting or limiting:

(i) the production, or likely production, of goods by any or all of the parties to the contract, arrangement or understanding; or

(ii) the capacity, or likely capacity, of any or all of the parties to the contract, arrangement or understanding to supply services; or

(iii) the supply, or likely supply, of goods or services to persons or classes of persons by any or all of the parties to the contract, arrangement or understanding; or

(b) allocating between any or all of the parties to the contract, arrangement or understanding:

(i) the persons or classes of persons who have acquired, or who are likely to acquire, goods or services from any or all of the parties to the contract, arrangement or understanding; or

(ii) the persons or classes of persons who have supplied, or who are likely to supply, goods or services to any or all of the parties to the contract, arrangement or understanding; or

(iii) the geographical areas in which goods or services are supplied, or likely to be supplied, by any or all of the parties to the contract, arrangement or understanding; or

(iv) the geographical areas in which goods or services are acquired, or likely to be acquired, by any or all of the parties to the contract, arrangement or understanding; or

(c) ensuring that in the event of a request for bids in relation to the supply or acquisition of goods or services:

(i) one or more parties to the contract, arrangement or understanding bid, but one or more other parties do not; or

(ii) 2 or more parties to the contract, arrangement or understanding bid, but at least 2 of them do so on the basis that one of those bids is more likely to be successful than the others; or

(iii) 2 or more parties to the contract, arrangement or understanding bid, but not all of those parties proceed with their bids until the suspension or finalisation of the request for bids process; or

(iv) 2 or more parties to the contract, arrangement or understanding bid and proceed with their bids, but at least 2 of them proceed with their bids on the basis that one of those bids is more likely to be successful than the others; or

(v) 2 or more parties to the contract, arrangement or understanding bid, but a material component of at least one of those bids is worked out in accordance with the contract, arrangement or understanding.

Note 1: For example, subparagraph (3)(a)(iii) will not apply in relation to a roster for the supply of after-hours medical services if the roster does not prevent, restrict or limit the supply of services.

Note 2: The purpose condition can be satisfied when a provision is considered with related provisions—see subsection (9).

Note 3: ***Party*** has an extended meaning—see section 44ZZRC.

Competition condition

(4) The competition condition is satisfied if at least 2 of the parties to the contract, arrangement or understanding:

(a) are or are likely to be; or

(b) but for any contract, arrangement or understanding, would be or would be likely to be;

in competition with each other in relation to:

(c) if paragraph (2)(c) or (3)(b) applies in relation to a supply, or likely supply, of goods or services—the supply of those goods or services; or

(d) if paragraph (2)(d) or (3)(b) applies in relation to an acquisition, or likely acquisition, of goods or services—the acquisition of those goods or services; or

(e) if paragraph (2)(e) or (f) applies in relation to a re-supply, or likely re-supply, of goods or services—the supply of those goods or services to that re-supplier; or

(f) if subparagraph (3)(a)(i) applies in relation to preventing, restricting or limiting the production, or likely production, of goods—the production of those goods; or

(g) if subparagraph (3)(a)(ii) applies in relation to preventing, restricting or limiting the capacity, or likely capacity, to supply services—the supply of those services; or

(h) if subparagraph (3)(a)(iii) applies in relation to preventing, restricting or limiting the supply, or likely supply, of goods or services—the supply of those goods or services; or

(i) if paragraph (3)(c) applies in relation to a supply of goods or services—the supply of those goods or services; or

(j) if paragraph (3)(c) applies in relation to an acquisition of goods or services—the acquisition of those goods or services.

Note: ***Party*** has an extended meaning—see section 44ZZRC.

Immaterial whether identities of persons can be ascertained

(5) It is immaterial whether the identities of the persons referred to in paragraph (2)(e) or (f) or subparagraph (3)(a)(iii), (b)(i) or (ii) can be ascertained.

Recommending prices etc.

(6) For the purposes of this Division, a provision of a contract, arrangement or understanding is not taken:

(a) to have the purpose mentioned in subsection (2); or

(b) to have, or be likely to have, the effect mentioned in subsection (2);

by reason only that it recommends, or provides for the recommending of, a price, discount, allowance, rebate or credit.

Immaterial whether particular circumstances or particular conditions

(7) It is immaterial whether:

(a) for the purposes of subsection (2), subparagraph (3)(a)(iii) and paragraphs (3)(b) and (c)—a supply or acquisition happens, or a likely supply or likely acquisition is to happen, in particular circumstances or on particular conditions; and

(b) for the purposes of subparagraph (3)(a)(i)—the production happens, or the likely production is to happen, in particular circumstances or on particular conditions; and

(c) for the purposes of subparagraph (3)(a)(ii)—the capacity exists, or the likely capacity is to exist, in particular circumstances or on particular conditions.

Considering related provisions—purpose/effect condition

(8) For the purposes of this Division, a provision of a contract, arrangement or understanding is taken to have the purpose, or to have or be likely to have the effect, mentioned in subsection (2) if the provision, when considered together with any or all of the following provisions:

(a) the other provisions of the contract, arrangement or understanding;

(b) the provisions of another contract, arrangement or understanding, if the parties to that other contract, arrangement or understanding consist of or include at least one of the parties to the first-mentioned contract, arrangement or understanding;

has that purpose, or has or is likely to have that effect.

Considering related provisions—purpose condition

(9) For the purposes of this Division, a provision of a contract, arrangement or understanding is taken to have the purpose mentioned in a paragraph of subsection (3) if the provision, when considered together with any or all of the following provisions:

(a) the other provisions of the contract, arrangement or understanding;

(b) the provisions of another contract, arrangement or understanding, if the parties to that other contract, arrangement or understanding consist of or include at least one of the parties to the first-mentioned contract, arrangement or understanding;

has that purpose.

Purpose/effect of a provision

(10) For the purposes of this Division, a provision of a contract, arrangement or understanding is not to be taken not to have the purpose, or not to have or to be likely to have the effect, mentioned in subsection (2) by reason only of:

(a) the form of the provision; or

(b) the form of the contract, arrangement or understanding; or

(c) any description given to the provision, or to the contract, arrangement or understanding, by the parties.

Purpose of a provision

(11) For the purposes of this Division, a provision of a contract, arrangement or understanding is not to be taken not to have the purpose mentioned in a paragraph of subsection (3) by reason only of:

(a) the form of the provision; or

(b) the form of the contract, arrangement or understanding; or

(c) any description given to the provision, or to the contract, arrangement or understanding, by the parties.

44ZZRE Meaning of expressions in other provisions of this Act

In determining the meaning of an expression used in a provision of this Act (other than this Division, subsection 6(2C), paragraph 76(1A)(aa) or subsection 93AB(1A)), this Division is to be disregarded.

Subdivision B—Offences etc.

44ZZRF Making a contract etc. containing a cartel provision

Offence

(1) A person commits an offence if:
  (a) the person makes a contract or arrangement, or arrives at an understanding; and
  (b) the contract, arrangement or understanding contains a cartel provision.

(2) The fault element for paragraph (1)(b) is knowledge or belief.

Penalty

(3) An offence against subsection (1) committed by a body corporate is punishable on conviction by a fine not exceeding the greater of the following:
  (a) $10,000,000;
  (b) if the court can determine the total value of the benefits that:
    (i) have been obtained by one or more persons; and
    (ii) are reasonably attributable to the commission of the offence;
  3 times that total value;
  (c) if the court cannot determine the total value of those benefits—10% of the body corporate's annual turnover during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.

(4) An offence against subsection (1) committed by a person other than a body corporate is punishable on conviction by a term of imprisonment not exceeding 10 years or a fine not exceeding 2,000 penalty units, or both.

Indictable offence

(5) An offence against subsection (1) is an indictable offence.

44ZZRG Giving effect to a cartel provision

Offence

(1) A person commits an offence if:
  (a) a contract, arrangement or understanding contains a cartel provision; and
  (b) the person gives effect to the cartel provision.

(2) The fault element for paragraph (1)(a) is knowledge or belief.

Penalty

(3) An offence against subsection (1) committed by a body corporate is punishable on conviction by a fine not exceeding the greater of the following:
  (a) $10,000,000;

(b) if the court can determine the total value of the benefits that:
(i) have been obtained by one or more persons; and
(ii) are reasonably attributable to the commission of the offence;
3 times that total value;
(c) if the court cannot determine the total value of those benefits—10% of the body corporate's annual turnover during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.

(4) An offence against subsection (1) committed by a person other than a body corporate is punishable on conviction by a term of imprisonment not exceeding 10 years or a fine not exceeding 2,000 penalty units, or both.

Pre-commencement contracts etc.

(5) Paragraph (1)(a) applies to contracts or arrangements made, or understandings arrived at, before, at or after the commencement of this section.

Indictable offence

(6) An offence against subsection (1) is an indictable offence.

44ZZRH Determining guilt

(1) A person may be found guilty of an offence against section 44ZZRF or 44ZZRG even if:
(a) each other party to the contract, arrangement or understanding is a person who is not criminally responsible; or
(b) subject to subsection (2), all other parties to the contract, arrangement or understanding have been acquitted of the offence.

Note: ***Party*** has an extended meaning—see section 44ZZRC.

(2) A person cannot be found guilty of an offence against section 44ZZRF or 44ZZRG if:
(a) all other parties to the contract, arrangement or understanding have been acquitted of such an offence; and
(b) a finding of guilt would be inconsistent with their acquittal.

44ZZRI Court may make related civil orders

If a prosecution against a person for an offence against section 44ZZRF or 44ZZRG is being, or has been, heard by a court, the court may:
(a) grant an injunction under section 80 against the person in relation to:
(i) the conduct that constitutes, or is alleged to constitute, the offence; or
(ii) other conduct of that kind; or
(b) make an order under section 86C, 86D, 86E or 87 in relation to the offence.

Subdivision C—Civil penalty provisions

44ZZRJ Making a contract etc. containing a cartel provision

A person contravenes this section if:
(a) the person makes a contract or arrangement, or arrives at an understanding; and
(b) the contract, arrangement or understanding contains a cartel provision.

Note: For enforcement, see Part VI.

44ZZRK Giving effect to a cartel provision

(1) A person contravenes this section if:

(a) a contract, arrangement or understanding contains a cartel provision; and

(b) the person gives effect to the cartel provision.

Note: For enforcement, see Part VI.

(2) Paragraph (1)(a) applies to contracts or arrangements made, or understandings arrived at, before, at or after the commencement of this section.

Subdivision D—Exceptions

44ZZRL Conduct notified

(1) Sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK do not apply to a person in relation to a contract, arrangement or understanding containing a cartel provision, in so far as:

(a) the cartel provision:

(i) has the purpose, or has or is likely to have the effect, mentioned in subsection 44ZZRD(2); or

(ii) has the purpose mentioned in a paragraph of subsection 44ZZRD(3) other than paragraph (c); and

(b) the person has given the Commission a collective bargaining notice under subsection 93AB(1A) setting out particulars of the contract, arrangement or understanding; and

(c) the notice is in force under section 93AD.

(2) A person who wishes to rely on subsection (1) bears an evidential burden in relation to that matter.

44ZZRM Cartel provision subject to grant of authorisation

(1) Sections 44ZZRF and 44ZZRJ do not apply in relation to the making of a contract that contains a cartel provision if:

(a) the contract is subject to a condition that the provision will not come into force unless and until the person is granted an authorisation to give effect to the provision; and

(b) the person applies for the grant of such an authorisation within 14 days after the contract is made.

(2) A person who wishes to rely on subsection (1) bears an evidential burden in relation to that matter.

44ZZRN Contracts, arrangements or understandings between related bodies corporate

(1) Sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK do not apply in relation to a contract, arrangement or understanding if the only parties to the contract, arrangement or understanding are bodies corporate that are related to each other.

(2) A person who wishes to rely on subsection (1) bears an evidential burden in relation to that matter.

44ZZRO Joint ventures—prosecution

(1) Sections 44ZZRF and 44ZZRG do not apply in relation to a contract containing a cartel provision if:

(a) the cartel provision is for the purposes of a joint venture; and

(b) the joint venture is for the production and/or supply of goods or services; and

(c) in a case where subparagraph 4J(a)(i) applies to the joint venture—the joint venture is carried on jointly by the parties to the contract; and

(d) in a case where subparagraph 4J(a)(ii) applies to the joint venture—the joint venture is carried on by a body corporate formed by the parties to the contract for the purpose of enabling those parties to carry on the activity mentioned in paragraph (b) jointly by means of:

(i) their joint control; or

(ii) their ownership of shares in the capital;

of that body corporate.

Note: For example, if a joint venture formed for the purpose of research and development provides the results of its research and development to participants in the joint venture, it may be a joint venture for the supply of services.

(1A) Section 44ZZRF does not apply in relation to an arrangement or understanding containing a cartel provision if:

(a) the arrangement or understanding is not a contract; and

(b) when the arrangement was made, or the understanding was arrived at, each party to the arrangement or understanding:

(i) intended the arrangement or understanding to be a contract; and

(ii) reasonably believed that the arrangement or understanding was a contract; and

(c) the cartel provision is for the purposes of a joint venture; and

(d) the joint venture is for the production and/or supply of goods or services; and

(e) in a case where subparagraph 4J(a)(i) applies to the joint venture—the joint venture is carried on jointly by the parties to the arrangement or understanding; and

(f) in a case where subparagraph 4J(a)(ii) applies to the joint venture—the joint venture is carried on by a body corporate formed by the parties to the arrangement or understanding for the purpose of enabling those parties to carry on the activity mentioned in paragraph (d) jointly by means of:

(i) their joint control; or

(ii) their ownership of shares in the capital;

of that body corporate.

Note: For example, if a joint venture formed for the purpose of research and development provides the results of its research and development to participants in the joint venture, it may be a joint venture for the supply of services.

(1B) Section 44ZZRG does not apply in relation to giving effect to a cartel provision contained in an arrangement or understanding if:

(a) the arrangement or understanding is not a contract; and

(b) when the arrangement was made, or the understanding was arrived at, each party to the arrangement or understanding:

(i) intended the arrangement or understanding to be a contract; and

(ii) reasonably believed that the arrangement or understanding was a contract; and

(c) when the cartel provision was given effect to, each party to the arrangement or understanding reasonably believed that the arrangement or understanding was a contract; and

(d) the cartel provision is for the purposes of a joint venture; and

(e) the joint venture is for the production and/or supply of goods or services; and

(f) in a case where subparagraph 4J(a)(i) applies to the joint venture—the joint venture is carried on jointly by the parties to the arrangement or understanding; and

(g) in a case where subparagraph 4J(a)(ii) applies to the joint venture—the joint venture is carried on by a body corporate formed by the parties to the arrangement or understanding for the purpose of enabling those parties to carry on the activity mentioned in paragraph (e) jointly by means of:

(i) their joint control; or

(ii) their ownership of shares in the capital;

of that body corporate.

Note: For example, if a joint venture formed for the purpose of research and development provides the results of its research and development to participants in the joint venture, it may be a joint venture for the supply of services.

(2) A person who wishes to rely on subsection (1), (1A) or (1B) bears an evidential burden in relation to that matter.

Notice to prosecutor

(3) A person is not entitled to rely on subsection (1), (1A) or (1B) in a trial for an offence unless, within 28 days after the day on which the person is committed for trial, the person gives the prosecutor:

(a) a written notice setting out:

(i) the facts on which the person proposes to rely for the purpose of discharging the evidential burden borne by the person in relation to the matter in subsection (1), (1A) or (1B), as the case may be; and

(ii) the names and address of any witnesses whom the person proposes to call for the purpose of discharging the evidential burden borne by the person in relation to the matter in subsection (1), (1A) or (1B), as the case may be; and

(b) certified copies of any documents which the person proposes to adduce or point to for the purpose of discharging the evidential burden borne by the person in relation to the matter in subsection (1), (1A) or (1B), as the case may be.

(4) If the trial of a person for an offence is being, or is to be, held in a court, the court may, by order:

(a) exempt the person from compliance with subsection (3); or

(b) extend the time within which the person is required to comply with subsection (3).

(5) For the purposes of paragraph (3)(b), a ***certified copy*** of a document is a copy of the document certified to be a true copy by:

(a) a Justice of the Peace; or

(b) a commissioner for taking affidavits.

44ZZRP Joint ventures—civil penalty proceedings

(1) Sections 44ZZRJ and 44ZZRK do not apply in relation to a contract containing a cartel provision if:

(a) the cartel provision is for the purposes of a joint venture; and

(b) the joint venture is for the production and/or supply of goods or services; and

(c) in a case where subparagraph 4J(a)(i) applies to the joint venture—the joint venture is carried on jointly by the parties to the contract; and

(d) in a case where subparagraph 4J(a)(ii) applies to the joint venture—the joint venture is carried on by a body corporate formed by the parties to the contract for the purpose of enabling those parties to carry on the activity mentioned in paragraph (b) jointly by means of:

(i) their joint control; or

(ii) their ownership of shares in the capital;

of that body corporate.

Note: For example, if a joint venture formed for the purpose of research and development provides the results of its research and development to participants in the joint venture, it may be a joint venture for the supply of services.

(1A) Section 44ZZRJ does not apply in relation to an arrangement or understanding containing a cartel provision if:

(a) the arrangement or understanding is not a contract; and

(b) when the arrangement was made, or the understanding was arrived at, each party to the arrangement or understanding:

(i) intended the arrangement or understanding to be a contract; and

(ii) reasonably believed that the arrangement or understanding was a contract; and

(c) the cartel provision is for the purposes of a joint venture; and

(d) the joint venture is for the production and/or supply of goods or services; and

(e) in a case where subparagraph 4J(a)(i) applies to the joint venture—the joint venture is carried on jointly by the parties to the arrangement or understanding; and

(f) in a case where subparagraph 4J(a)(ii) applies to the joint venture—the joint venture is carried on by a body corporate formed by the parties to the arrangement or understanding for the purpose of enabling those parties to carry on the activity mentioned in paragraph (d) jointly by means of:

(i) their joint control; or

(ii) their ownership of shares in the capital;

of that body corporate.

Note: For example, if a joint venture formed for the purpose of research and development provides the results of its research and development to participants in the joint venture, it may be a joint venture for the supply of services.

(1B) Section 44ZZRK does not apply in relation to giving effect to a cartel provision contained in an arrangement or understanding if:

(a) the arrangement or understanding is not a contract; and

(b) when the arrangement was made, or the understanding was arrived at, each party to the arrangement or understanding:

(i) intended the arrangement or understanding to be a contract; and

(ii) reasonably believed that the arrangement or understanding was a contract; and

(c) when the cartel provision was given effect to, each party to the arrangement or understanding reasonably believed that the arrangement or understanding was a contract; and

(d) the cartel provision is for the purposes of a joint venture; and

(e) the joint venture is for the production and/or supply of goods or services; and

(f) in a case where subparagraph 4J(a)(i) applies to the joint venture—the joint venture is carried on jointly by the parties to the arrangement or understanding; and

(g) in a case where subparagraph 4J(a)(ii) applies to the joint venture—the joint venture is carried on by a body corporate formed by the parties to the arrangement or understanding for the purpose of enabling those parties to carry on the activity mentioned in paragraph (e) jointly by means of:

(i) their joint control; or

(ii) their ownership of shares in the capital;

of that body corporate.

Note: For example, if a joint venture formed for the purpose of research and development provides the results of its research and development to participants in the joint venture, it may be a joint venture for the supply of services.

(2) A person who wishes to rely on subsection (1), (1A) or (1B) bears an evidential burden in relation to that matter.

44ZZRQ Covenants affecting competition

(1) Sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK do not apply in relation to a contract containing a cartel provision, in so far as the cartel provision constitutes a covenant to which section 45B applies or, but for subsection 45B(9), would apply.

(2) A person who wishes to rely on subsection (1) bears an evidential burden in relation to that matter.

44ZZRR Resale price maintenance

(1) Sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK do not apply in relation to a contract, arrangement or understanding containing a cartel provision, in so far as the cartel provision relates to:

(a) conduct that contravenes section 48; or

(b) conduct that would contravene section 48 but for the operation of subsection 88(8A); or

(c) conduct that would contravene section 48 if this Act defined the acts constituting the practice of resale price maintenance by reference to the maximum price at which goods or services are to be sold or supplied or are to be advertised, displayed or offered for sale or supply.

(2) A person who wishes to rely on subsection (1) bears an evidential burden in relation to that matter.

44ZZRS Exclusive dealing

(1) Sections 44ZZRF and 44ZZRJ do not apply in relation to the making of a contract, arrangement or understanding that contains a cartel provision, in so far as giving effect to the cartel provision would, or would but for the operation of subsection 47(10) or 88(8) or section 93, constitute a contravention of section 47.

(2) Sections 44ZZRG and 44ZZRK do not apply in relation to the giving effect to a cartel provision by way of:

(a) engaging in conduct that contravenes, or would but for the operation of subsection 47(10) or 88(8) or section 93 contravene, section 47; or

(b) doing an act by reason of a breach or threatened breach of a condition referred to in subsection 47(2), (4), (6) or (8), being an act done by a person at a time when:

(i) an authorisation under subsection 88(8) is in force in relation to conduct engaged in by that person on that condition; or

(ii) by reason of subsection 93(7), conduct engaged in by that person on that condition is not to be taken to have the effect of substantially lessening competition within the meaning of section 47; or

(iii) a notice under subsection 93(1) is in force in relation to conduct engaged in by that person on that condition.

(3) A person who wishes to rely on subsection (1) or (2) bears an evidential burden in relation to that matter.

44ZZRT Dual listed company arrangement

(1) Sections 44ZZRF and 44ZZRJ do not apply in relation to the making of a contract, arrangement or understanding that contains a cartel provision, in so far as:

(a) the contract, arrangement or understanding is a dual listed company arrangement; and

(b) the making of the contract, arrangement or understanding would, or would apart from subsection 88(8B), contravene section 49.

(2) Sections 44ZZRG and 44ZZRK do not apply in relation to the giving effect to a cartel provision, in so far as:

(a) the cartel provision is a provision of a dual listed company arrangement; and

(b) the giving effect to the cartel provision would, or would apart from subsection 88(8B), contravene section 49.

(3) A person who wishes to rely on subsection (1) or (2) bears an evidential burden in relation to that matter.

44ZZRU Acquisition of shares or assets

(1) Sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK do not apply in relation to a contract, arrangement or understanding containing a cartel provision, in so far as the cartel provision provides directly or indirectly for the acquisition of:

(a) any shares in the capital of a body corporate; or

(b) any assets of a person.

(2) A person who wishes to rely on subsection (1) bears an evidential burden in relation to that matter.

44ZZRV Collective acquisition of goods or services by the parties to a contract, arrangement or understanding

(1) Sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK do not apply in relation to a contract, arrangement or understanding containing a cartel provision, in so far as:

(a) the cartel provision has the purpose, or has or is likely to have the effect, mentioned in subsection 44ZZRD(2); and

(b) either:

(i) the cartel provision relates to the price for goods or services to be collectively acquired, whether directly or indirectly, by the parties to the contract, arrangement or understanding; or

(ii) the cartel provision is for the joint advertising of the price for the re-supply of goods or services so acquired.

(2) A person who wishes to rely on subsection (1) bears an evidential burden in relation to that matter.

Division 2—Other provisions

45 Contracts, arrangements or understandings that restrict dealings or affect competition

(1) If a provision of a contract made before the commencement of this section:

(a) is an exclusionary provision; or

(b) has the purpose, or has or is likely to have the effect, of substantially lessening competition;

that provision is unenforceable in so far as it confers rights or benefits or imposes duties or obligations on a person.

(2) A person shall not:

(a) make a contract or arrangement, or arrive at an understanding, if:

(i) the proposed contract, arrangement or understanding contains an exclusionary provision; or

(ii) a provision of the proposed contract, arrangement or understanding has the purpose, or would have or be likely to have the effect, of substantially lessening competition; or

(b) give effect to a provision of a contract, arrangement or understanding, whether the contract or arrangement was made, or the understanding was arrived at, before or after the commencement of this section, if that provision:

(i) is an exclusionary provision; or

(ii) has the purpose, or has or is likely to have the effect, of substantially lessening competition.

(3) For the purposes of this section, ***competition***, in relation to a provision of a contract, arrangement or understanding or of a proposed contract, arrangement or understanding, means competition in any market in which a person who is a party to the contract, arrangement or understanding or would be a party to the proposed contract, arrangement or understanding, or any body corporate related to such a person, supplies or acquires, or is likely to supply or acquire, goods or services or would, but for the provision, supply or acquire, or be likely to supply or acquire, goods or services.

(4) For the purposes of the application of this section in relation to a particular person, a provision of a contract, arrangement or understanding or of a proposed contract, arrangement or understanding shall be deemed to have or to be likely to have the effect of substantially lessening competition if that provision and any one or more of the following provisions, namely:

(a) the other provisions of that contract, arrangement or understanding or proposed contract, arrangement or understanding; and

(b) the provisions of any other contract, arrangement or understanding or proposed contract, arrangement or understanding to which the person or a body corporate related to the person is or would be a party;

together have or are likely to have that effect.

(5) This section does not apply to or in relation to:

(a) a provision of a contract where the provision constitutes a covenant to which section 45B applies or, but for subsection 45B(9), would apply;

(b) a provision of a proposed contract where the provision would constitute a covenant to which section 45B would apply or, but for subsection 45B(9), would apply; or

(c) a provision of a contract, arrangement or understanding or of a proposed contract, arrangement or understanding in so far as the provision relates to:

(i) conduct that contravenes section 48; or

(ii) conduct that would contravene section 48 but for the operation of subsection 88(8A); or

(iii) conduct that would contravene section 48 if this Act defined the acts constituting the practice of resale price maintenance by reference to the maximum price at which goods or services are to be sold or supplied or are to be advertised, displayed or offered for sale or supply.

(6) The making of a contract, arrangement or understanding does not constitute a contravention of this section by reason that the contract, arrangement or understanding contains a provision the giving effect to which would, or would but for the operation of subsection 47(10) or 88(8) or section 93, constitute a contravention of section 47 and this section does not apply to or in relation to the giving effect to a provision of a contract, arrangement or understanding by way of:

(a) engaging in conduct that contravenes, or would but for the operation of subsection 47(10) or 88(8) or section 93 contravene, section 47; or

(b) doing an act by reason of a breach or threatened breach of a condition referred to in subsection 47(2), (4), (6) or (8), being an act done by a person at a time when:

(i) an authorization under subsection 88(8) is in force in relation to conduct engaged in by that person on that condition; or

(ii) by reason of subsection 93(7) conduct engaged in by that person on that condition is not to be taken to have the effect of substantially lessening competition within the meaning of section 47; or

(iii) a notice under subsection 93(1) is in force in relation to conduct engaged in by that person on that condition.

(6A) The following conduct:

(a) the making of a dual listed company arrangement;

(b) the giving effect to a provision of a dual listed company arrangement;

does not contravene this section if the conduct would, or would apart from subsection 88(8B), contravene section 49.

(7) This section does not apply to or in relation to a contract, arrangement or understanding in so far as the contract, arrangement or understanding provides, or to or in relation to a proposed contract, arrangement or understanding in so far as the proposed contract, arrangement or understanding would provide, directly or indirectly for the acquisition of any shares in the capital of a body corporate or any assets of a person.

(8) This section does not apply to or in relation to a contract, arrangement or understanding, or a proposed contract, arrangement or understanding, the only parties to which are or would be bodies corporate that are related to each other.

(8A) Subsection (2) does not apply to a person engaging in conduct described in that subsection if:

(a) the person has given the Commission a collective bargaining notice under subsection 93AB(1) describing the conduct; and

(b) the notice is in force under section 93AD.

(9) The making by a person of a contract that contains a provision in relation to which subsection 88(1) applies is not a contravention of subsection (2) of this section if:

(a) the contract is subject to a condition that the provision will not come into force unless and until the person is granted an authorization to give effect to the provision; and

(b) the person applies for the grant of such an authorization within 14 days after the contract is made;

but nothing in this subsection prevents the giving effect by a person to such a provision from constituting a contravention of subsection (2).

45B Covenants affecting competition

(1) A covenant, whether the covenant was given before or after the commencement of this section, is unenforceable in so far as it confers rights or benefits or imposes duties or obligations on a first person or on a person associated with a first person if the covenant has, or is likely to have, the effect of substantially lessening competition in any market in which the first person or any person associated with the first person supplies or acquires, or is likely to supply or acquire, goods or services or would, but for the covenant, supply or acquire, or be likely to supply or acquire, goods or services.

(2) A first person or a person associated with a first person shall not:

(a) require the giving of a covenant, or give a covenant, if the proposed covenant has the purpose, or would have or be likely to have the effect, of substantially lessening competition in any market in which:

(i) the first person, or any person associated with the first person by virtue of paragraph (7)(b), supplies or acquires, is likely to supply or acquire, or would, but for the covenant, supply or acquire, or be likely to supply or acquire, goods or services; or

(ii) any person associated with the first person by virtue of the operation of paragraph (7)(a) supplies or acquires, is likely to supply or acquire, or would, but for the covenant, supply or acquire, or be likely to supply or acquire, goods or services, being a supply or acquisition in relation to which that person is, or would be, under an obligation to act in accordance with directions, instructions or wishes of the first person;

(b) threaten to engage in particular conduct if a person who, but for subsection (1), would be bound by a covenant does not comply with the terms of the covenant; or

(c) engage in particular conduct by reason that a person who, but for subsection (1), would be bound by a covenant has failed to comply, or proposes or threatens to fail to comply, with the terms of the covenant.

(3) Where a person:

(a) issues an invitation to another person to enter into a contract containing a covenant;

(b) makes an offer to another person to enter into a contract containing a covenant; or

(c) makes it known that the person will not enter into a contract of a particular kind unless the contract contains a covenant of a particular kind or in particular terms;

the first-mentioned person shall, by issuing that invitation, making that offer or making that fact known, be deemed to require the giving of the covenant.

(4) For the purposes of this section, a covenant or proposed covenant shall be deemed to have, or to be likely to have, the effect of substantially lessening competition in a market if the covenant or proposed covenant, as the case may be, would have, or be likely to have, that effect when taken together with the effect or likely effect on competition in that market of any other covenant or proposed covenant to the benefit of which:

(a) a person who is or would be, or but for subsection (1) would be, entitled to the benefit of the first-mentioned covenant or proposed covenant; or

(b) a person associated with the person referred to in paragraph (a);

is or would be, or but for subsection (1) would be, entitled.

(5) The requiring of the giving of, or the giving of, a covenant does not constitute a contravention of this section by reason that giving effect to the covenant would, or would but for the operation of subsection 88(8) or section 93, constitute a contravention of section 47 and this section does not apply to or in relation to engaging in conduct in relation to a covenant by way of:

(a) conduct that contravenes, or would but for the operation of subsection 88(8) or section 93 contravene, section 47; or

(b) doing an act by reason of a breach or threatened breach of a condition referred to in subsection 47(2), (4), (6) or (8), being an act done by a person at a time when:

(i) an authorization under subsection 88(8) is in force in relation to conduct engaged in by that person on that condition; or

(ii) by reason of subsection 93(7) conduct engaged in by that person on that condition is not to be taken to have the effect of substantially lessening competition within the meaning of section 47; or

(iii) a notice under subsection 93(1) is in force in relation to conduct engaged in by that person on that condition.

(6) This section does not apply to or in relation to a covenant or proposed covenant where the only persons who are or would be respectively bound by, or entitled to the benefit of, the covenant or proposed covenant are persons who are associated with each other or are bodies corporate that are related to each other.

(7) For the purposes of this section, section 45C and subparagraph 87(3)(a)(ii), the first person and another person (the ***second person***) shall be taken to be associated with each other in relation to a covenant or proposed covenant if, and only if:

(a) the first person is a body corporate and the second person is under an obligation (otherwise than in pursuance of the covenant or proposed covenant), whether formal or informal, to act in accordance with directions, instructions or wishes of the first person in relation to the covenant or proposed covenant; or

(b) the second person is a body corporate in relation to which the first person is in the position mentioned in subparagraph 4A(1)(a)(ii).

(8) The requiring by a person of the giving of, or the giving by a person of, a covenant in relation to which subsection 88(5) applies is not a contravention of subsection (2) of this section if:

(a) the covenant is subject to a condition that the covenant will not come into force unless and until the person is granted an authorization to require the giving of, or to give, the covenant; and

(b) the person applies for the grant of such an authorization within 14 days after the covenant is given;

but nothing in this subsection affects the application of paragraph (2)(b) or (c) in relation to the covenant.

(9) This section does not apply to or in relation to a covenant or proposed covenant if:

(a) the sole or principal purpose for which the covenant was or is required to be given was or is to prevent the relevant land from being used otherwise than for residential purposes;

(b) the person who required or requires the covenant to be given was or is a religious, charitable or public benevolent institution or a trustee for such an institution and the covenant was or is required to be given for or in accordance with the purposes or objects of that institution; or

(c) the covenant was or is required to be given in pursuance of a legally enforceable requirement made by, or by a trustee for, a religious, charitable or public benevolent institution, being a requirement made for or in accordance with the purposes or objects of that institution.

45C Covenants in relation to prices

(1) In the application of subsection 45B(1) in relation to a covenant that has, or is likely to have, the effect of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods or services supplied or acquired by the persons who are, or but for that subsection would be, bound by or entitled to the benefit of the covenant, or by any of them, or by any persons associated with any of them, in competition with each other, that subsection has effect as if the words "if the covenant has, or is likely to have, the effect of substantially lessening competition in any market in which the first person or any person associated with the first person supplies or acquires, or is likely to supply or acquire, goods or services or would, but for the covenant, supply or acquire, or be likely to supply or acquire, goods or services" were omitted.

(2) In the application of subsection 45B(2) in relation to a proposed covenant that has the purpose, or would have or be likely to have the effect, of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods or services supplied or acquired by the persons who would, or would but for subsection 45B(1), be bound by or entitled to the benefit of the proposed covenant, or by any of them, or by any persons associated with any of them, in competition with each other, paragraph 45B(2)(a) has effect as if all the words after the words "require the giving of a covenant, or give a covenant" were omitted.

(3) For the purposes of this Act, a covenant shall not be taken not to have, or not to be likely to have, the effect, or a proposed covenant shall not be taken not to have the purpose, or not to have, or not to be likely to have, the effect, of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods or services by reason only of:

(a) the form of the covenant or proposed covenant; or

(b) any description given to the covenant by any of the persons who are, or but for subsection 45B(1) would be, bound by or entitled to the benefit of the covenant or any description given to the proposed covenant by any of the persons who would, or would but for subsection 45B(1), be bound by or entitled to the benefit of the proposed covenant.

(4) For the purposes of the preceding provisions of this section, but without limiting the generality of those provisions:

(a) a covenant shall be deemed to have, or to be likely to have, the effect of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods or services supplied as mentioned in subsection (1) if the covenant has, or is likely to have, the effect of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, such a price, discount, allowance, rebate or credit in relation to a re-supply of the goods or services by persons to whom the goods or

services are supplied by the persons who are, or but for subsection 45B(1) would be, bound by or entitled to the benefit of the covenant, or by any of them, or by any persons associated with any of them; and

(b) a proposed covenant shall be deemed to have the purpose, or to have, or to be likely to have, the effect, of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods or services supplied as mentioned in subsection (2) if the proposed covenant has the purpose, or would have or be likely to have the effect, as the case may be, of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, such a price, discount, allowance, rebate or credit in relation to a re-supply of the goods or services by persons to whom the goods or services are supplied by the persons who would, or would but for subsection 45B(1), be bound by or entitled to the benefit of the proposed covenant, or by any of them, or by any persons associated with any of them.

(5) The reference in subsection (1) to the supply or acquisition of goods or services by persons in competition with each other includes a reference to the supply or acquisition of goods or services by persons who, but for a provision of any contract, arrangement or understanding or of any proposed contract, arrangement or understanding, would be, or would be likely to be, in competition with each other in relation to the supply or acquisition of the goods or services.

45D Secondary boycotts for the purpose of causing substantial loss or damage

(1) A person must not, in concert with a second person, engage in conduct:

(a) that hinders or prevents:

(i) a third person supplying goods or services to a fourth person (who is not an employer of the first person or the second person); or

(ii) a third person acquiring goods or services from a fourth person (who is not an employer of the first person or the second person); and

(b) that is engaged in for the purpose, and would have or be likely to have the effect, of causing substantial loss or damage to the business of the fourth person.

Note 1: Conduct that would otherwise contravene this section can be authorised under subsection 88(7).

Note 2: This section also has effect subject to section 45DD, which deals with permitted boycotts.

(2) A person is taken to engage in conduct for a purpose mentioned in subsection (1) if the person engages in the conduct for purposes that include that purpose.

45DA Secondary boycotts for the purpose of causing substantial lessening of competition

(1) A person must not, in concert with a second person, engage in conduct:

(a) that hinders or prevents:

(i) a third person supplying goods or services to a fourth person (who is not an employer of the first person or the second person); or

(ii) a third person acquiring goods or services from a fourth person (who is not an employer of the first person or the second person); and

(b) that is engaged in for the purpose, and would have or be likely to have the effect, of causing a substantial lessening of competition in any market in which the fourth person supplies or acquires goods or services.

Note 1: Conduct that would otherwise contravene this section can be authorised under subsection 88(7).

Note 2: This section also has effect subject to section 45DD, which deals with permitted boycotts.

(2) A person is taken to engage in conduct for a purpose mentioned in subsection (1) if the person engages in the conduct for purposes that include that purpose.

Note: This version of Part IV does not contain an equivalent of section 45DB of the *Trade Practices Act 1974*.

45DC Involvement and liability of employee organisations

Certain organisations taken to be acting in concert

(1) If 2 or more persons (the ***participants***), each of whom is a member or officer of the same organisation of employees, engage in conduct in concert with one another, whether or not the conduct is also engaged in in concert with another person, then, unless the organisation proves otherwise, the organisation is taken for the purposes of sections 45D and 45DA:

(a) to engage in that conduct in concert with the participants; and

(b) to have engaged in that conduct for the purposes for which the participants engaged in it.

Consequences of organisation contravening subsection 45D(1) or 45DA(1)

(2) The consequences of an organisation of employees engaging, or being taken by subsection (1) to engage, in conduct in concert with any of its members or officers in contravention of subsection 45D(1) or 45DA(1) are as set out in subsections (3), (4) and (5).

Loss or damage taken to have been caused by organisation's conduct

(3) Any loss or damage suffered by a person as a result of the conduct is taken, for the purposes of this Act, to have been caused by the conduct of the organisation.

Taking proceedings if organisation is a body corporate

(4) If the organisation is a body corporate, no action under section 82 to recover the amount of the loss or damage may be brought against any of the members or officers of the organisation in respect of the conduct.

Taking proceedings if organisation is not a body corporate

(5) If the organisation is not a body corporate:

(a) a proceeding in respect of the conduct may be brought under section 77, 80 or 82 against an officer of the organisation as a representative of the organisation's members and the proceeding is taken to be a proceeding against all the persons who were members of the organisation at the time when the conduct was engaged in; and

(b) subsection 76(2) does not prevent an order being made in a proceeding mentioned in paragraph (a) that was brought under section 77; and

(c) the maximum pecuniary penalty that may be imposed in a proceeding mentioned in paragraph (a) that was brought under section 77 is the penalty applicable under section 76 in relation to a body corporate; and

(d) except as provided by paragraph (a), a proceeding in respect of the conduct must not be brought under section 77 or 82 against any of the members or officers of the organisation; and

(e) for the purpose of enforcing any judgment or order given or made in a proceeding mentioned in paragraph (a) that was brought under section 77 or 82, process may

be issued and executed against the following property or interests as if the organisation were a body corporate and the absolute owner of the property or interests:

(i) any property of the organisation or of any branch or part of the organisation, whether vested in trustees or however otherwise held;

(ii) any property in which the organisation or any branch or part of the organisation has a beneficial interest, whether vested in trustees or however otherwise held;

(iii) any property in which any members of the organisation or of a branch or part of the organisation have a beneficial interest in their capacity as members, whether vested in trustees or however otherwise held; and

(f) if paragraph (e) applies, no process is to be issued or executed against any property of members or officers of the organisation or of a branch or part of the organisation except as provided in that paragraph.

45DD Situations in which boycotts permitted

Dominant purpose of conduct relates to employment matters—conduct by a person

(1) A person does not contravene, and is not involved in a contravention of, subsection 45D(1) or 45DA(1) by engaging in conduct if the dominant purpose for which the conduct is engaged in is substantially related to the remuneration, conditions of employment, hours of work or working conditions of that person or of another person employed by an employer of that person.

Dominant purpose of conduct relates to employment matters—conduct by employee organisation and employees

(2) If:

(a) an employee, or 2 or more employees who are employed by the same employer, engage in conduct in concert with another person who is, or with other persons each of whom is:

(i) an organisation of employees; or

(ii) an officer of an organisation of employees; and

(b) the conduct is only engaged in by the persons covered by paragraph (a); and

(c) the dominant purpose for which the conduct is engaged in is substantially related to the remuneration, conditions of employment, hours of work or working conditions of the employee, or any of the employees, covered by paragraph (a);

the persons covered by paragraph (a) do not contravene, and are not involved in a contravention of, subsection 45D(1) or 45DA(1) by engaging in the conduct.

Dominant purpose of conduct relates to environmental protection or consumer protection

(3) A person does not contravene, and is not involved in a contravention of, subsection 45D(1) or 45DA(1) by engaging in conduct if:

(a) the dominant purpose for which the conduct is engaged in is substantially related to environmental protection or consumer protection; and

(b) engaging in the conduct is not industrial action.

Note 1: If an environmental organisation or a consumer organisation is a body corporate:

(a) it is a "person" who may be subject to the prohibitions in subsections 45D(1) and 45DA(1) and who may also be covered by this exemption; and

(b) each of its members is a "person" who may be subject to the prohibitions in subsections 45D(1) and 45DA(1) and who may also be covered by this exemption.

Note 2: If an environmental organisation or a consumer organisation is not a body corporate:

(a) it is not a "person" and is therefore not subject to the prohibitions in subsections 45D(1) and 45DA(1) (consequently, this exemption does not cover the organisation as such); but

(b) each of its members is a "person" who may be subject to the prohibitions in subsections 45D(1) and 45DA(1) and who may also be covered by this exemption.

*Meaning of **industrial action**—basic definition*

(4) In subsection (3), ***industrial action*** means:

(a) the performance of work in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, the result of which is a restriction or limitation on, or a delay in, the performance of the work, where:

(i) the terms and conditions of the work are prescribed, wholly or partly, by a workplace instrument or an order of an industrial body; or

(ii) the work is performed, or the practice is adopted, in connection with an industrial dispute; or

(b) a ban, limitation or restriction on the performance of work, or on acceptance of or offering for work, in accordance with the terms and conditions prescribed by a workplace instrument or by an order of an industrial body; or

(c) a ban, limitation or restriction on the performance of work, or on acceptance of or offering for work, that is adopted in connection with an industrial dispute; or

(d) a failure or refusal by persons to attend for work or a failure or refusal to perform any work at all by persons who attend for work.

For this purpose, ***industrial body***, and ***workplace instrument*** have the same meanings as in the *Fair Work Act 2009*.

*Meaning of **industrial action**—further clarification*

(5) For the purposes of subsection (3):

(a) conduct is capable of constituting industrial action even if the conduct relates to part only of the duties that persons are required to perform in the course of their employment; and

(b) a reference to industrial action includes a reference to a course of conduct consisting of a series of industrial actions.

Subsections (1), (2) and (3) do not protect people not covered by them

(6) In applying subsection 45D(1) or 45DA(1) to a person who is not covered by subsection (1), (2) or (3) in respect of certain conduct, disregard the fact that other persons may be covered by one of those subsections in respect of the same conduct.

Note: Section 415 of the *Fair Work Act 2009* limits the right to bring actions under the Competition Code in respect of industrial action that is protected action for the purposes of that section.

45E Prohibition of contracts, arrangements or understandings affecting the supply or acquisition of goods or services

Situations to which section applies

(1) This section applies in the following situations:

(a) a ***supply situation***—in this situation, a person (the ***first person***) has been accustomed, or is under an obligation, to supply goods or services to another person (the ***second person***); or

(b) an ***acquisition situation***—in this situation, a person (the ***first person***) has been accustomed, or is under an obligation, to acquire goods or services from another person (the ***second person***).

Note : For the meanings of ***accustomed to supply*** and ***accustomed to acquire***, see subsections (5) and (7).

Prohibition in a supply situation

(2) In a supply situation, the first person must not make a contract or arrangement, or arrive at an understanding, with an organisation of employees, an officer of such an organisation or a person acting for and on behalf of such an officer or organisation, if the proposed contract, arrangement or understanding contains a provision included for the purpose, or for purposes including the purpose, of:

(a) preventing or hindering the first person from supplying or continuing to supply such goods or services to the second person; or

(b) preventing or hindering the first person from supplying or continuing to supply such goods or services to the second person, except subject to a condition:

(i) that is not a condition to which the supply of such goods or services by the first person to the second person has previously been subject because of a provision in a contract between those persons; and

(ii) that is about the persons to whom, the manner in which or the terms on which the second person may supply any goods or services.

Prohibition in an acquisition situation

(3) In an acquisition situation, the first person must not make a contract or arrangement, or arrive at an understanding, with an organisation of employees, an officer of such an organisation or a person acting for and on behalf of such an officer or organisation, if the proposed contract, arrangement or understanding contains a provision included for the purpose, or for purposes including the purpose, of:

(a) preventing or hindering the first person from acquiring or continuing to acquire such goods or services from the second person; or

(b) preventing or hindering the first person from acquiring or continuing to acquire such goods or services from the second person, except subject to a condition:

(i) that is not a condition to which the acquisition of such goods or services by the first person from the second person has previously been subject because of a provision in a contract between those persons; and

(ii) that is about the persons to whom, the manner in which or the terms on which the second person may supply any goods or services.

No contravention if second person gives written consent to written contract etc.

(4) Subsections (2) and (3) do not apply to a contract, arrangement or understanding if it is in writing and was made or arrived at with the written consent of the second person.

Meaning of ***accustomed to supply***

(5) In this section, a reference to a person who has been ***accustomed to supply*** goods or services to a second person includes (subject to subsection (6)):

(a) a regular supplier of such goods or services to the second person; or

(b) the latest supplier of such goods or services to the second person; or

(c) a person who, at any time during the immediately preceding 3 months, supplied such goods or services to the second person.

Exception to subsection (5)

(6) If:

(a) goods or services have been supplied by a person to a second person under a contract between them that required the first person to supply such goods or services over a period; and

(b) the period has ended; and

(c) after the end of the period, the second person has been supplied with such goods or services by another person and has not also been supplied with such goods or services by the first person;

then, for the purposes of the application of this section in relation to anything done after the second person has been supplied with goods or services as mentioned in paragraph (c), the first person is not to be taken to be a person who has been accustomed to supply such goods or services to the second person.

Meaning of ***accustomed to acquire***

(7) In this section, a reference to a person who has been ***accustomed to acquire*** goods or services from a second person includes (subject to subsection (8)):

(a) a regular acquirer of such goods or services from the second person; or

(b) a person who, when last acquiring such goods or services, acquired them from the second person; or

(c) a person who, at any time during the immediately preceding 3 months, acquired such goods or services from the second person.

Exception to subsection (7)

(8) If:

(a) goods or services have been acquired by a person from a second person under a contract between them that required the first person to acquire such goods or services over a period; and

(b) the period has ended; and

(c) after the end of the period, the second person has refused to supply such goods or services to the first person;

then, for the purposes of the application of this section in relation to anything done after the second person has refused to supply goods or services as mentioned in paragraph (c), the first person is not to be taken to be a person who has been accustomed to acquire such goods or services from the second person.

Note: Conduct that would otherwise contravene this section can be authorised under subsection 88(7A).

45EA Provisions contravening section 45E not to be given effect

A person must not give effect to a provision of a contract, arrangement or understanding if, because of the provision, the making of the contract or arrangement, or the arriving at the understanding, by the person:

(a) contravened subsection 45E(2) or (3); or

(b) would have contravened subsection 45E(2) or (3) if:

(i) section 45E had been in force when the contract or arrangement was made, or the understanding was arrived at; and

(ii) the words "is in writing and" and "written" were not included in subsection 45E(4).

Note: Conduct that would otherwise contravene this section can be authorised under subsection 88(7A).

45EB Sections 45D to 45EA do not affect operation of other provisions of Part

Nothing in section 45D, 45DA, 45DC, 45DD, 45E or 45EA affects the operation of any other provision of this Part.

46 Misuse of market power

(1) A person (the ***first person***) who has a substantial degree of power in a market shall not take advantage of that power in that or any other market for the purpose of:

(a) eliminating or substantially damaging a competitor of the first person or of a body corporate that is related to the first person in that or any other market;

(b) preventing the entry of a person into that or any other market; or

(c) deterring or preventing a person from engaging in competitive conduct in that or any other market.

(1AAA) If a person supplies goods or services for a sustained period at a price that is less than the relevant cost to the person of supplying the goods or services, the person may contravene subsection (1) even if the person cannot, and might not ever be able to, recoup losses incurred by supplying the goods or services.

(1AA) A person that has a substantial share of a market must not supply, or offer to supply, goods or services for a sustained period at a price that is less than the relevant cost to the person of supplying such goods or services, for the purpose of:

(a) eliminating or substantially damaging a competitor of the person or of a body corporate that is related to the person in that or any other market; or

(b) preventing the entry of a person into that or any other market; or

(c) deterring or preventing a person from engaging in competitive conduct in that or any other market.

(1AB) For the purposes of subsection (1AA), without limiting the matters to which the Court may have regard for the purpose of determining whether a person has a substantial share of a market, the Court may have regard to the number and size of the competitors of the person in the market.

(1A) For the purposes of subsections (1) and (1AA):

(a) the reference in paragraphs (1)(a) and (1AA)(a) to a competitor includes a reference to competitors generally, or to a particular class or classes of competitors; and

(b) the reference in paragraphs (1)(b) and (c) and (1AA)(b) and (c) to a person includes a reference to persons generally, or to a particular class or classes of persons.

(2) If:

(a) a body corporate that is related to a person (the ***first person***) has, or 2 or more bodies corporate each of which is related to the one person (the ***first person***) together have, a substantial degree of power in a market; or

(b) a person (the ***first person***) and a body corporate that is, or a person (the ***first person***) and 2 or more bodies corporate each of which is, related to the first person, together have a substantial degree of power in a market;

the first person shall be taken for the purposes of this section to have a substantial degree of power in that market.

(3) In determining for the purposes of this section the degree of power that a person (the ***first person***) or bodies corporate has or have in a market, the court shall have regard to the extent to which the conduct of the first person or of any of those bodies corporate in that market is constrained by the conduct of:

(a) competitors, or potential competitors, of the first person or of any of those bodies corporate in that market; or

(b) persons to whom or from whom the first person or any of those bodies corporate supplies or acquires goods or services in that market.

(3A) In determining for the purposes of this section the degree of power that a person (the ***first person***) or bodies corporate has or have in a market, the court may have regard to the power the first person or bodies corporate has or have in that market that results from:

(a) any contracts, arrangements or understandings, or proposed contracts, arrangements or understandings, that the first person or bodies corporate has or have, or may have, with another party or other parties; and

(b) any covenants, or proposed covenants, that the first person or bodies corporate is or are, or would be, bound by or entitled to the benefit of.

(3B) Subsections (3) and (3A) do not, by implication, limit the matters to which regard may be had in determining, for the purposes of this section, the degree of power that a person or bodies corporate has or have in a market.

(3C) For the purposes of this section, without limiting the matters to which the court may have regard for the purpose of determining whether a person has a substantial degree of power in a market, a person may have a substantial degree of power in a market even though:

(a) the person does not substantially control the market; or

(b) the person does not have absolute freedom from constraint by the conduct of:

(i) competitors, or potential competitors, of the person in that market; or

(ii) persons to whom or from whom the person supplies or acquires goods or services in that market.

(3D) To avoid doubt, for the purposes of this section, more than 1 person may have a substantial degree of power in a market.

(4) In this section:

(a) a reference to power is a reference to market power;

(b) a reference to a market is a reference to a market for goods or services; and

(c) a reference to power in relation to, or to conduct in, a market is a reference to power, or to conduct, in that market either as a supplier or as an acquirer of goods or services in that market.

(4A) Without limiting the matters to which the court may have regard for the purpose of determining whether a person has contravened subsection (1), the court may have regard to:

(a) any conduct of the person that consisted of supplying goods or services for a sustained period at a price that was less than the relevant cost to the person of supplying such goods or services; and

(b) the reasons for that conduct.

(5) Without extending by implication the meaning of subsection (1), a person shall not be taken to contravene that subsection by reason only that the person acquires plant or equipment.

(6) This section does not prevent a person from engaging in conduct that does not constitute a contravention of any of the following sections, namely, sections 45, 45B, 47, 49 and 50, by reason that an authorization or clearance is in force or by reason of the operation of subsection 45(8A) or section 93.

(6A) In determining for the purposes of this section whether, by engaging in conduct, a person has taken advantage of the person's substantial degree of power in a market, the court may have regard to any or all of the following:

(a) whether the conduct was materially facilitated by the person's substantial degree of power in the market;

(b) whether the person engaged in the conduct in reliance on the person's substantial degree of power in the market;

(c) whether it is likely that the person would have engaged in the conduct if the person did not have a substantial degree of power in the market;

(d) whether the conduct is otherwise related to the person's substantial degree of power in the market.

This subsection does not limit the matters to which the court may have regard.

(7) Without in any way limiting the manner in which the purpose of a person may be established for the purposes of any other provision of this Act, a person may be taken to have taken advantage of the person's power for a purpose referred to in subsection (1) notwithstanding that, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from the conduct of the person or of any other person or from other relevant circumstances.

47 Exclusive dealing

(1) Subject to this section, a person shall not, in trade or commerce, engage in the practice of exclusive dealing.

(2) A person (the ***first person***) engages in the practice of exclusive dealing if the first person:

(a) supplies, or offers to supply, goods or services;

(b) supplies, or offers to supply, goods or services at a particular price; or

(c) gives or allows, or offers to give or allow, a discount, allowance, rebate or credit in relation to the supply or proposed supply of goods or services by the first person;

on the condition that the person (the ***second person***) to whom the first person supplies, or offers or proposes to supply, the goods or services or, if the second person is a body corporate, a body corporate related to that body corporate:

(d) will not, or will not except to a limited extent, acquire goods or services, or goods or services of a particular kind or description, directly or indirectly from a competitor of the first person or from a competitor of a body corporate related to the first person;

(e) will not, or will not except to a limited extent, re-supply goods or services, or goods or services of a particular kind or description, acquired directly or indirectly from a competitor of the first person or from a competitor of a body corporate related to the first person; or

(f) in the case where the first person supplies or would supply goods or services, will not re-supply the goods or services to any person, or will not, or will not except to a limited extent, re-supply the goods or services:

(i) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or

(ii) in particular places or classes of places or in places other than particular places or classes of places.

(3) A person (the ***first person***) also engages in the practice of exclusive dealing if the first person refuses:

(a) to supply goods or services to a second person;

(b) to supply goods or services to a second person at a particular price; or

(c) to give or allow a discount, allowance, rebate or credit in relation to the supply or proposed supply of goods or services to a second person;

for the reason that the second person or, if the second person is a body corporate, a body corporate related to that body corporate:

(d) has acquired, or has not agreed not to acquire, goods or services, or goods or services of a particular kind or description, directly or indirectly from a competitor of the first person or from a competitor of a body corporate related to the first person;

(e) has re-supplied, or has not agreed not to re-supply, goods or services, or goods or services of a particular kind or description, acquired directly or indirectly from a competitor of the first person or from a competitor of a body corporate related to the first person; or

(f) has re-supplied, or has not agreed not to re-supply, goods or services, or goods or services of a particular kind or description, acquired from the first person to any person, or has re-supplied, or has not agreed not to re-supply, goods or services, or goods or services of a particular kind or description, acquired from the first person:

(i) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or

(ii) in particular places or classes of places or in places other than particular places or classes of places.

(4) A person (the ***first person***) also engages in the practice of exclusive dealing if the first person:

(a) acquires, or offers to acquire, goods or services; or

(b) acquires, or offers to acquire, goods or services at a particular price;

on the condition that the person (the ***second person***) from whom the first person acquires or offers to acquire the goods or services or, if the second person is a body corporate, a body corporate related to that body corporate will not supply goods or services, or goods or services of a particular kind or description, to any person, or will not, or will not except to a limited extent, supply goods or services, or goods or services of a particular kind or description:

(c) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or

(d) in particular places or classes of places or in places other than particular places or classes of places.

(5) A person (the ***first person***) also engages in the practice of exclusive dealing if the first person refuses:

(a) to acquire goods or services from a second person; or

(b) to acquire goods or services at a particular price from a second person;

for the reason that the second person or, if the second person is a body corporate, a body corporate related to that body corporate has supplied, or has not agreed not to supply, goods or services, or goods or services of a particular kind or description:

(c) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or

(d) in particular places or classes of places or in places other than particular places or classes of places.

(6) A person (the ***first person***) also engages in the practice of exclusive dealing if the first person:

(a) supplies, or offers to supply, goods or services;

(b) supplies, or offers to supply, goods or services at a particular price; or

(c) gives or allows, or offers to give or allow, a discount, allowance, rebate or credit in relation to the supply or proposed supply of goods or services by the first person;

on the condition that the person (the ***second person***) to whom the first person supplies or offers or proposes to supply the goods or services or, if the second person is a body corporate, a body corporate related to that body corporate will acquire goods or services of a particular kind or description directly or indirectly from another person not being a body corporate related to the first person.

(7) A person (the ***first person***) also engages in the practice of exclusive dealing if the first person refuses:

(a) to supply goods or services to a second person;

(b) to supply goods or services at a particular price to a second person; or

(c) to give or allow a discount, allowance, rebate or credit in relation to the supply of goods or services to a second person;

for the reason that the second person or, if the second person is a body corporate, a body corporate related to that body corporate has not acquired, or has not agreed to acquire, goods or services of a particular kind or description directly or indirectly from another person not being a body corporate related to the first person.

(8) A person (the ***first person***) also engages in the practice of exclusive dealing if the first person grants or renews, or makes it known that the first person will not exercise a power or right to terminate, a lease of, or a licence in respect of, land or a building or part of a building on the condition that another party to the lease or licence or, if that other party is a body corporate, a body corporate related to that body corporate:

(a) will not, or will not except to a limited extent:

(i) acquire goods or services, or goods or services of a particular kind or description, directly or indirectly from a competitor of the first person or from a competitor of a body corporate related to the first person; or

(ii) re-supply goods or services, or goods or services of a particular kind or description, acquired directly or indirectly from a competitor of the first person or from a competitor of a body corporate related to the first person;

(b) will not supply goods or services, or goods or services of a particular kind or description, to any person, or will not, or will not except to a limited extent, supply goods or services, or goods or services of a particular kind or description:

(i) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or

(ii) in particular places or classes of places or in places other than particular places or classes of places; or

(c) will acquire goods or services of a particular kind or description directly or indirectly from another person not being a body corporate related to the first person.

(9) A person (the ***first person***) also engages in the practice of exclusive dealing if the first person refuses to grant or renew, or exercises a power or right to terminate, a lease of, or a licence in respect of, land or a building or part of a building for the reason that another party to the lease or licence or, if that other party is a body corporate, a body corporate related to that body corporate:

(a) has acquired, or has not agreed not to acquire, goods or services, or goods or services of a particular kind or description, directly or indirectly from a competitor of the first person or from a competitor of a body corporate related to the first person;

(b) has re-supplied, or has not agreed not to re-supply, goods or services, or goods or services of a particular kind or description, acquired directly or indirectly from a competitor of the first person or from a competitor of a body corporate related to the first person;

(c) has supplied goods or services, or goods or services of a particular kind or description:

(i) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or

(ii) in particular places or classes of places or in places other than particular places or classes of places; or

(d) has not acquired, or has not agreed to acquire, goods or services of a particular kind or description directly or indirectly from another person not being a body corporate related to the first person.

(10) Subsection (1) does not apply to the practice of exclusive dealing constituted by a person engaging in conduct of a kind referred to in subsection (2), (3), (4) or (5) or paragraph (8)(a) or (b) or (9)(a), (b) or (c) unless:

(a) the engaging by the person in that conduct has the purpose, or has or is likely to have the effect, of substantially lessening competition; or

(b) the engaging by the person in that conduct, and the engaging by the person, or by a body corporate related to the person, in other conduct of the same or a similar kind, together have or are likely to have the effect of substantially lessening competition.

(10A) Subsection (1) does not apply to a person engaging in conduct described in subsection (6) or (7) or paragraph (8)(c) or (9)(d) if:

(a) the person has given the Commission a notice under subsection 93(1) describing the conduct; and

(b) the notice is in force under section 93.

(11) Subsections (8) and (9) do not apply with respect to:

(a) conduct engaged in by, or by a trustee for, a religious, charitable or public benevolent institution, being conduct engaged in for or in accordance with the purposes or objects of that institution; or

(b) conduct engaged in in pursuance of a legally enforceable requirement made by, or by a trustee for, a religious, charitable or public benevolent institution, being a requirement made for or in accordance with the purposes or objects of that institution.

(12) Subsection (1) does not apply with respect to any conduct engaged in by a body corporate by way of restricting dealings by another body corporate if those bodies corporate are related to each other.

(13) In this section:

(a) a reference to a condition shall be read as a reference to any condition, whether direct or indirect and whether having legal or equitable force or not, and includes a reference to a condition the existence or nature of which is ascertainable only by inference from the conduct of persons or from other relevant circumstances;

(b) a reference to competition, in relation to conduct to which a provision of this section other than subsection (8) or (9) applies, shall be read as a reference to competition in any market in which:

(i) the person engaging in the conduct or any body corporate related to that person; or

(ii) any person whose business dealings are restricted, limited or otherwise circumscribed by the conduct or, if that person is a body corporate, any body corporate related to that body corporate;

supplies or acquires, or is likely to supply or acquire, goods or services or would, but for the conduct, supply or acquire, or be likely to supply or acquire, goods or services; and

(c) a reference to competition, in relation to conduct to which subsection (8) or (9) applies, shall be read as a reference to competition in any market in which the person engaging in the conduct or any other person whose business dealings are restricted, limited or otherwise circumscribed by the conduct, or any body corporate related to either of those persons, supplies or acquires, or is likely to supply or acquire, goods or services or would, but for the conduct, supply or acquire, or be likely to supply or acquire, goods or services.

48 Resale price maintenance

A person shall not engage in the practice of resale price maintenance.

49 Dual listed company arrangements that affect competition

(1) A person must not:

(a) make a dual listed company arrangement if a provision of the proposed arrangement has the purpose, or would have or be likely to have the effect, of substantially lessening competition; or

(b) give effect to a provision of a dual listed company arrangement if that provision has the purpose, or has or is likely to have the effect, of substantially lessening competition.

Note: Conduct that would otherwise contravene this section can be authorised under subsection 88(8B).

Exception

(2) The making by a person of a dual listed company arrangement that contains a provision that has the purpose, or would have or be likely to have the effect, of substantially lessening competition does not contravene this section if:

(a) the arrangement is subject to a condition that the provision will not come into force unless and until the person is granted an authorisation to give effect to the provision; and

(b) the person applies for the grant of such an authorisation within 14 days after the arrangement is made.

However, this subsection does not permit the person to give effect to such a provision.

*Meaning of **competition***

(3) For the purposes of this section, ***competition***, in relation to a provision of a dual listed company arrangement or of a proposed dual listed company arrangement, means competition in any market in which:

(a) a person that is a party to the arrangement or would be a party to the proposed arrangement; or

(b) any body corporate related to such a person;

supplies or acquires, or is likely to supply or acquire, goods or services or would, apart from the provision, supply or acquire, or be likely to supply or acquire, goods or services.

(4) For the purposes of the application of this section in relation to a particular person, a provision of a dual listed company arrangement or of a proposed dual listed company arrangement is taken to have, or to be likely to have, the effect of substantially lessening competition if that provision and any one or more of the following provisions:

(a) the other provisions of that arrangement or proposed arrangement;

(b) the provisions of any other contract, arrangement or understanding or proposed contract, arrangement or understanding to which the person or a body corporate related to the person is or would be a party;

together have or are likely to have that effect.

50 Prohibition of acquisitions that would result in a substantial lessening of competition

(1) A person must not directly or indirectly:

(a) acquire shares in the capital of a body corporate; or

(b) acquire any assets of a person;

if the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in a market.

Note: The person will not be prevented from making the acquisition if the corporation is granted a clearance or an authorisation for the acquisition under Division 3 of Part VII: see subsections 95AC(2) and 95AT(2).

(3) Without limiting the matters that may be taken into account for the purposes of subsection (1) in determining whether the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in a market, the following matters must be taken into account:

(a) the actual and potential level of import competition in the market;

(b) the height of barriers to entry to the market;

(c) the level of concentration in the market;

(d) the degree of countervailing power in the market;

(e) the likelihood that the acquisition would result in the acquirer being able to significantly and sustainably increase prices or profit margins;

(f) the extent to which substitutes are available in the market or are likely to be available in the market;

(g) the dynamic characteristics of the market, including growth, innovation and product differentiation;

(h) the likelihood that the acquisition would result in the removal from the market of a vigorous and effective competitor;

(i) the nature and extent of vertical integration in the market.

(4) Where:

(a) a person has entered into a contract to acquire shares in the capital of a body corporate or assets of a person;

(b) the contract is subject to a condition that the provisions of the contract relating to the acquisition will not come into force unless and until the person has been granted a clearance or an authorization to acquire the shares or assets; and

(c) the person applied for the grant of such a clearance or an authorization before the expiration of 14 days after the contract was entered into;

the acquisition of the shares or assets shall not be regarded for the purposes of this Act as having taken place in pursuance of the contract before:

(d) the application for the clearance or authorization is disposed of; or

(e) the contract ceases to be subject to the condition;

whichever first happens.

(5) For the purposes of subsection (4), an application for a clearance shall be taken to be disposed of:

(a) in a case to which paragraph (b) of this subsection does not apply—at the expiration of 14 days after the period in which an application may be made to the Tribunal for a review of the determination by the Commission of the application for the clearance; or

(b) if an application is made to the Tribunal for a review of the determination by the Commission of the application for the clearance—at the expiration of 14 days after the date of the making by the Tribunal of a determination on the review.

(5A) For the purposes of subsection (4), an application for an authorisation is taken to be disposed of 14 days after the day the Tribunal makes a determination on the application.

(6) In this section:

market means a substantial market for goods or services in:

(a) Australia; or

(b) a State; or

(c) a Territory; or

(d) a region of Australia.

51 Exceptions

(1) In deciding whether a person has contravened this Part, the following must be disregarded:

(a) anything that is disregarded for the purposes of Part IV of the *Trade Practices Act 1974* because of subsection 51(1) of that Act;

(b) anything done in a State, if the thing is specified in, and specifically authorised by:

(i) an Act passed by the Parliament of that State; or

(ii) regulations made under such an Act;

(c) anything done in the Australian Capital Territory, if the thing is specified in, and specifically authorised by:

(i) an enactment as defined in section 3 of the *Australian Capital Territory (Self-Government) Act 1988*; or

(ii) regulations made under such an enactment;

(d) anything done in the Northern Territory, if the thing is specified in, and specifically authorised by:

(i) an enactment as defined in section 4 of the *Northern Territory (Self-Government) Act 1978*; or

(ii) regulations made under such an enactment;

(e) anything done in another Territory, if the thing is specified in, and specifically authorised by:

(i) an Ordinance of that Territory; or

(ii) regulations made under such an Ordinance.

(1A) Without limiting subsection (1), conduct is taken to be specified in, and authorised by, a law for the purposes of that subsection if:

(a) a licence or other instrument issued or made under the law specifies one or both of the following:

(i) the person authorised to engage in the conduct;

(ii) the place where the conduct is to occur; and

(b) the law specifies the attributes of the conduct except those mentioned in paragraph (a).

For this purpose, ***law*** means a State Act, enactment or Ordinance.

(1B) Subsections (1) and (1A) apply regardless of when the State Acts, enactments, Ordinances, regulations or instruments referred to in those subsections were passed, made or issued.

(1C) The operation of subsection (1) (other than paragraph (1)(a)) is subject to the following limitations:

(a) in order for something to be regarded as specifically authorised for the purposes of subsection (1), the authorising provision must expressly refer to the Competition Code;

(b) paragraphs (1)(b), (c), (d) and (e) do not apply in deciding whether a person has contravened section 50;

(c) regulations referred to in subparagraph (1)(b)(ii), (c)(ii), (d)(ii) or (e)(ii) do not have the effect of requiring a particular thing to be disregarded if the thing happens more than 2 years after those regulations came into operation;

(d) regulations referred to in subparagraph (1)(b)(ii), (c)(ii) or (d)(ii) do not have the effect of requiring a particular thing to be disregarded to the extent that the regulations are the same in substance as other regulations that:

(i) were made for the purposes of the subparagraph concerned; and

(ii) came into operation more than 2 years before the particular thing happened.

(2) In determining whether a contravention of a provision of this Part other than section 45D, 45DA, 45E, 45EA or 48 has been committed, regard shall not be had:

(a) to any act done in relation to, or to the making of a contract or arrangement or the entering into of an understanding, or to any provision of a contract, arrangement or understanding, to the extent that the contract, arrangement or understanding, or the provision, relates to, the remuneration, conditions of employment, hours of work or working conditions of employees;

(b) to any provision of a contract of service or of a contract for the provision of services, being a provision under which a person, not being a body corporate, agrees to accept restrictions as to the work, whether as an employee or otherwise, in which he or she may engage during, or after the termination of, the contract;

(c) to any provision of a contract, arrangement or understanding, being a provision obliging a person to comply with or apply standards of dimension, design, quality or performance prepared or approved by Standards Australia International Limited or by a prescribed association or body;

(d) to any provision of a contract, arrangement or understanding between partners none of whom is a body corporate, being a provision in relation to the terms of the partnership or the conduct of the partnership business or in relation to competition between the partnership and a party to the contract, arrangement or understanding while he or she is, or after he or she ceases to be, a partner;

(e) in the case of a contract for the sale of a business or of shares in the capital of a body corporate carrying on a business—to any provision of the contract that is solely for the protection of the purchaser in respect of the goodwill of the business; or

(g) to any provision of a contract, arrangement or understanding, being a provision that relates exclusively to the export of goods from Australia or to the supply of services outside Australia, if full and accurate particulars of the provision (not including particulars of prices for goods or services but including particulars of any method of fixing, controlling or maintaining such prices) were furnished to the Commission before the expiration of 14 days after the date on which the contract or arrangement was made or the understanding was arrived at, or before 8 September 1976, whichever was the later.

(2A) In determining whether a contravention of a provision of this Part other than section 48 has been committed, regard shall not be had to any acts done, otherwise than in the course of trade or commerce, in concert by ultimate users or consumers of goods or services against the suppliers of those goods or services.

(3) A contravention of a provision of this Part other than section 46 or 48 shall not be taken to have been committed by reason of:

(a) the imposing of, or giving effect to, a condition of:

(i) a licence granted by the proprietor, licensee or owner of a patent, of a registered design, of a copyright or of EL rights within the meaning of the *Circuit Layouts Act 1989*, or by a person who has applied for a patent or for the registration of a design; or

(ii) an assignment of a patent, of a registered design, of a copyright or of such EL rights, or of the right to apply for a patent or for the registration of a design;

to the extent that the condition relates to:

(iii) the invention to which the patent or application for a patent relates or articles made by the use of that invention;

(iv) goods in respect of which the design is, or is proposed to be, registered and to which it is applied;

(v) the work or other subject matter in which the copyright subsists; or

(vi) the eligible layout in which the EL rights subsist;

(b) the inclusion in a contract, arrangement or understanding authorizing the use of a certification trade mark of a provision in accordance with rules applicable under Part XI of the *Trade Marks Act 1955*, or the giving effect to such a provision; or

(c) the inclusion in a contract, arrangement or understanding between:

(i) the registered proprietor of a trade mark other than a certification trade mark; and

(ii) a person registered as a registered user of that trade mark under Part IX of the *Trade Marks Act 1955* or a person authorized by the contract to use the trade mark subject to his or her becoming registered as such a registered user;

of a provision to the extent that it relates to the kinds, qualities or standards of goods bearing the mark that may be produced or supplied, or the giving effect to the provision to that extent.

(4) This section applies in determining whether a provision of a contract is unenforceable by reason of subsection 45(1), or whether a covenant is unenforceable by reason of subsection 45B(1), in like manner as it applies in determining whether a contravention of a provision of this Part has been committed.

Part 2—Schedule version of Part VB

Note: See section 150L.

75AT Definitions

In this section and sections 75AU to 75AZ, unless the contrary intention appears:

GST has the same meaning as in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

Note: The operation of the GST Act is affected by the GST Transition Act.

GST implementation date means the day on which the GST Act commences.

GST Transition Act means the *A New Tax System (Goods and Services Tax Transition) Act 1999* of the Commonwealth.

New Tax System changes means the following:

(a) the amendment of the *Sales Tax (Exemptions and Classifications) Act 1992* of the Commonwealth made by the GST Transition Act;

(b) the ending of sales tax, as provided for in the *A New Tax System (End of Sales Tax) Act 1999* of the Commonwealth;

(c) the imposition of GST;

(d) any other changes (including changes to Commonwealth, State or Territory laws) prescribed by the regulations for the purposes of this definition.

New Tax System transition period means the period:

(a) starting on the later of 1 July 1999 and the commencement of the *A New Tax System (Trade Practices Amendment) Act 1999* of the Commonwealth; and

(b) ending on the day that is 2 years after the GST implementation date.

price, in relation to a supply, includes:

(a) a charge of any description for the supply; and

(b) any pecuniary or other benefit, whether direct or indirect, received or to be received by a person for or in connection with the supply.

regulated supply means:

(a) a supply that:

(i) occurs during the New Tax System transition period and before the GST implementation date; and

(ii) is by a person who would be required to be registered under the GST Act had the supply occurred on or after 1 July 2000; and

(iii) had the supply occurred on or after 1 July 2000, it would have been a taxable supply for the purposes of the GST Act or would have been a taxable supply had it not been GST-free or input taxed for the purposes of that Act; or

(b) a supply that:

(i) occurs during the New Tax System transition period and on or after the GST implementation date; and

(ii) is by a person who is registered or required to be registered under the GST Act; and

(iii) is a taxable supply for the purposes of the GST Act, or would have been a taxable supply for the purposes of the GST Act had it not been GST-free or input taxed for the purposes of that Act.

supply means:

(a) a supply of goods, including by way of sale, exchange, lease, hire or hire-purchase; or

(b) any other transaction or dealing that is a supply for the purposes of the GST Act.

75AU Price exploitation in relation to New Tax System changes

(1) A person contravenes this section if the person engages in price exploitation in relation to the New Tax System changes.

(2) For the purposes of this section, a person engages in price exploitation in relation to the New Tax System changes if:

(a) the person makes a regulated supply; and

(b) the price for the supply is unreasonably high, having regard alone to the New Tax System changes (whether the supply took place before or after those changes); and

(c) the price for the supply is unreasonably high even if the following other matters are also taken into account:

(i) the supplier's costs;

(ii) supply and demand conditions;

(iii) any other relevant matter.

75AV Price exploitation—guidelines about when prices contravene section 75AU

(1) In this section:

guidelines means the guidelines in force under section 75AV of the *Trade Practices Act 1974* of the Commonwealth.

(2) The Commission must have regard to the guidelines in making decisions under section 75AW or 75AX in relation to the issue, variation and revocation of notices under that section.

(3) The Court may have regard to the guidelines in any proceedings:

(a) under section 76 relating to section 75AU; or

(b) under section 80 for an injunction relating to section 75AU.

75AW Commission may issue notice to person it considers has contravened section 75AU

(1) If the Commission considers that a person has made a supply in contravention of section 75AU, the Commission may give the person a notice in writing under this section.

(2) The notice must:

(a) be expressed to be given under this section; and

(b) identify:

(i) the person that made the supply; and

(ii) the kind of supply made; and

(iii) the circumstances in which the supply was made; and

(c) state that, in the Commission's opinion:

(i) the price for the supply was unreasonably high as mentioned in paragraph 75AU(2)(b); and

(ii) that unreasonably high price was not attributable to matters referred to in paragraph 75AU(2)(c).

(3) In any proceedings:

(a) under section 76 relating to section 75AU; or

(b) under section 80 for an injunction relating to section 75AU;

the notice is taken to be prima facie evidence that:

(c) the price for the supply was unreasonably high as mentioned in paragraph 75AU(2)(b); and

(d) that unreasonably high price was not attributable to matters referred to in paragraph 75AU(2)(c).

(4) The Commission may vary or revoke the notice on its own initiative or on application made by the person. The Commission must give the person notice in writing of the variation or revocation.

75AX Commission may issue notice to aid prevention of price exploitation

(1) The Commission may give a person a notice in writing under this section if the Commission considers that doing so will aid the prevention of price exploitation (within the meaning of section 75AU).

(2) The notice must:

(a) be expressed to be given under this section; and

(b) be expressed to relate to any supply that the person makes that is:

(i) of a kind specified in the notice; and

(ii) made in circumstances specified in the notice; and

(iii) made during the period specified in the notice (which must not be a period ending after the end of the New Tax System Transition period); and

(c) specify the maximum price that, in the Commission's opinion, may be charged for a supply to which the notice is expressed to relate.

(3) The Commission may, on its own initiative or on application made by the person:

(a) vary the notice to:

(i) change the period specified as required by subparagraph (2)(b)(iii); or

(ii) change the price specified in the notice as required by paragraph (2)(c); or

(b) revoke the notice.

The Commission must give the corporation notice in writing of the variation or revocation.

(4) The Commission may publish the notice, or particulars of any variation or revocation of the notice, in such manner as the Commission considers appropriate, including, for example, in a national newspaper.

75AY Commission may monitor prices

(1) The Commission may monitor prices for either or both of the following purposes:

(a) to assess the general effect of the New Tax System changes on prices charged by persons for supplies during the New Tax System transition period;

(b) to assist its consideration of whether section 75AU has been, is being, or may in the future be, contravened.

(2) A member of the Commission may, by notice in writing served on a person, require the person:

(a) to give the Commission specified information in writing signed by:

(i) the person; or

(ii) if the person is a body corporate—a competent officer of the body corporate; or

(b) to produce to the Commission specified documents;

being information, or documents containing information, relating to prices or the setting of prices that the member considers will or may be useful to the Commission in monitoring prices as mentioned in subsection (1).

Note: The powers under this section are in addition to the powers under section 155. Under section 155, the Commission may obtain information about particular matters that constitute or may constitute a contravention of section 75AU.

(3) Without limiting subsection (2), information or documents that may be required under that subsection may relate to prices, or the setting of prices:

(a) before or after all or any of the New Tax System changes have taken effect; and

(b) before or after the start of the New Tax System transition period; and

(c) in a situation, or during a period, specified in the notice.

(4) A person must not:

(a) refuse or fail to comply with a notice under subsection (2) to the extent that the person is capable of complying with it; or

(b) in purported compliance with such a notice, intentionally or recklessly provide information or a document that is false or misleading.

Penalty: 20 penalty units.

75AYA Prohibition on misrepresenting the effect of the New Tax System changes

A person must not, in trade or commerce, for the purpose of price exploitation, in connection with:

(a) the supply or possible supply of goods or services; or

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

engage in conduct, at any time during the period starting when this section commences and ending at the end of the New Tax System transition period, that:

(c) falsely represents (whether expressly or impliedly) the effect, or likely effect, of all or any of the New Tax System changes; or

(d) misleads or deceives, or is likely to mislead or deceive, a person about the effect, or likely effect, of all or any of the New Tax System changes.

75AZ Reporting

(1) The Commission must, within 28 days after the end of each quarter, give the Minister administering Part VB of the *Trade Practices Act 1974* of the Commonwealth a written report about the operations of the Commission under sections 75AU to 75AX during the quarter.

(2) Without otherwise limiting subsection (1), a report under that subsection must include particulars of:

(a) all notices given under section 75AX during the quarter; and

(b) all variations or revocations during the quarter of notices given under section 75AX.

(3) For this purpose, a ***quarter*** is a period of 3 months:

(a) that occurs wholly or partly during the New Tax System transition period; and

(b) that starts on any of the following days in a year:

(i) 1 January;

(ii) 1 April;

(iii) 1 July;

(iv) 1 October.

(4) As soon as practicable after the Minister receives a report under subsection (1), the Minister must make the report public by such means as the Minister considers appropriate.

(5) If this section commences during a quarter (but not on the first day of a quarter):

(a) no report is to be made at the end of the quarter; but

(b) the report made at the end of the next quarter is also to include the information required by subsection (1) in relation to the previous quarter.

Notes to the *Trade Practices Act 1974*

Note 1

The *Trade Practices Act 1974* as shown in this compilation comprises Act No. 51, 1974 amended as indicated in the Tables below.

The *Trade Practices Act 1974* was amended by the *Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 1)* (SLI 2006 No. 50). The amendments are incorporated in this compilation.

For application, saving or transitional provisions made by the *Corporations (Repeals, Consequentials and Transitionals) Act 2001*, *see* Act No. 55, 2001.

For application, saving or transitional provisions made by the *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005, see* Act No. 45, 2005.

All other relevant information pertaining to application, saving or transitional provisions prior to 25 November 1996 is not included in this compilation. For subsequent information *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Trade Practices Act 1974	51, 1974	24 Aug 1974	Ss. 1 and 2: Royal Assent S. 55: 27 Sept 1975 (*see Gazette* 1975, No. S178) Remainder: 1 Oct 1974 (*see Gazette* 1974, No. 75B)	
Postal and Telecommunications Commissions (Transitional Provisions) Act 1975	56, 1975	12 June 1975	Ss. 4 and 38: 1 July 1975 (*see* s. 2(1) and *Gazette* 1975, No. S122) Remainder: Royal Assent	—
Trade Practices Act 1975	63, 1975	19 June 1975	19 June 1975	—
Trade Practices Amendment Act 1976	88, 1976	31 Aug 1976	31 Aug 1976	Ss. 2 and 6(2)
Federal Court of Australia (Consequential Provisions) Act 1976	157, 1976	9 Dec 1976	1 Feb 1977 (*see* s. 2 and *Gazette* 1977, No. S3)	—

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Trade Practices Amendment Act 1977	81, 1977	16 June 1977	1 July 1977	Ss. 8(2)–(6), 22(2), 40(2), 41(2), 42(2), 47(2), 52(2), 54(2)–(7), 58(2), 62(2), 63(2) and 82
Remuneration and Allowances Amendment Act 1977	111, 1977	28 Oct 1977	Ss. 1, 2, 5, 9(2), 13, 16, 18 and 19(2): Royal Assent Remainder: 1 June 1977	S. 19(2)
Trade Practices Amendment Act (No. 2) 1977	151, 1977	10 Nov 1977	10 Nov 1977	S. 6
Trade Practices Amendment Act 1978	206, 1978	6 Dec 1978	6 Dec 1978	Ss. 8(2) and 20
Trade Practices Amendment Act (No. 2) 1978	207, 1978	6 Dec 1978	6 Dec 1978	—
Trade Practices (Boycotts) Amendment Act 1980	73, 1980	29 May 1980	29 May 1980	—
Statute Law Revision Act 1981	61, 1981	12 June 1981	S. 115: Royal Assent *(a)*	—
Statute Law (Miscellaneous Amendments) Act 1981	176, 1981	2 Dec 1981	Part XIX (s. 68): 30 Dec 1981 *(b)*	—
Statute Law (Miscellaneous Amendments) Act (No. 2) 1982	80, 1982	22 Sept 1982	Part LXXVI (ss. 278, 279): 20 Oct 1982 *(c)*	S. 280(2) and (3)
Statute Law (Miscellaneous Provisions) Act (No. 1) 1983	39, 1983	20 June 1983	S. 3: 18 July 1983 *(d)*	S. 7(1), (3) and (4)
Public Service Reform Act 1984	63, 1984	25 June 1984	S. 151(1): 1 July 1984 (*see Gazette* 1984, No. S245) *(e)*	S. 151(9)
Remuneration and Allowances Amendment Act 1984	73, 1984	25 June 1984	25 June 1984	—
Statute Law (Miscellaneous Provisions) Act (No. 2) 1984	165, 1984	25 Oct 1984	S. 3: *(f)*	S. 2(32) S. 2(28) (am. by 17, 1986, s. 75)
as amended by				
Trade Practices Revision Act 1986	17, 1986	13 May 1986	(*see* 17, 1986 below)	—
Statute Law (Miscellaneous Provisions) Act (No. 1) 1985	65, 1985	5 June 1985	S. 3: 3 July 1985 *(g)*	—

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Trade Practices (Transfer of Market Dominance) Amendment Act 1986	8, 1986	1 May 1986	1 June 1986 (*see Gazette* 1986, No. S251)	—
Trade Practices Revision Act 1986	17, 1986	13 May 1986	Ss. 1, 2, 49(1), 51(1) and 64(1): Royal Assent Part III (ss. 74–76): 25 Oct 1984 Ss. 31 and 35: 1 July 1986 Remainder: 1 June 1986 (*see Gazette* 1986, No. S251)	Ss. 27(2), 31(2), 33(2), 34(2), 47(2), 50(2), 59(3) and 65(2)
Statute Law (Miscellaneous Provisions) Act (No. 2) 1986	168, 1986	18 Dec 1986	S. 3: Royal Assent *(h)*	S. 5(1)
Jurisdiction of Courts (Miscellaneous Amendments) Act 1987	23, 1987	26 May 1987	S. 3: *(j)*	S. 4
Statute Law (Miscellaneous Provisions) Act 1987	141, 1987	18 Dec 1987	S. 3: 1 Apr 1989 (*see Gazette* 1989, No. S88) *(k)*	S. 5(1)
Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988	8, 1988	5 Apr 1988	Ss. 1–11, 12(b), (c), (e), (f), 13–21, 27, 29 and 30: Royal Assent S. 12(a) and (d): 1 Jan 1990 Remainder: 1 July 1988 (*see Gazette* 1988, No. S191)	—
as amended by				
Law and Justice Legislation Amendment Act 1988	120, 1988	14 Dec 1988	Part XI (ss. 34, 35): 5 Apr 1988 *(l)*	—
Trade Practices Amendment Act 1988	20, 1988	11 May 1988	S. 4: 1 July 1988 Remainder: Royal Assent	—
Industrial Relations (Consequential Provisions) Act 1988	87, 1988	8 Nov 1988	Ss. 1 and 2: Royal Assent Remainder: 1 Mar 1989 (*see* s. 2(2) and *Gazette* 1989, No. S53)	—

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
as amended by				
Industrial Relations Legislation Amendment Act (No. 2) 1990	108, 1990	18 Dec 1990	Ss. 8, 13 and 21: 1 Feb 1991 (*see* s. 2(4) and *Gazette* 1991, No. S18) Ss. 22, 23 and 24: 1 Mar 1989 S. 26: 1 Jan 1990 S. 33: 25 Mar 1991 (*see Gazette* 1991, No. S73) Remainder: Royal Assent	—
Circuit Layouts Act 1989	28, 1989	22 May 1989	Ss. 1 and 2: Royal Assent Remainder: 1 Oct 1990 (*see Gazette* 1990, No. S261)	—
Trade Practices (International Liner Cargo Shipping) Amendment Act 1989	34, 1989	30 May 1989	1 Aug 1989 (*see Gazette* 1989, No. S260)	S. 6
Law and Justice Legislation Amendment Act 1989	11, 1990	17 Jan 1990	Part 1 (ss. 1, 2) and Part 3 (ss. 6, 7): Royal Assent Ss. 8–10: 17 July 1990 Ss. 12, 13, 51(1)(b) and 51(2): 17 Jan 1990 (*see* s. 2(5)) Remainder: 14 Feb 1990	—
Trade Practices (Misuse of Trans-Tasman Market Power) Act 1990	70, 1990	16 June 1990	1 July 1990 (*see Gazette* 1990, No. S172)	—
Trade Practices Amendment Act 1991	49, 1991	24 Apr 1991	21 Dec 1990	—
Industrial Relations Legislation Amendment Act 1991	122, 1991	27 June 1991	Ss. 4(1), 10(b) and 15–20: 1 Dec 1988 Ss. 28(b)–(e), 30 and 31: 10 Dec 1991 (*see Gazette* 1991, No. S332) Remainder: Royal Assent	S. 31(2)
Law and Justice Legislation Amendment Act 1991	136, 1991	12 Sept 1991	Ss. 22–25: 10 Oct 1991 *(m)*	S. 25
Transport and Communications Legislation Amendment Act 1991	173, 1991	25 Nov 1991	Ss. 48–56: Royal Assent *(n)*	—
Special Broadcasting Service Act 1991	180, 1991	25 Nov 1991	S. 116: 23 Dec 1991 *(o)*	—
Law and Justice Legislation Amendment Act 1992	22, 1992	13 Apr 1992	13 Apr 1992	—

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Territories Law Reform Act 1992	104, 1992	30 June 1992	S. 24: 1 July 1992 *(p)*	—
Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992	105, 1992	9 July 1992	5 Oct 1992 (*see* s. 2 and *Gazette* 1992, No. GN38)	—
Trade Practices Amendment Act 1992	106, 1992	9 July 1992	9 July 1992	S. 3
Trade Practices Legislation Amendment Act 1992	222, 1992	24 Dec 1992	21 Jan 1993	Ss. 10(2), 16(2), 18(2) and 21
Industrial Relations Reform Act 1993	98, 1993	22 Dec 1993	Ss. 42–48 and 54: 30 Mar 1994 (*see Gazette* 1994, No. S104) *(q)*	S. 54
Insurance Laws Amendment Act (No. 2) 1994	49, 1994	7 Apr 1994	Schedule (item 19): Royal Assent *(r)*	—
Law and Justice Legislation Amendment Act (No. 2) 1994	141, 1994	28 Nov 1994	S. 3 (items 21–26): Royal Assent *(s)*	—
Competition Policy Reform Act 1995	88, 1995	20 July 1995	Parts 1, 2 (ss. 1–34), Div. 2 of Part 5 (ss. 88–90) and Part 7 (s. 92): 17 Aug 1995 *(t)* Ss. 35–76 and 78: 6 Nov 1995 (*see Gazette* 1995, No. S423) *(t)* Div. 1 of Part 5 (ss. 80–87): 20 July 1996 *(t)* Part 6 (s. 91): *(t)*	Ss. 33, 34, 78, 88–90 and 92
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Schedule 4 (item 147): Royal Assent *(u)*	—
Workplace Relations and Other Legislation Amendment Act 1996	60, 1996	25 Nov 1996	Schedule 17 (items 1–11, 14–24): 17 Jan 1997 (*see Gazette* 1997, No. S18) *(v)*	Sch. 17 (items 29–37) [*see* Table A] S. 2(2) and (6) (am. by 77, 1996, Sch. 3 [items 1, 2])
as amended by				
Workplace Relations and Other Legislation Amendment Act (No. 2) 1996	77, 1996	19 Dec 1996	Schedule 3 (items 1, 2): *(w)*	—

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Trade Practices Amendment (Industry Access Codes) Act 1997	28, 1997	10 Apr 1997	10 Apr 1997	—
Trade Practices Amendment (Telecommunications) Act 1997	58, 1997	30 Apr 1997	30 Apr 1997	Sch. 1 (item 15) [*see* Table A]
Audit (Transitional and Miscellaneous) Amendment Act 1997	152, 1997	24 Oct 1997	Schedule 2 (item 1260): 1 Jan 1998 (*see Gazette* 1997, No. GN49) *(x)*	—
Telecommunications Legislation Amendment Act 1997	200, 1997	16 Dec 1997	Schedule 2 (items 30–34): *(y)*	—
Trade Practices Amendment (Fair Trading) Act 1998	36, 1998	22 Apr 1998	Schedule 2: 1 July 1998 (*see Gazette* 1998, No. S301) Remainder: Royal Assent	—
Financial Sector Reform (Consequential Amendments) Act 1998	48, 1998	29 June 1998	Schedule 1 (item 194) and Schedule 2 (items 24–29): 1 July 1998 (*see Gazette* 1998, No. S316) *(z)*	—
Gas Pipelines Access (Commonwealth) Act 1998	101, 1998	30 July 1998	Schedule 1 (items 11–26): 30 July 1998 *(za)* Schedule 1 (items 27–56): Royal Assent *(za)*	Sch. 1 (items 36, 47, 50) [*see* Table A]
Trade Practices Amendment (Country of Origin Representations) Act 1998	106, 1998	30 July 1998	Schedule 1: 13 Aug 1998 (*see Gazette* 1998, No. S398) Remainder: Royal Assent	—
Telecommunications Legislation Amendment Act 1999	52, 1999	5 July 1999	Schedule 1 (items 6–77): Royal Assent *(zb)* Schedule 3 (items 69–76, 81): 2 Aug 1999 *(zb)* Schedule 4 (items 17–20, 28): 1 July 1999 *(zb)*	Sch. 1 (items 72–77), Sch. 3 (item 81) and Sch. 4 (item 28) [*see* Table A]
A New Tax System (Trade Practices Amendment) Act 1999	61, 1999	8 July 1999	9 July 1999 (*see* s. 2)	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Schedule 1 (items 944–955): 5 Dec 1999 (*see Gazette* 1999, No. S584) *(zc)*	—

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
A New Tax System (Indirect Tax and Consequential Amendments) Act 1999	176, 1999	22 Dec 1999	Schedule 4: Royal Assent *(zd)*	—
Federal Magistrates (Consequential Amendments) Act 1999	194, 1999	23 Dec 1999	Schedule 25: 23 Dec 1999 *(ze)*	—
Jurisdiction of Courts Legislation Amendment Act 2000	57, 2000	30 May 2000	Schedule 1 (items 77–90): Royal Assent *(zf)*	—
A New Tax System (Trade Practices Amendment) Act 2000	69, 2000	22 June 2000	Schedule 2 (item 1): 6 Nov 1995 (*see* s. 2(2) and *Gazette* 1995, No. S423) Schedule 2 (item 2): 10 Apr 1997 (*see* s. 2(3)) Remainder: Royal Assent	—
Trade Practices Amendment (International Liner Cargo Shipping) Act 2000	123, 2000	5 Oct 2000	Schedule 1 (items 154–170, 180): 2 Mar 2001 Remainder: 2 Nov 2000	Sch. 1 (items 171–180) [*see* Table A]
Jurisdiction of Courts (Miscellaneous Amendments) Act 2000	161, 2000	21 Dec 2000	21 Dec 2000	—
Treasury Legislation Amendment (Application of Criminal Code) Act (No. 1) 2001	31, 2001	28 Apr 2001	Schedule 1 (items 240–290): 15 Dec 2001 *(zg)*	—
as amended by				
Statute Law Revision Act 2002	63, 2002	3 July 2002	Schedule 2 (item 35): *(zga)*	—
Communications and the Arts Legislation Amendment Act 2001	46, 2001	5 June 2001	5 June 2001	S. 6 [*see* Table A]
Corporations (Repeals, Consequentials and Transitionals) Act 2001	55, 2001	28 June 2001	Ss. 4–14 and Schedule 3 (items 550–557): 15 July 2001 (*see Gazette* 2001, No. S285) *(zh)*	Ss. 4–14 [*see* Note 1]
Trade Practices Amendment Act (No. 1) 2001	63, 2001	28 June 2001	Schedule 2 (items 1–3, 6–8): *(zi)* Schedule 2 (items 4, 5): *(zi)* Remainder: 26 July 2001	Sch. 1 (items 5, 8, 10, 13, 15, 17, 19, 21, 23, 25, 27, 29, 32, 34, 36, 38) and Sch. 2 (items 3, 5, 8) [*see* Table A]

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
as amended by				
Statute Law Revision Act 2002	63, 2002	3 July 2002	Schedule 2 (item 32): *(zia)*	—
Treasury Legislation Amendment (Application of Criminal Code) Act (No. 3) 2001	117, 2001	18 Sept 2001	S. 4: 15 Dec 2001 *(zj)* Schedule 3 (items 16–56): *(zj)*	S. 4 [*see* Table A]
Financial Services Reform (Consequential Provisions) Act 2001	123, 2001	27 Sept 2001	Schedule 1 (items 364–364D, 365–365B): 11 Mar 2002 (*see Gazette* 2001, No. GN42) *(zk)*	—
Trade Practices Amendment (Telecommunications) Act 2001	124, 2001	27 Sept 2001	27 Sept 2001	Sch. 1 (items 23, 24) [*see* Table A]
Treasury Legislation Amendment (Application of Criminal Code) Act (No. 2) 2001	146, 2001	1 Oct 2001	S. 4 and Schedule 2 (items 1, 2, 4–39): 15 Dec 2001 *(zl)* Schedule 2 (item 3): *(zl)*	S. 4 [*see* Table A]
Statute Law Revision Act 2002	63, 2002	3 July 2002	Schedule 1 (items 34, 35, 38): 1 July 1999 Schedule 1 (items 36, 37): Royal Assent	—
Trade Practices Amendment Act (No. 1) 2002	128, 2002	11 Dec 2002	11 Dec 2002	Sch. 1 (items 4, 7, 9) [*see* Table A]
Telecommunications Competition Act 2002	140, 2002	19 Dec 2002	19 Dec 2002	Sch. 2 (items 9, 15, 19, 21, 69, 110, 111, 113, 115) [*see* Table A]
Trade Practices Amendment (Liability for Recreational Services) Act 2002	146, 2002	19 Dec 2002	19 Dec 2002	—
Maritime Legislation Amendment Act 2003	7, 2003	19 Mar 2003	Schedule 1 (items 1–6): 1 Nov 2003 Schedule 1 (items 7–9): 20 Mar 2003 Remainder: Royal Assent	—

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Industry, Tourism and Resources Legislation Amendment Act 2003	21, 2003	11 Apr 2003	Schedule 1 (items 25–29): 12 Apr 2003	Sch. 1 (item 29) [*see* Table A]
Trade Practices Legislation Amendment Act 2003	134, 2003	17 Dec 2003	Schedules 1 and 2: 1 Mar 2004 (*see Gazette* 2004, No. GN8) Remainder: Royal Assent	Sch. 2 (items 44–53, 56) [*see* Table A]
Postal Services Legislation Amendment Act 2004	69, 2004	22 June 2004	22 June 2004	—
Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004	103, 2004	30 June 2004	Schedule 3 (items 5, 6): 26 July 2004 (*see Gazette* 2004, No. GN28)	—
Trade Practices Amendment (Australian Energy Market) Act 2004	108, 2004	30 June 2004	Schedules 1 and 2: 23 May 2005 (*see* F2005L01121) Remainder: Royal Assent	—
Trade Practices Amendment (Personal Injuries and Death) Act (No. 2) 2004	113, 2004	13 July 2004	13 July 2004	Sch. 1 (item 11) [*see* Table A]
Treasury Legislation Amendment (Professional Standards) Act 2004	118, 2004	13 July 2004	13 July 2004	—
Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005	45, 2005	1 Apr 2005	Schedule 1 (items 168–171) and Schedule 4: 1 July 2005 *(zm)* Schedule 2: *(zm)*	Sch. 4 [*see* Note 1]
Telecommunications Legislation Amendment (Competition and Consumer Issues) Act 2005	119, 2005	23 Sept 2005	Schedules 4–6, Schedule 7 (items 1–3, 5–12, 14–19, 21–28), Schedule 9 and Schedule 12: 24 Sept 2005 Schedule 7 (items 4, 13, 20): 23 Mar 2006 Schedule 11 (items 8, 9): 1 Jan 2006 (*see* F2005L04117)	Sch. 4 (item 2) [*see* Table A]
Trade Practices Amendment (Personal Injuries and Death) Act 2006	11, 2006	23 Mar 2006	Schedule 1: 20 April 2006 Remainder: Royal Assent	Sch. 1 (item 8) [*see* Table A]
Offshore Petroleum (Repeals and Consequential Amendments) Act 2006	17, 2006	29 Mar 2006	Schedule 2 (items 113–116): 1 July 2008 (*see* s. 2(1) and F2008L02273)	—
Jurisdiction of the Federal	23, 2006	6 Apr 2006	Schedule 1: 4 May	Sch. 1

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Magistrates Court Legislation Amendment Act 2006			2006	(items 2, 5) [*see* Table A]
Energy Legislation Amendment Act 2006	60, 2006	22 June 2006	Schedules 1 (items 2–13) and 2 (item 14): Royal Assent Schedule 2 (items 12, 13, 15, 16): *(zn)*	—
Trade Practices Amendment (National Access Regime) Act 2006	92, 2006	18 Aug 2006	Schedule 1: 1 Oct 2006 (*see* F2006L02999) Remainder: Royal Assent	Sch. 1 (items 114–136) [*see* Table A]
Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006	101, 2006	14 Sept 2006	Schedule 5 (items 164, 165): Royal Assent	—
Maritime Transport and Offshore Facilities Security Amendment (Security Plans and Other Measures) Act 2006	109, 2006	27 Sept 2006	Schedule 2 (items 97–103): Royal Assent	—

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Trade Practices Legislation Amendment Act (No. 1) 2006	131, 2006	6 Nov 2006	Schedule 1: 1 Jan 2007 (*see* F2006L04026) Schedules 2–8 and Schedule 9 (items 1–15, 20–24): 1 Jan 2007 Schedule 10: 7 Nov 2006 Schedule 11: Royal Assent	Sch. 1 (items 52, 53), Sch. 2 (items 13, 14), Sch. 3 (items 28, 29), Sch. 4 (item 2), Sch. 5 (item 4), Sch. 6 (item 20), Sch. 7 (items 18, 33, 35), Sch. 8 (items 28, 29) and Sch. 9 (items 15, 21, 24) [*see* Table A]
Australian Energy Market Amendment (Gas Legislation) Act 2007	45, 2007	10 Apr 2007	Schedule 1 (items 58–81): 1 July 2008 (*see* F2008L02164)	—
Broadcasting Legislation Amendment (Digital Radio) Act 2007	68, 2007	28 May 2007	Schedule 1: 29 May 2007 Schedule 2: *(zo)* Remainder: Royal Assent	—
Corporations (NZ Closer Economic Relations) and Other Legislation Amendment Act 2007	85, 2007	21 June 2007	Schedule 3 (items 3–9): 19 July 2007	—
Water (Consequential Amendments) Act 2007	138, 2007	3 Sept 2007	Schedule 1: 3 Mar 2008 (*see* s. 2(1)) Remainder: Royal Assent	—
Trade Practices Legislation Amendment Act (No. 1) 2007	159, 2007	24 Sept 2007	25 Sept 2007	Sch. 1 (item 4), Sch. 2 (item 12) and Sch. 3 (item 9) [*see* Table A]
Trade Practices Amendment (Access Declarations) Act 2008	7, 2008	20 Mar 2008	20 Mar 2008	—
Australian Energy Market Amendment (Minor Amendments) Act 2008	60, 2008	30 June 2008	Schedule 4: *(zp)*	—
Trade Practices Legislation Amendment Act 2008	116, 2008	21 Nov 2008	22 Nov 2008	Sch. 3 (items 13, 15) [*see*

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
				Table A]
Offshore Petroleum Amendment (Greenhouse Gas Storage) Act 2008	117, 2008	21 Nov 2008	Schedule 3 (item 60): 22 Nov 2008	—
Trade Practices Amendment (Clarity in Pricing) Act 2008	126, 2008	25 Nov 2008	Schedule 1: 25 May 2009 Schedule 2: 26 Nov 2008 Remainder: Royal Assent	Sch. 1 (item 5) [*see* Table A]
Water Amendment Act 2008	139, 2008	8 Dec 2008	Schedule 2 (items 3–5): 15 Dec 2008 (*see* F2008L04656)	—
Australian Energy Market Amendment (AEMO and Other Measures) Act 2009	17, 2009	26 Mar 2009	Schedule 1 (items 12, 14): 27 Mar 2009 Schedule 1 (item 13): 1 July 2009 (*see* F2009L02489 and South Australia *Gazette* 25 June 2009 p 3000)	—
Fair Work (State Referral and Consequential and Other Amendments) Act 2009	54, 2009	25 June 2009	TBA	
Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009	59, 2009	TBA	Sections 1-3 (26 June 2009), Schedule 2 (items 50 and 51) 27 June 2009, Shedule 1, Shedule 2 (items 1-49; 52-53) 24 July 2009	

(a) The *Trade Practices Act 1974* was amended by section 115 only of the *Statute Law Revision Act 1981*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.

(b) The *Trade Practices Act 1974* was amended by Part XIX (section 68) only of the *Statute Law (Miscellaneous Amendments) Act 1981*, subsection 2(12) of which provides as follows:

(12) The remaining provisions of this Act shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.

(c) The *Trade Practices Act 1974* was amended by Part LXXVI (sections 278 and 279) only of the *Statute Law (Miscellaneous Amendments) Act (No. 2) 1982*, subsection 2(16) of which provides as follows:

(16) The remaining provisions of this Act shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.

(d) The *Trade Practices Act 1974* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1983*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.

(e) The *Trade Practices Act 1974* was amended by subsection 151(1) only of the *Public Service Reform Act 1984*, subsection 2(4) of which provides as follows:

(4) The remaining provisions of this Act shall come into operation on such day as is, or on such respective days as are, fixed by Proclamation.

(f) The *Trade Practices Act 1974* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1984*, subsection 2(28) of which provides as follows:

(28) The amendment of the *Trade Practices Act 1974* made by this Act shall come into operation on the day on which this Act receives the Royal Assent.

(g) The *Trade Practices Act 1974* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.

(h) The *Trade Practices Act 1974* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1986*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.

(j) The *Trade Practices Act 1974* was amended by section 3 only of the *Jurisdiction of Courts (Miscellaneous Amendments) Act 1987*, subsection 2(2) of which provides as follows:

(2) The amendments made by this Act to an Act specified in the Schedule shall come into operation on such day as is fixed by Proclamation in relation to those amendments.

The date fixed in pursuance of subsection 2(2) was 1 September 1987 (*see Gazette* 1987, No. S217).

(k) The *Trade Practices Act 1974* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act 1987*, subsection 2(32) of which provides as follows:

(32) The amendment of the *Trade Practices Act 1974* made by this Act shall come into operation on a day to be fixed by Proclamation for the purposes of this subsection, being a day not earlier than the day on which the United Nations Convention on Contracts for the International Sale of Goods, adopted at Vienna, Austria, on 10 April 1980, enters into force in respect of Australia.

(l) The *Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988* was amended by Part XI (sections 34 and 35) only of the *Law and Justice Legislation Amendment Act 1988*, subsection 2(6) of which provides as follows:

(6) Part XI shall be taken to have commenced on 5 April 1988.

(m) The *Trade Practices Act 1974* was amended by sections 22–24 only of the *Law and Justice Legislation Amendment Act 1991*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the 28th day after the day on which it receives the Royal Assent.

(n) The *Trade Practices Act 1974* was amended by sections 48–56 only of the *Transport and Communications Legislation Amendment Act 1991*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(o) The *Trade Practices Act 1974* was amended by section 116 only of the *Special Broadcasting Service Act 1991*, subsection 2(1) of which provides as follows:

(1) Subject to subsection (2), this Act commences 28 days after the day on which it receives the Royal Assent.

(p) The *Trade Practices Act 1974* was amended by section 24 only of the *Territories Law Reform Act 1992*, subsection 2(3) of which provides as follows:

(3) The remaining provisions of this Act commence on 1 July 1992.

(q) The *Trade Practices Act 1974* was amended by sections 42–48 only of the *Industrial Relations Reform Act 1993*, subsection 2(6) of which provides as follows:

(6) Subject to subsection (7), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

(r) The *Trade Practices Act 1974* was amended by the Schedule (item 19) only of the *Insurance Laws Amendment Act (No. 2) 1994*, subsection 2(1) of which provides as follows:

(1) Sections 1, 2 and 3 and the amendments contained in items 1, 2, 4, 5, 7, 17, 18 and 19 of the Schedule commence on the day on which this Act receives the Royal Assent.

(s) The *Trade Practices Act 1974* was amended by section 3 (items 21–26) only of the *Law and Justice Legislation Amendment Act (No. 2) 1994*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(t) The *Trade Practices Act 1974* was amended by sections 1–32, 35–76, 80–87 and 91 only of the *Competition Policy Reform Act 1995*, subsections 2(1), (2), (4) and (5) of which provide as follows:

(1) The following provisions commence on the 28th day after the day on which this Act receives the Royal Assent:

(a) Parts 1, 2 and 7;

(b) Division 2 of Part 5.

(2) Part 3 commences on a day to be fixed by Proclamation. However, if Part 3 does not commence by Proclamation within the period of 6 months beginning on the day on which this Act receives the Royal Assent, then it commences on the first day after the end of that period.

(4) Division 1 of Part 5 commences on the first day after the end of the period of 12 months after the day on which this Act receives the Royal Assent.

(5) Part 6 commences immediately after the commencement of Division 1 of Part 5.

(u) The *Trade Practices Act 1974* was amended by Schedule 4 (item 147) only of the *Statute Law Revision Act 1996*, subsection 2(1) of which provides as follows:

(1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.

(v) The *Trade Practices Act 1974* was amended by Schedule 17 (items 1–11 and 14–24) only of the *Workplace Relations and Other Legislation Amendment Act 1996*, subsection 2(2) of which provides as follows:

(2) Subject to subsection (3), the items of the Schedules, other than Schedule 5, item 1 of Schedule 9, items 2 and 3 of Schedule 12, item 90 of Schedule 16 and the items of Schedule 19, commence on a day or days to be fixed by Proclamation.

(w) The *Workplace Relations and Other Legislation Amendment Act 1996* was amended by Schedule 3 (items 1 and 2) only of the *Workplace Relations and Other Legislation Amendment Act (No. 2) 1996*, subsection 2(4) of which provides as follows:

(4) The items of Schedule 3 are taken to have commenced immediately after the *Workplace Relations and Other Legislation Amendment Act 1996* received the Royal Assent.

The *Workplace Relations and Other Legislation Amendment Act 1996* received the Royal Assent on 25 November 1996.

(x) The *Trade Practices Act 1974* was amended by Schedule 2 (item 1260) only of the *Audit (Transitional and Miscellaneous) Amendment Act 1997*, subsection 2(2) of which provides as follows:

(2) Schedules 1, 2 and 4 commence on the same day as the *Financial Management and Accountability Act 1997*.

(y) The *Trade Practices Act 1974* was amended by Schedule 2 (items 30–34) only of the *Telecommunications Legislation Amendment Act 1997*, subsection 2(4) of which provides as follows:

(4) Items 30, 31, 32, 33 and 34 of Schedule 2 are taken to have commenced on 30 April 1997, immediately after the commencement of Schedule 1 to the *Trade Practices Amendment (Telecommunications) Act 1997*.

(z) The *Trade Practices Act 1974* was amended by Schedule 1 (item 194) and Schedule 2 (items 24–29) only of the *Financial Sector Reform (Consequential Amendments) Act 1998*, subsection 2(2) of which provides as follows:

(2) Subject to subsections (3) to (14), Schedules 1, 2 and 3 commence on the commencement of the *Australian Prudential Regulation Authority Act 1998*.

(za) The *Trade Practices Act 1974* was amended by Schedule 1 (items 11–35, 37–46, 48, 49, 51–56) only of the *Gas Pipelines Access (Commonwealth) Act 1998*, subsections 2(1) and (3) of which provide as follows:

(1) Subject to subsections (2) and (3), this Act commences at the commencement of sections 13 and 14 of the *Gas Pipelines Access (South Australia) Act 1997* of South Australia.

(3) Items 27 to 56 of Schedule 1 commence on the day on which this Act receives the Royal Assent.

The *Gas Pipelines Access (South Australia) Act 1997* of South Australia came into operation on 30 July 1998 (*see* South Australian Government Gazette 2 April 1998, p. 1606).

(zb) The *Trade Practices Act 1974* was amended by Schedule 1 (items 6–71), Schedule 3 (items 69–76) and Schedule 4 (items 17–20) only of the *Telecommunications Legislation Amendment Act 1999*, subsections 2(1), (4) and (6) of which provide as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(4) Subject to subsection (5), Schedule 3 commences on the commencement of section 1 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

(6) Schedule 4 commences on 1 July 1999.

(zc) The *Trade Practices Act 1974* was amended by Schedule 1 (items 944–955) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:

(1) In this Act, ***commencing time*** means the time when the *Public Service Act 1999* commences.

(2) Subject to this section, this Act commences at the commencing time.

(zd) The *Trade Practices Act 1974* was amended by Schedule 4 only of the *A New Tax System (Indirect Tax and Consequential Amendments) Act 1999*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(ze) The *Trade Practices Act 1974* was amended by Schedule 25 only of the *Federal Magistrates (Consequential Amendments) Act 1999*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the commencement of the *Federal Magistrates Act 1999*.

(zf) The *Trade Practices Act 1974* was amended by Schedule 1 (items 77–90) only of the *Jurisdiction of Courts Legislation Amendment Act 2000*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(zg) The *Trade Practices Act 1974* was amended by Schedule 1 (items 240–290) only of the *Treasury Legislation Amendment (Application of Criminal Code) Act (No. 1) 2001*, subsection 2(4) of which provides as follows:

(4) The remaining items of Schedule 1 to this Act commence on the day specified in subsection 2.2(2) of the *Criminal Code*.

(zga) Subsection 2(1) (item 64) of the *Statute Law Revision Act 2002* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
64. Schedule 2, item 35	Immediately after the time specified in the *Treasury Legislation Amendment (Application of Criminal Code) Act (No. 1) 2001* for the commencement of item 242 of Schedule 1 to that Act	15 December 2001

(zh) The *Trade Practices Act 1974* was amended by Schedule 3 (items 550–557) only of the *Corporations (Repeals, Consequentials and Transitionals) Act 2001*, subsection 2(3) of which provides as follows:

(3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.

(zi) Subsections 2(2)(a) and (3) of the *Trade Practices Amendment Act (No. 1) 2001* provide as follows:

(2) Items 4 and 5 of Schedule 2 commence immediately after the later of:

(a) the commencement of section 1;

(3) The items of Schedule 2 (other than items 4 and 5) commence immediately after the commencement of item 260 of Schedule 1 to the *Treasury Legislation Amendment (Application of Criminal Code) Act (No. 1) 2001*.

Schedule 1 (item 260) commenced on 15 December 2001.

(zia) Subsection 2(1) (item 61) of the *Statute Law Revision Act 2002* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
61. Schedule 2, item 32	Immediately after the time specified in the *Trade Practices Amendment Act (No. 1) 2001* for the commencement of item 1 of Schedule 2 to that Act	15 December 2001

(zj) The *Trade Practices Act 1974* was amended by Schedule 3 (items 16–56) only of the *Treasury Legislation Amendment (Application of Criminal Code) Act (No. 3) 2001*, subsections 2(1) and (4) of which provide as follows:

(1) Subject to this section, this Act commences on the day mentioned in subsection 2.2(2) of the *Criminal Code*.

(4) Schedule 2 and Part 4 of Schedule 3 are taken to have commenced immediately after the commencement of item 14 of Schedule 1 to the *Treasury Legislation Amendment (Application of Criminal Code) Act (No. 1) 2001*.

Schedule 1 (item 14) commenced on 15 December 2001.

(zk) The *Trade Practices Act 1974* was amended by Schedule 1 (items 364–365B) only of the *Financial Services Reform (Consequential Provisions) Act 2001*, subsections 2(1), (6) and (15)(a) of which provide as follows:

(1) In this section:

FSR commencement means the commencement of item 1 of Schedule 1 to the *Financial Services Reform Act 2001*.

(6) Subject to subsections (7) to (17), the other items of Schedule 1 commence on the FSR commencement.

(15) Subject to subsection (17), item 365 of Schedule 1 commences on the later of:

(a) the FSR commencement; and.

(zl) The *Trade Practices Act 1974* was amended by Schedule 2 only of the *Treasury Legislation Amendment (Application of Criminal Code) Act (No. 2) 2001*, subsections 2(1) and (2)(b) of which provide as follows:

(1) Subject to this section, this Act commences on the day mentioned in subsection 2.2(2) of the *Criminal Code*.

(2) Item 3 of Schedule 2 commences immediately after the later of:

(b) the commencement of item 274 of Schedule 1 to the *Treasury Legislation Amendment (Application of Criminal Code) Act (No. 1) 2001*.

Schedule 1 (item 274) commenced on 15 December 2001.

(zm) Subsection 2(1) (items 2, 3 and 10) of the *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005* provide as follows:

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

Provision(s)	Commencement	Date/Details
2. Schedule 1	At the same time as section 6 of the *Australian Communications and Media Authority Act 2005* commences.	1 July 2005
3. Schedule 2	Immediately after the commencement of the provision(s) covered by table item 2.	1 July 2005
10. Schedule 4	At the same time as section 6 of the *Australian Communications and Media Authority Act 2005* commences.	1 July 2005

(zn) Subsection 2(1) (items 5 and 7) of the *Energy Legislation Amendment Act 2006* provides as follows:

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

Provision(s)	Commencement	Date/Details
5. Schedule 2, items 12 and 13	Immediately after the commencement of Schedules 1 and 2 to the *Trade Practices Amendment (Australian Energy Market) Act 2004*.	23 May 2005
7. Schedule 2, items 15 and 16	Immediately after the commencement of Schedules 1 and 2 to the *Trade Practices Amendment (Australian Energy Market) Act 2004*.	23 May 2005

(zo) Subsection 2(1) (item 3) of the *Broadcasting Legislation Amendment (Digital Radio) Act 2007* provides as follows:

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

Provision(s)	Commencement	Date/Details
3. Schedule 2	The later of: (a) immediately after the commencement of Schedule 1 to this Act; and (b) immediately after the commencement of section 155AAA of the *Trade Practices Act 1974*. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	19 July 2007 (paragraph (b) applies)

(zp) Subsection 2(1) (item 4) of the *Australian Energy Market Amendment (Minor Amendments) Act 2008* provides as follows:

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

Provision(s)	Commencement	Date/Details
4. Schedule 4	Immediately after the commencement of Schedule 1 to the *Australian Energy Market Amendment (Gas Legislation) Act 2007*.	1 July 2008 (*see* F2008L02164)

Table of Amendments

Note: table of amendments has not been updated to reflect *Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009* (No 59 of 2009) or Fair Work (State Referral and Consequential and Other Amendments) Act 2009 (No 54 of 2009)

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part I	
S. 2	rep. No. 81, 1977 ad. No. 88, 1995
S. 2A	ad. No. 81, 1977 am. No. 34, 1989; No. 88, 1995; No. 134, 2003; No. 108, 2004
S. 2B	ad. No. 88, 1995 am. No. 58, 1997; No. 61, 1999
S. 2BA	ad. No. 131, 2006
S. 2C	ad. No. 88, 1995 am. No. 131, 2006
S. 2D	ad. No. 88, 1995 rep. No. 131, 2006
S. 4	am. Nos. 88 and 157, 1976; No. 81, 1977; No. 206, 1978; No. 17, 1986; No. 8, 1988; No. 70, 1990; Nos. 104 and 222, 1992; No. 88, 1995; No. 60, 1996; No. 48, 1998; No. 55, 2001; Nos. 108 and 113, 2004; No. 131, 2006; Nos. 45 and 159, 2007; No. 60, 2008; No. 17, 2009
S. 4A	ad. No. 81, 1977 am. No. 88, 1995; No. 131, 2006
S. 4B	ad. No. 81, 1977 am. No. 151, 1977; No. 17, 1986; No. 88, 1995
S. 4C	ad. No. 81, 1977 am. No. 88, 1995
S. 4D	ad. No. 81, 1977 am. No. 206, 1978; No. 17, 1986
S. 4E	ad. No. 81, 1977 am. No. 70, 1990
S. 4F	ad. No. 81, 1977 am. No. 60, 1996
Ss. 4G, 4H	ad. No. 81, 1977
Ss. 4J, 4K	ad. No. 81, 1977
S. 4KA	ad. No. 113, 2004
S. 4L	ad. No. 81, 1977 am. No. 17, 1986
S. 4M	ad. No. 81, 1977
S. 4N	ad. No. 101, 1998 am. Nos. 17 and 92, 2006; No. 117, 2008
Heading to s. 5	am. No. 61, 1999; No. 31, 2001
S. 5	am. No. 17, 1986; No. 70, 1990; No. 222, 1992; No. 106, 1998; No. 61, 1999; No. 31, 2001
Heading to s. 6	am. No. 61, 1999; No. 31, 2001
S. 6	am. No. 88, 1976; No. 81, 1977; Nos. 206 and 207, 1978; No. 73, 1980; No. 17, 1986; No. 70, 1990; Nos. 106 and 222, 1992; No. 98, 1993; No. 88, 1995; No. 60, 1996; No. 58, 1997; No. 106, 1998; No. 61, 1999; No. 69, 2000; No. 31, 2001 (as am. by No. 63, 2002); No. 117, 2001; No. 134, 2003; No. 131, 2006; No. 126, 2008
S. 6AA	ad. No. 146, 2001
Part II	
Heading to Part II	rs. No. 88, 1995
S. 6A	ad. No. 81, 1977 am. No. 88, 1995

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Provision affected	How affected
S. 7	rs. No. 81, 1977 am. No. 88, 1995; No. 106, 1998
Note to s. 7(2)	ad. No. 108, 2004
S. 8	am. No. 81, 1977; No. 88, 1995
S. 8A	ad. No. 81, 1977 am. No. 88, 1995; No. 131, 2006
S. 8AB	ad. No. 108, 2004
S. 9	am. No. 81, 1977; No. 88, 1995
Heading to s. 10	rs. No. 159, 2007
S. 10	am. No. 81, 1977; No. 88, 1995; No. 159, 2007; No. 116, 2008
S. 11	am. No. 88, 1976; No. 17, 1986; No. 88, 1995; No. 159, 2007
S. 12	am. No. 88, 1976; No. 81, 1977 rs. No. 122, 1991 am. No. 146, 1999
S. 13	am. No. 88, 1976 rs. No. 81, 1977 am. No. 206, 1978; No. 88, 1995
S. 14	rs. No. 81, 1977 am. No. 88, 1995
S. 15	am. No. 81, 1977; No. 88, 1995
S. 16	am. No. 88, 1995
S. 17	am. No. 88, 1976; No. 81, 1977 rs. No. 17, 1986 am. No. 88, 1995
S. 18	am. No. 17, 1986; No. 88, 1995; No. 159, 2007
S. 19	am. No. 88, 1995; No. 159, 2007
S. 20	rep. No. 81, 1977 ad. No. 88, 1995 rep. No. 152, 1997
Ss. 21–23	rep. No. 81, 1977
S. 24	am. No. 88, 1976 rep. No. 81, 1977
S. 25	am. No. 58, 1997; No. 52, 1999; No. 134, 2003; No. 69, 2004; No. 119, 2005; No. 131, 2006; No. 138, 2007
Note to s. 25(1)	ad. No. 134, 2003
S. 26	am. No. 81, 1977 rep. No. 65, 1985 ad. No. 48, 1998 am. Nos. 31 and 55, 2001
S. 27	am. No. 63, 1984; No. 88, 1995; No. 146, 1999
S. 27A	ad. No. 88, 1995
S. 28	am. No. 88, 1976; No. 81, 1977; No. 88, 1995
S. 29	am. No. 88, 1976; No. 81, 1977; No. 17, 1986; No. 88, 1995; No. 58, 1997; No. 123, 2000; No. 134, 2003
Part IIA	
Part IIA	ad. No. 88, 1995
S. 29AA	ad. No. 60, 2006 rep. No. 45, 2007
S. 29A	ad. No. 88, 1995
S. 29B	ad. No. 88, 1995 am. No. 101, 1998; No. 60, 2006; No. 45, 2007
Note to s. 29B(2B)	am. No. 45, 2007
Ss. 29BA, 29BB	ad. No. 60, 2006 am. No. 45, 2007
Heading to s. 29BC	am. No. 45, 2007

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Provision affected	How affected
S. 29BC	ad. No. 60, 2006 am. No. 45, 2007
Ss. 29C–29F	ad. No. 88, 1995
S. 29G	ad. No. 88, 1995 am. No. 146, 1999
Ss. 29H, 29I	ad. No. 88, 1995
S. 29J	ad. No. 88, 1995 am. No. 134, 2003
Ss. 29K, 29L	ad. No. 88, 1995
S. 29M	ad. No. 88, 1995 am. No. 146, 1999
S. 29N	ad. No. 88, 1995
S. 29O	ad. No. 88, 1995 am. No. 92, 2006
Part III	
Heading to Part III	rs. No. 88, 1995
S. 29P	ad. No. 131, 2006
S. 30	am. No. 88, 1995
S. 31	am. No. 81, 1977; No. 88, 1995
Heading to s. 31A	am. No. 88, 1995
S. 31A	ad. No. 111, 1977 am. No. 88, 1995
S. 32	am. No. 88, 1995
Heading to s. 33	am. No. 88, 1995
S. 33	rs. No. 88, 1976 am. No. 81, 1977 rs. No. 111, 1977 am. No. 73, 1984; No. 43, 1996
S. 34	am. No. 80, 1982; No. 106, 1998
S. 35	am. No. 81, 1977; No. 61, 1981; No. 88, 1995
S. 36	am. No. 88, 1995
Heading to s. 39	rs. No. 131, 2006
S. 39	am. No. 131, 2006
S. 40	rs. No. 17, 1986 am. No. 123, 2000
S. 43	am. No. 88, 1995
Ss. 43A, 43B	ad. No. 88, 1995
S. 44	am. No. 81, 1977; No. 88, 1995; No. 146, 1999
S. 44A	ad. No. 206, 1978 am. No. 88, 1995; No. 146, 1999
Part IIIAA	
Part IIIAA	ad. No. 108, 2004
Division 1	
S. 44AB	ad. No. 108, 2004 am. No. 60, 2006; No. 45, 2007
Ss. 44AC, 44AD	ad. No. 108, 2004
Division 2	
Ss. 44AE–44AG	ad. No. 108, 2004
Division 3	
S. 44AH	ad. No. 108, 2004
Note to s. 44AH	am. No. 45, 2007
Ss. 44AI–44AL	ad. No. 108, 2004
Division 4	
Subdivision A	

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Provision affected	How affected
Ss. 44AM–44AZ	ad. No. 108, 2004
S. 44AAB	ad. No. 108, 2004
Subdivision B	
S. 44AAC	ad. No. 108, 2004
Subdivision C	
Ss. 44AAD, 44AAE	ad. No. 108, 2004
S. 44AAEA	ad. No. 45, 2007
Subdivision D	
S. 44AAF	ad. No. 108, 2004 am. No. 17, 2009
S. 44AAG	ad. No. 108, 2004
S. 44AAGA	ad. No. 60, 2006
Ss. 44AAH–44AAK	ad. No. 108, 2004
Part IIIA	
Part IIIA	ad. No. 88, 1995
Division 1	
S. 44AA	ad. No. 92, 2006
S. 44B	ad. No. 88, 1995 am. No. 28, 1997; No. 55, 2001; No. 134, 2003; No. 92, 2006; No. 45, 2007; No. 60, 2008; No. 17, 2009
Ss. 44C, 44D	ad. No. 88, 1995
S. 44DA	ad. No. 101, 1998
S. 44E	ad. No. 88, 1995
Division 2	
Subdivision A	
S. 44F	ad. No. 88, 1995 am. No. 92, 2006
Notes 1–3 to s. 44F(2)	ad. No. 92, 2006
S. 44G	ad. No. 88, 1995 am. No. 101, 1998; Nos. 60 and 92, 2006; No. 45, 2007
Ss. 44GA–44GC	ad. No. 92, 2006
Subdivision B	
S. 44H	ad. No. 88, 1995 am. No. 101, 1998; Nos. 60 and 92, 2006; No. 45, 2007
Note to s. 44H(1)	ad. No. 92, 2006
S. 44HA	ad. No. 92, 2006
S. 44I	ad. No. 88, 1995
S. 44J	ad. No. 88, 1995 am. No. 92, 2006
Note to s. 44J(3)	ad. No. 92, 2006
S. 44JA	ad. No. 92, 2006
S. 44K	ad. No. 88, 1995
Note to s. 44K(4)	ad. No. 92, 2006
S. 44L	ad. No. 88, 1995
Note to s. 44L(3)	ad. No. 92, 2006
Heading to Subdiv. C of Div. 2 of Part IIIA	rep. No. 92, 2006
Division 2A	
Heading to Div. 2A of Part IIIA	ad. No. 92, 2006
Subdivision A	
Heading to Subdiv. A of Div. 2A of Part IIIA	ad. No. 92, 2006

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Provision affected	How affected
S. 44M	ad. No. 88, 1995 am. No. 101, 1998; Nos. 60 and 92, 2006; No. 45, 2007
Notes 1–3 to s. 44M(3)	ad. No. 92, 2006
Subdivision B	
Heading to Subdiv. B of Div. 2A of Part IIIA	ad. No. 92, 2006
S. 44N	ad. No. 88, 1995 am. No. 101, 1998; Nos. 60 and No. 92, 2006; No. 45, 2007
Notes 1, 2 to s. 44N(1)	ad. No. 92, 2006
Note to s. 44N(3)	ad. No. 92, 2006
Subdivision C	
Subdiv. C of Div. 2A of Part IIIA	ad. No. 92, 2006
Ss. 44NA, 44NB	ad. No. 92, 2006
Subdivision D	
Subdiv. D of Div. 2A of Part IIIA	ad. No. 92, 2006
Ss. 44NC–44NG	ad. No. 92, 2006
Subdivision E	
Heading to Subdiv. E of Div. 2A of Part IIIA	ad. No. 92, 2006
S. 44O	ad. No. 88, 1995 am. No. 92, 2006
Note to s. 44O(3)	ad. No. 92, 2006
Subdivision F	
Heading to Subdiv. F of Div. 2A of Part IIIA	ad. No. 92, 2006
S. 44P	ad. No. 88, 1995 am. No. 101, 1998
Division 2B	
Div. 2B of Part IIIA	ad. No. 92, 2006
Ss. 44PA–44PH	ad. No. 92, 2006
Division 2C	
Heading to Div. 2C of Part IIIA	ad. No. 92, 2006
S. 44Q	ad. No. 88, 1995 am. No. 101, 1998; No. 92, 2006
Division 3	
Subdivision A	
S. 44R	ad. No. 88, 1995
Subdivision B	
Ss. 44S, 44T	ad. No. 88, 1995 am. No. 92, 2006
Subdivision C	
S. 44U	ad. No. 88, 1995
Ss. 44V, 44W	ad. No. 88, 1995 am. No. 92, 2006
Subhead. to s. 44X(1)	ad. No. 92, 2006
S. 44X	ad. No. 88, 1995 am. No. 92, 2006
S. 44XA	ad. No. 92, 2006
S. 44Y	ad. No. 88, 1995 am. No. 92, 2006
Subdivision D	
S. 44Z	ad. No. 88, 1995

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Provision affected	How affected
Ss. 44ZA–44ZN	ad. No. 88, 1995
S. 44ZNA	ad. No. 92, 2006
Subdivision DA	
Subdiv. DA of Div. 3 of Part IIIA	ad. No. 92, 2006
S. 44ZNB	ad. No. 92, 2006
Subdivision E	
Heading to s. 44ZO	am. No 92, 2006
S. 44ZO	ad. No. 88, 1995 am. No. 92, 2006
S. 44ZOA	ad. No. 92, 2006
Subdivision F	
Heading to Subdiv. F of Div. 3 of Part IIIA	rs. No. 92, 2006
S. 44ZP	ad. No. 88, 1995 am. No. 92, 2006
Note to s. 44ZP(3)	ad. No. 92, 2006
S. 44ZQ	ad. No. 88, 1995 am. No. 92, 2006
Ss. 44ZR–44ZT	ad. No. 88, 1995
Subdivision G	
Heading to Subdiv. G of Div. 3 of Part IIIA	rs. No. 92, 2006
Heading to s. 44ZU	am. No. 92, 2006
S. 44ZU	ad. No. 88, 1995 am. No. 92, 2006
S. 44ZUA	ad. No. 92, 2006
Division 4	
S. 44ZV	ad. No. 88, 1995
S. 44ZW	ad. No. 88, 1995 am. No. 92, 2006
S. 44ZX	ad. No. 88, 1995
Note to s. 44ZX(3)	ad. No. 92, 2006
S. 44ZY	ad. No. 88, 1995
Division 5	
S. 44ZZ	ad. No. 88, 1995
Division 6	
Heading to Div. 6 of Part IIIA	rs. No. 92, 2006
Heading to Subdiv. A of Div. 6 of Part IIIA	ad. No. 92, 2006
S. 44ZZA	ad. No. 88, 1995 am. No. 28, 1997; No. 69, 2000; No. 92, 2006
Note to s. 44ZZA(3)	ad. No. 92, 2006
Notes 1–3 to s. 44ZZA	ad. No. 92, 2006
S. 44ZZAA	ad. No. 28, 1997 am. No. 108, 2004; No. 92, 2006
Note to s. 44ZZAA(4)	ad. No. 108, 2004 rep. No. 92, 2006
Note to s. 44ZZAA(6)	ad. No. 108, 2004
Notes 1–3 to s. 44ZZAA	ad. No. 92, 2006
S. 44ZZAB	ad. No. 108, 2004
S. 44ZZB	ad. No. 88, 1995 rep. No. 92, 2006

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Provision affected	How affected
Subdivision B	
Subdiv. B of Div. 6 of Part IIIA	ad. No. 92, 2006
S. 44ZZBA	ad. No. 92, 2006
Subdivision C	
Subdiv. C of Div. 6 of Part IIIA	ad. No. 92, 2006
S. 44ZZBB	ad. No. 92, 2006
Subdivision D	
Subdiv. D of Div. 6 of Part IIIA	ad. No. 92, 2006
Ss. 44ZZBC–44ZZBE	ad. No. 92, 2006
Subdivision E	
Subdiv. E of Div. 6 of Part IIIA	ad. No. 92, 2006
S. 44ZZBF	ad. No. 92, 2006
Subdivision F	
Heading to Subdiv. F of Div. 6 of Part IIIA	ad. No. 92, 2006
S. 44ZZC	ad. No. 88, 1995 rs. No. 28, 1997 am. No. 92, 2006
Division 6A	
Div. 6A of Part IIIA	ad. No. 92, 2006
S. 44ZZCA	ad. No. 92, 2006
Division 6B	
Div. 6B of Part IIIA	ad. No. 92, 2006
Ss. 44ZZCB–44ZZCD	ad. No. 92, 2006
Division 7	
Ss. 44ZZD–44ZZI	ad. No. 88, 1995
S. 44ZZJ	ad. No. 88, 1995 am. No. 69, 2000; No. 92, 2006
S. 44ZZK	ad. No. 88, 1995
Division 8	
S. 44ZZL	ad. No. 88, 1995
S. 44ZZM	ad. No. 88, 1995 rs. No. 101, 1998; No. 134, 2003
Ss. 44ZZMA, 44ZZMB	ad. No. 134, 2003
S. 44ZZN	ad. No. 88, 1995
S. 44ZZNA	ad. No. 28, 1997
S. 44ZZO	ad. No. 88, 1995
S. 44ZZOA	ad. No. 101, 1998 rep. No. 134, 2003 ad. No. 92, 2006
S. 44ZZP	ad. No. 88, 1995 am. No. 45, 2007
S. 44ZZQ	ad. No. 88, 1995
S. 44ZZR	ad. No. 45, 2007
Part IV	
S. 45	rs. No. 81, 1977 am. No. 17, 1986; No. 222, 1992; No. 88, 1995; No. 131, 2006
S. 45A	ad. No. 81, 1977 am. No. 206, 1978; No. 88, 1995; No. 131, 2006

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Provision affected	How affected
S. 45B	ad. No. 81, 1977 am. No. 88, 1995
S. 45C	ad. No. 81, 1977 am. No. 17, 1986; No. 88, 1995
S. 45D	ad. No. 81, 1977 am. No. 207, 1978; No. 73, 1980; No. 176, 1981 rs. No. 98, 1993; No. 60, 1996
Ss. 45DA–45DC	ad. No. 60, 1996
S. 45DD	ad. No. 60, 1996 am. SLI 2006 No. 50
S. 45E	ad. No. 73, 1980 rep. No. 98, 1993 ad. No. 60, 1996
Ss. 45EA, 45EB	ad. No. 60, 1996
S. 46	rs. No. 81, 1977 am. No. 17, 1986; No. 222, 1992; No. 131, 2006; No. 159, 2007; No. 116, 2008
S. 46A	ad. No. 70, 1990 am. No. 222, 1992; No. 131, 2006
S. 46B	ad. No. 70, 1990
S. 47	am. No. 88, 1976 rs. No. 81, 1977 am. No. 206, 1978; No. 88, 1995; No. 131, 2006
S. 49	am. No. 81, 1977 rep. No. 88, 1995 ad. No. 131, 2006
S. 50	rs. No. 81, 1977 am. Nos. 8, 17 and 168, 1986; No. 49, 1991; No. 222, 1992; No. 63, 2001; No. 131, 2006
Note to s. 50(1), 50(2)	ad. No. 131, 2006
S. 50A	ad. No. 17, 1986 am. Nos. 22 and 222, 1992
S. 51	am. No. 63, 1975; No. 88, 1976; No. 81, 1977; No. 73, 1980; No. 17, 1986; No. 28, 1989; No. 70, 1990; No. 98, 1993; No. 88, 1995; No. 60, 1996; No. 63, 2002
S. 51AAA	ad. No. 88, 1995
Part IVA	
Part IVA	ad. No. 222, 1992
S. 51AAB	ad. No. 48, 1998
S. 51AA	ad. No. 222, 1992 am. No. 36, 1998
S. 51AB (formerly s. 52A)	No. 222, 1992 am. No. 116, 2008
S. 51AC	ad. No. 36, 1998 am. No. 63, 2001; No. 159, 2007; No. 116, 2008
S. 51ACAA	ad. No. 63, 2001
Part IVB	
Part IVB	ad. No. 36, 1998
S. 51ACA	ad. No. 36, 1998
Ss. 51AD, 51AE	ad. No. 36, 1998
S. 51AEA	ad. No. 63, 2001
Part V	
Division 1	
S. 51AF	ad. No. 48, 1998 am. Nos. 55 and 123, 2001
S. 51A	ad. No. 17, 1986
S. 52	am. No. 81, 1977

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Provision affected	How affected
Note to s. 52	ad. No. 106, 1998
S. 52A	ad. No. 17, 1986 am. No. 222, 1992
Renumbered s. 51AB	No. 222, 1992
S. 53	am. No. 81, 1977; No. 17, 1986; No. 20, 1988
Note to s. 53	ad. No. 106, 1998
S. 53A	ad. No. 81, 1977 am. No. 206, 1978; No. 17, 1986
S. 53B	ad. No. 206, 1978 rs. No. 17, 1986
S. 53C	ad. No. 17, 1986 rs. No. 126, 2008
S. 54	am. No. 81, 1977
S. 55A	ad. No. 81, 1977
S. 56	am. No. 81, 1977; No. 17, 1986; No. 31, 2001
S. 58	rs. No. 17, 1986
S. 59	am. No. 81, 1977; No. 17, 1986
S. 60	rs. No. 17, 1986
S. 61	am. No. 17, 1986; No. 88, 1995 rep. No. 128, 2002
S. 62	am. No. 63, 1975; No. 81, 1977; No. 206, 1978 rep. No. 17, 1986
S. 63	am. No. 63, 1975; No. 81, 1977 rep. No. 17, 1986
S. 63AA	ad. No. 151, 1977 rep. No. 17, 1986
S. 63A	ad. No. 63, 1975 am. No. 81, 1977; Nos. 17 and 168, 1986; No. 123, 2001
S. 64	am. No. 56, 1975; No. 81, 1977; No. 17, 1986; No. 88, 1995
S. 65	am. No. 17, 1986; No. 88, 1995
S. 65A	ad. No. 165, 1984 am. No. 180, 1991; No. 105, 1992
Division 1AAA	
Div. 1AAA of Part V	ad. No. 128, 2002
Ss. 65AAA–65AAE	ad. No. 128, 2002
Division 1AA	
Div. 1AA of Part V	ad. No. 106, 1998
Subdivision A	
Ss. 65AA–65AD	ad. No. 106, 1998 am. No. 31, 2001; No. 21, 2003
Ss. 65AE, 65AF	ad. No. 106, 1998
Subdivision B	
Ss. 65AG, 65AH	ad. No. 106, 1998
Ss. 65AJ–65AM	ad. No. 106, 1998
Subdivision C	
Heading to s. 65AN	am. No. 31, 2001 rs. No. 21, 2003
S. 65AN	ad. No. 106, 1998 am. No. 31, 2001; No. 21, 2003
Division 1A	
Div. 1A of Part V	ad. No. 17, 1986
Ss. 65B–65D	ad. No. 17, 1986
S. 65E	ad. No. 17, 1986 am. No. 63, 2002; No. 126, 2008

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Provision affected	How affected
S. 65F	ad. No. 17, 1986 am. No. 141, 1994; Nos. 31 and 63, 2001; No. 63, 2002
Ss. 65G, 65H	ad. No. 17, 1986
S. 65J	ad. No. 17, 1986 am. No. 88, 1995
Ss. 65K–65N	ad. No. 17, 1986
S. 65P	ad. No. 17, 1986
S. 65Q	ad. No. 17, 1986 am. No. 168, 1986; No. 141, 1994; No. 31, 2001
S. 65R	ad. No. 17, 1986 am. No. 141, 1994; Nos. 31 and 63, 2001; No. 63, 2002
S. 65S	ad. No. 17, 1986
S. 65T	ad. No. 17, 1986 am. No. 146, 1999
S. 65U	ad. No. 17, 1986 rep. No. 20, 1988
Division 2	
S. 66A	ad. No. 141, 1987
S. 68	am. No. 206, 1978; No. 17, 1986
S. 68A	ad. No. 151, 1977
S. 68B	ad. No. 146, 2002
S. 69	am. No. 88, 1995
S. 70	am. No. 81, 1977
S. 71	am. No. 81, 1977; No. 88, 1995
S. 72	am. No. 81, 1977
S. 73	rs. No. 17, 1986 am. No. 48, 1998; No. 55, 2001
Ss. 73A, 73B	ad. No. 17, 1986
S. 74	am. No. 81, 1977; No. 17, 1986; No. 88, 1995; No. 118, 2004
Division 2A	
Div. 2A of Part V	ad. No. 206, 1978
Ss. 74A–74C	ad. No. 206, 1978 am. No. 17, 1986
S. 74D	ad. No. 206, 1978 am. Nos. 17 and 168, 1986
S. 74E	ad. No. 206, 1978 am. No. 17, 1986
S. 74F	ad. No. 206, 1978 am. No. 17, 1986; No. 88, 1995
S. 74G	ad. No. 206, 1978 am. No. 17, 1986
S. 74H	ad. No. 206, 1978
S. 74J	ad. No. 206, 1978 am. No. 17, 1986; No. 11, 1990
Note to s. 74J(3)	ad. No. 113, 2004
Ss. 74K, 74L	ad. No. 206, 1978
S. 74M	ad. No. 113, 2004
Division 3	
S. 75	am. No. 88, 1995
S. 75A	ad. No. 81, 1977 am. No. 88, 1995
Part VA	
Part VA	ad. No. 106, 1992
Ss. 75AA–75AN	ad. No. 106, 1992

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Provision affected	How affected
S. 75AO	ad. No. 106, 1992
Note to s. 75AO(2)	ad. No. 113, 2004
S. 75AP	ad. No. 106, 1992
Heading to s. 75AQ	am. No. 88, 1995
Ss. 75AQ, 75AR	ad. No. 106, 1992
S. 75AS	ad. No. 106, 1992 am. No. 106, 1998; No. 194, 1999
Part VB	
Part VB	ad. No. 61, 1999
S. 75AT	ad. No. 61, 1999 am. No. 176, 1999; No. 101, 2006
S. 75AU	ad. No. 61, 1999 am. No. 176, 1999
Ss. 75AV–75AX	ad. No. 61, 1999
S. 75AY	ad. No. 61, 1999 am. No. 146, 2001
Notes 1, 2 to s. 75AY	ad. No. 146, 2001
S. 75AYA	ad. No. 69, 2000
S. 75AZ	ad. No. 61, 1999
Part VC	
Part VC	ad. No. 31, 2001
Division 1	
S. 75AZA	ad. No. 31, 2001 am. Nos. 55 and 123, 2001
S. 75AZAA	ad. No. 126, 2008
Division 2	
S. 75AZB	ad. No. 31, 2001
Ss. 75AZC, 75AZD	ad. No. 31, 2001 am. No. 117, 2001
Notes 1, 2 to s. 75AZD(2)	ad. No. 117, 2001
Notes 1, 2 to s. 75AZD(3)	ad. No. 117, 2001
S. 75AZE	ad. No. 31, 2001 am. No. 117, 2001
Heading to s. 75AZF	am. No. 126, 2008
S. 75AZF	ad. No. 31, 2001 am. No. 117, 2001; No. 126, 2008
S. 75AZG	ad. No. 31, 2001 am. No. 117, 2001
Notes 1, 2 to s. 75AZG(1)	ad. No. 117, 2001
S. 75AZH	ad. No. 31, 2001 am. No. 117, 2001
S. 75AZI	ad. No. 31, 2001 am. No. 117, 2001
S. 75AZJ	ad. No. 31, 2001 am. No. 117, 2001
S. 75AZK	ad. No. 31, 2001 am. No. 117, 2001
S. 75AZL	ad. No. 31, 2001 am. No. 117, 2001
Notes 1, 2 to s. 75AZL(1)	ad. No. 117, 2001
Notes 1, 2 to s. 75AZL(3)	ad. No. 117, 2001
S. 75AZM	ad. No. 31, 2001 am. No. 117, 2001
S. 75AZN	ad. No. 31, 2001 am. No. 117, 2001

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Provision affected	How affected
Notes 1, 2 to s. 75AZN	ad. No. 117, 2001
S. 75AZO	ad. No. 31, 2001 am. No. 117, 2001 rs. No. 128, 2002
Notes 1, 2 to s. 75AZO(1)	ad. No. 117, 2001
Notes 1, 2 to s. 75AZO(2)	ad. No. 117, 2001
Notes 1, 2 to s. 75AZO(3)	ad. No. 117, 2001
Ss. 75AZP, 75AZQ	ad. No. 31, 2001 am. No. 117, 2001
S. 75AZR	ad. No. 31, 2001
Division 3	
S. 75AZS	ad. No. 31, 2001 am. No. 117, 2001
Notes 1, 2 to s. 75AZS(1)	ad. No. 117, 2001
Note 3 to s. 75AZS(1)	ad. No. 126, 2008
S. 75AZT	ad. No. 31, 2001 am. No. 117, 2001
Notes 1, 2 to s. 75AZT(1)	ad. No. 117, 2001
Note 3 to s. 75AZT(1)	ad. No. 126, 2008
S. 75AZU	ad. No. 31, 2001 am. No. 117, 2001
Part VI	
S. 75B	ad. No. 81, 1977 am. No. 23, 1987; No. 222, 1992; No. 36, 1998; No. 61, 1999; No. 69, 2000; No. 31, 2001; No. 131, 2006
S. 76	am. No. 88, 1976; No. 81, 1977; No. 207, 1978; No. 73, 1980; No. 222, 1992; No. 98, 1993; No. 60, 1996; No. 58, 1997; No. 61, 1999; No. 69, 2000; No. 131, 2006
Heading to s. 76A	am. No. 131, 2006
S. 76A	ad. No. 69, 2000 am. No. 131, 2006
Heading to s. 76B	am. No. 131, 2006
S. 76B	ad. No. 69, 2000 am. No. 131, 2006
Ss. 76C, 76D	ad. No. 131, 2006
S. 77	am. No. 88, 1976; No. 88, 1995
Ss. 77A–77C	ad. No. 131, 2006
Heading to s. 78	am. No. 61, 1999; No. 69, 2000; No. 31, 2001
S. 78	am. No. 61, 1999; No. 69, 2000; No. 31, 2001
Heading to s. 79	am. No. 31, 2001
S. 79	am. No. 81, 1977; No. 17, 1986; No. 222, 1992; Nos. 31 and 63, 2001
Notes 1, 2 to s. 79(1)	ad. No. 63, 2001
S. 79A	ad. No. 17, 1986 am. No. 31, 2001; No. 131, 2006
S. 79B	ad. No. 63, 2001 am. No. 63, 2001 (as am. by No. 63, 2002)
S. 80	am. No. 88, 1976; No. 81, 1977; No. 39, 1983; No. 17, 1986; No. 222, 1992; No. 88, 1995; No. 60, 1996; No. 36, 1998; No. 61, 1999; No. 69, 2000; No. 31, 2001
S. 80AA	ad. No. 73, 1980 am. No. 39, 1983; No. 87, 1988 (as am. by No. 108, 1990) rep. No. 98, 1993 ad. No. 60, 1996 rep. SLI 2006 No. 50
S. 80AB	ad. No. 60, 1996

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Provision affected	How affected
	am. SLI 2006 No. 50
S. 80AC	ad. No. 131, 2006
S. 80A	ad. No. 81, 1977 am. No. 39, 1983; No. 17, 1986; No. 222, 1992; No. 88, 1995; No. 36, 1998 rep. No. 63, 2001
S. 80B	ad. No. 61, 1999
Heading to s. 81	am. No. 131, 2006
S. 81	am. No. 88, 1976 rs. No. 81, 1977 am. No. 17, 1986; No. 222, 1992; No. 88, 1995
S. 81A	ad. No. 131, 2006
S. 82	rs. No. 81, 1977 am. No. 17, 1986; No. 222, 1992; No. 36, 1998; No. 63, 2001; Nos. 103 and 118, 2004; No. 11, 2006
Note to s. 82(2)	ad. No. 113, 2004
S. 83	rs. No. 81, 1977 am. No. 222, 1992; No. 36, 1998; Nos. 31 and 63, 2001
S. 84	rs. No. 17, 1986 am. No. 70, 1990; No. 222, 1992; No. 36, 1998; No. 61, 1999; Nos. 31 and 146, 2001
S. 85	am. No. 81, 1977; No. 17, 1986; No. 88, 1995; No. 31, 2001; No. 128, 2002
Note to s. 85(1)	ad. No. 31, 2001
Note to s. 85(3)	ad. No. 31, 2001
Note to s. 85(4)	ad. No. 31, 2001
S. 86	rs. No. 23, 1987 am. No. 222, 1992; Nos. 36 and 106, 1998; No. 194, 1999; No. 57, 2000; No. 23, 2006; No. 116, 2008
Heading to s. 86AA	am. No. 23, 2006
S. 86AA	ad. No. 194, 1999 am. No. 161, 2000; No. 23, 2006
Note to s. 86AA	am. No. 161, 2000
S. 86A	ad. No. 23, 1987 am. No. 222, 1992; Nos. 36 and 106, 1998
S. 86B	ad. No. 8, 1988 am. No. 222, 1992; No. 106, 1998
S. 86C	ad. No. 63, 2001 am. No. 63, 2001; No. 131, 2006
S. 86D	ad. No. 63, 2001 am. No. 63, 2001
S. 86E	ad. No. 131, 2006
S. 87	am. No. 81, 1977; No. 39, 1983; Nos. 17 and 168, 1986; No. 222, 1992; No. 49, 1994; No. 88, 1995; No. 36, 1998; Nos. 31 and 63, 2001; No. 118, 2004; No. 11, 2006
Note to s. 87(6)	ad. No. 113, 2004
S. 87A	ad. No. 17, 1986 am. No. 222, 1992; Nos. 31 and 146, 2001
S. 87AA	ad. No. 60, 1996 am. SLI 2006 No. 50
S. 87AB	ad. No. 118, 2004
S. 87B	ad. No. 222, 1992 am. No. 131, 2006
S. 87C	ad. No. 141, 1994
S. 87CA	ad. No. 63, 2001
S. 87CAA	ad. No. 113, 2004

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Provision affected	How affected
Part VIA	
Part VIA	ad. No. 103, 2004
Ss. 87CB–87CI	ad. No. 103, 2004
Part VIB	
Part VIB	ad. No. 113, 2004
Division 1	
Ss. 87D, 87E	ad. No. 113, 2004
Division 2	
Ss. 87F–87H	ad. No. 113, 2004
Ss. 87J, 87K	ad. No. 113, 2004
Division 3	
Ss. 87L–87N	ad. No. 113, 2004
Ss. 87P–87T	ad. No. 113, 2004
Division 4	
Ss. 87U, 87V	ad. No. 113, 2004
Division 5	
Ss. 87W, 87X	ad. No. 113, 2004
Division 6	
Ss. 87Y, 87Z	ad. No. 113, 2004
Ss. 87ZA, 87ZB	ad. No. 113, 2004
Division 7	
S. 87ZC	ad. No. 113, 2004
Part VII	
Heading to Part VII	am. No. 81, 1977; No. 206, 1978 rs. No. 131, 2006
Division 1	
Heading to Div. 1 of Part VII	rs. No. 131, 2006
S. 87D	ad. No. 101, 1998
Renumbered s. 87ZD	No. 113, 2004
S. 87ZD	am. No. 131, 2006
S. 88	rs. No. 81, 1977 am. Nos. 206 and 207, 1978; No. 73, 1980; No. 17, 1986; No. 222, 1992; No. 98, 1993; No. 88, 1995; No. 60, 1996; No. 101, 1998; No. 131, 2006
Heading to s. 89	am. No. 101, 1998
S. 89	am. No. 88, 1976; No. 81, 1977; No. 17, 1986; No. 222, 1992; No. 88, 1995; No. 101, 1998; No. 131, 2006
S. 90	am. No. 88, 1976; No. 81, 1977; No. 206, 1978; No. 73, 1980; No. 17, 1986; No. 11, 1990; No. 222, 1992; No. 98, 1993; No. 88, 1995; No. 60, 1996; No. 131, 2006
Note to s. 90(2)	ad. No. 108, 2004
Note to s. 90(5)	ad. No. 108, 2004
S. 90A	ad. No. 81, 1977 am. No. 17, 1986; No. 88, 1995
S. 90B	ad. No. 108, 2004 am. No. 60, 2006
Heading to s. 91	am. No. 101, 1998
S. 91	am. No. 81, 1977; No. 17, 1986; No. 101, 1998
S. 91A	ad. No. 101, 1998 am. No. 131, 2006
Note to s. 91A(2)	ad. No. 108, 2004
S. 91B	ad. No. 101, 1998 am. No. 131, 2006
Note to s. 91B(2)	ad. No. 108, 2004

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Provision affected	How affected
S. 91C	ad. No. 101, 1998 am. No. 131, 2006
Note to s. 91C(2)	ad. No. 108, 2004
Note to s. 91C(5)	ad. No. 108, 2004
Division 2	
Heading to Div. 2 of Part VII	rs. No. 81, 1977 am. No. 206, 1978
S. 92	rep. No. 81, 1977
Subdivision A	
Heading to Subdiv. A of Div. 2 of Part VII	ad. No. 131, 2006
S. 93	rs. No. 81, 1977 am. No. 206, 1978; No. 17, 1986; No. 88, 1995; No. 131, 2006
Subdivision B	
Subdiv. B of Div. 2 of Part VII	ad. No. 131, 2006
Ss. 93AA–93AF	ad. No. 131, 2006
Subdivision C	
Heading to Subdiv. C of Div. 2 of Part VII	ad. No. 131, 2006
Heading to s. 93A	am. No. 131, 2006
S. 93A	ad. No. 81, 1977 am. No. 88, 1995; No. 131, 2006
S. 94	rep. No. 81, 1977
Subdivision D	
Heading to Subdiv. D of Div. 2 of Part VII	ad. No. 131, 2006
S. 95	rs. No. 81, 1977 am. No. 17, 1986; No. 222, 1992; No. 88, 1995; No. 36, 1998; No. 131, 2006
Division 3	
Div. 3 of Part VII	ad. No. 131, 2006
Subdivision A	
Ss. 95AA, 95AB	ad. No. 131, 2006
Subdivision B	
Ss. 95AC–95AS	ad. No. 131, 2006
Subdivision C	
Ss. 95AT–95AZ	ad. No. 131, 2006
S. 95AZA	ad. No. 131, 2006
Ss. 95AZC–95AZE	ad. No. 131, 2006
S. 95AZEA	ad. No. 131, 2006
S. 95AZF	ad. No. 131, 2006
S. 95AZFA	ad. No. 131, 2006
Ss. 95AZG–95AZM	ad. No. 131, 2006
Subdivision D	
S. 95AZN	ad. No. 131, 2006
Part VIIA	
Part VIIA	ad. No. 134, 2003
Division 1	
Ss. 95A–95F	ad. No. 134, 2003
Division 2	
S. 95G	ad. No. 134, 2003
Division 3	

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Provision affected	How affected
Subdivision A	
S. 95H	ad. No. 134, 2003
Ss. 95J–95N	ad. No. 134, 2003
Subdivision B	
Ss. 95P, 95Q	ad. No. 134, 2003
Subdivision C	
Ss. 95R–95W	ad. No. 134, 2003
Division 4	
Ss. 95X–95Z	ad. No. 134, 2003
Ss. 95ZA–95ZD	ad. No. 134, 2003
Division 5	
Ss. 95ZE–95ZG	ad. No. 134, 2003
Division 6	
Ss. 95ZH–95ZQ	ad. No. 134, 2003
Part VIII	
S. 96	am. No. 88, 1995
S. 96A	ad. No. 88, 1995
S. 97	am. No. 88, 1995
S. 100	am. No. 88, 1976; No. 88, 1995
Part IX	
Division 1	
Heading to Div. 1 of Part IX	rs. No. 131, 2006
S. 101	am. No. 88, 1976; No. 81, 1977; No. 17, 1986; No. 88, 1995; No. 101, 1998; No. 131, 2006
Heading to s. 101A	am. No. 131, 2006
S. 101A	ad. No. 81, 1977 am. No. 88, 1995; No. 131, 2006
S. 102	rs. No. 81, 1977 am. No. 222, 1992; No. 88, 1995; No. 101, 1998; No. 131, 2006
Division 2	
S. 102A	ad. No. 131, 2006
S. 103	am. No. 131, 2006
S. 104	am. No. 88, 1995
S. 109	am. No. 81, 1977; No. 88, 1995; No. 131, 2006
S. 110	am. No. 88, 1976
Division 3	
Div. 3 of Part IX	ad. No. 131, 2006
S. 111	am. No. 88, 1976 rep. No. 34, 1989 ad. No. 131, 2006
Ss. 112–119	rep. No. 34, 1989 ad. No. 131, 2006
Part X	
Part X	rs. No. 34, 1989
Division 1	
S. 10.01	ad. No. 34, 1989 am. No. 123, 2000
S. 10.01A	ad. No. 123, 2000
S. 10.02	ad. No. 34, 1989 am. No. 173, 1991; No. 123, 2000
S. 10.02A	ad. No. 123, 2000 am. No. 109, 2006

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Provision affected	How affected
S. 10.03	ad. No. 34, 1989 am. No. 123, 2000; No. 109, 2006
Division 2	
S. 10.04	ad. No. 34, 1989
S. 10.05	ad. No. 34, 1989 rep. No. 123, 2000
Division 3	
Heading to s. 10.06	am. No. 123, 2000
S. 10.06	ad. No. 34, 1989 am. No. 123, 2000
Ss. 10.07, 10.08	ad. No. 34, 1989 am. No. 123, 2000
S. 10.09	ad. No. 34, 1989
Division 4	
S. 10.10	ad. No. 34, 1989
S. 10.11	ad. No. 34, 1989 am. No. 123, 2000
S. 10.12	ad. No. 34, 1989
S. 10.13	ad. No. 34, 1989 am. No. 123, 2000
Division 5	
Subdivision A	
S. 10.14	ad. No. 34, 1989 rs. No. 123, 2000
S. 10.15	ad. No. 34, 1989 am. No. 123, 2000
S. 10.15A	ad. No. 123, 2000 rep. No. 123, 2000
Ss. 10.16, 10.17	ad. No. 34, 1989 am. No. 123, 2000
S. 10.17A	ad. No. 173, 1991 rs. No. 123, 2000
S. 10.18	ad. No. 34, 1989 am. No. 123, 2000
S. 10.18A	ad. No. 173, 1991 rs. No. 123, 2000
Subdivision B	
S. 10.19	ad. No. 34, 1989 am. No. 123, 2000
Heading to s. 10.20	am. No. 123, 2000
S. 10.20	ad. No. 34, 1989 am. No. 123, 2000
S. 10.21	ad. No. 34, 1989
S. 10.21A	ad. No. 123, 2000 rep. No. 123, 2000
Subdiv. C of Div. 5 of Part X	rep. No. 123, 2000
Ss. 10.22, 10.23	ad. No. 34, 1989 rep. No. 123, 2000
Subdivision D	
S. 10.24	ad. No. 34, 1989 am. No. 123, 2000
S. 10.24A	ad. No. 123, 2000 am. No. 7, 2003

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Provision affected	How affected
Division 6	
Subdivision A	
Ss. 10.25, 10.26	ad. No. 34, 1989
S. 10.27	ad. No. 34, 1989 am. No. 173, 1991; No. 123, 2000
S. 10.27A	ad. No. 123, 2000
Ss. 10.28, 10.29	ad. No. 34, 1989 am. No. 123, 2000
Subdivision B	
Ss. 10.30, 10.31	ad. No. 34, 1989
S. 10.32	ad. No. 34, 1989 am. No. 173, 1991
S. 10.33	ad. No. 34, 1989 am. No. 123, 2000
Subdivision C	
Ss. 10.34–10.36	ad. No. 34, 1989
S. 10.37	ad. No. 34, 1989 am. No. 123, 2000
S. 10.38	ad. No. 34, 1989
Subdivision D	
S. 10.39	ad. No. 34, 1989 am. No. 173, 1991
S. 10.40	ad. No. 34, 1989 am. No. 123, 2000
Division 7	
S. 10.41	ad. No. 34, 1989 am. No. 123, 2000
S. 10.42	ad. No. 34, 1989 am. No. 173, 1991
S. 10.43	ad. No. 34, 1989 am. No. 123, 2000
Division 8	
Ss. 10.44–10.47	ad. No. 34, 1989 am. No. 123, 2000
Heading to s. 10.48	am. No. 123, 2000
S. 10.48	ad. No. 34, 1989 am. No. 123, 2000
S. 10.49	ad. No. 34, 1989
S. 10.49A	ad. No. 123, 2000
Division 9	
Heading to s. 10.50	am. No. 123, 2000
S. 10.50	ad. No. 34, 1989 am. No. 123, 2000
Ss. 10.51–10.53	ad. No. 34, 1989 am. No. 123, 2000
Division 10	
S. 10.54	ad. No. 34, 1989
Ss. 10.55, 10.56	ad. No. 34, 1989 am. No. 123, 2000
S. 10.57	ad. No. 34, 1989
S. 10.58	ad. No. 34, 1989 am. No. 123, 2000
Ss. 10.59, 10.60	ad. No. 34, 1989
Division 11	
S. 10.61	ad. No. 34, 1989

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Provision affected	How affected
S. 10.62	ad. No. 34, 1989 am. No. 123, 2000
Heading to s. 10.63	rs. No. 123, 2000
S. 10.63	ad. No. 34, 1989 am. No. 123, 2000
S. 10.64	ad. No. 34, 1989 am. No. 123, 2000
S. 10.65	ad. No. 34, 1989
Ss. 10.66, 10.67	ad. No. 34, 1989 am. No. 123, 2000
Division 12	
Ss. 10.68–10.72	ad. No. 34, 1989
Division 12A	
Div. 12A of Part X	ad. No. 123, 2000
S. 10.72A	ad. No. 123, 2000 am. No. 123, 2000; No. 109, 2006
Note to s. 10.72A(1)	am. No. 109, 2006
Ss. 10.72B–10.72D	ad. No. 123, 2000
Division 13	
Ss. 10.73–10.76	ad. No. 34, 1989
Division 14	
Ss. 10.77–10.79	ad. No. 34, 1989
S. 10.80	ad. No. 34, 1989 am. No. 146, 1999
S. 10.81	ad. No. 34, 1989 am. No. 123, 2000
S. 10.82	ad. No. 34, 1989
Division 14A	
Div. 14A of Part X	ad. No. 123, 2000
Ss. 10.82A–10.82C	ad. No. 123, 2000
Division 14B	
Div. 14B of Part X	ad. No. 123, 2000
Ss. 10.82D–10.82G	ad. No. 123, 2000
Division 15	
Ss. 10.83–10.86	ad. No. 34, 1989
Ss. 10.87, 10.88	ad. No. 34, 1989 am. No. 123, 2000
S. 10.89	ad. No. 34, 1989
S. 10.90	ad. No. 34, 1989 am. No. 173, 1991; No. 123, 2000
Heading to s. 10.91	am. No. 131, 2006
S. 10.91	ad. No. 34, 1989 am. No. 131, 2006
Ss. 10.92, 10.93	ad. No. 34, 1989 rep. No. 123, 2000
Ss. 120–136	rep. No. 34, 1989
S. 137	am. No. 88, 1976 rep. No. 34, 1989
Ss. 138, 139	rep. No. 34, 1989
S. 140	am. No. 88, 1976 rep. No. 34, 1989
Ss. 141–146	rep. No. 34, 1989
Part XI	rep. No. 88, 1995
Ss. 147, 148	rep. No. 88, 1995

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Provision affected	How affected
S. 149	am. No. 88, 1976; No. 81, 1977 rep. No. 88, 1995
S. 150	rep. No. 173, 1991
Part XIA	
Part XIA	ad. No. 88, 1995
S. 150A	ad. No. 88, 1995 am. No. 61, 1999; No. 131, 2006
Ss. 150B, 150C	ad. No. 88, 1995
Heading to s. 150D	am. No. 57, 2000
S. 150D	ad. No. 88, 1995 am. No. 57, 2000
S. 150E	ad. No. 88, 1995
S. 150F	ad. No. 88, 1995 rs. No. 131, 2006
Ss. 150FA, 150FB	ad. No. 131, 2006
Ss. 150G–150I	ad. No. 88, 1995
S. 150J	ad. No. 88, 1995 am. No. 131, 2006
S. 150K	ad. No. 88, 1995
Part XIAA	
Part XIAA	ad. No. 61, 1999
Ss. 150L–150N	ad. No. 61, 1999
Heading to s. 150O	am. No. 57, 2000
S. 150O	ad. No. 61, 1999 am. No. 57, 2000
Ss. 150P–150T	ad. No. 61, 1999
S. 151	rep. No. 173, 1991
Part XIB	
Part XIB	ad. No. 58, 1997
Division 1	
S. 151AA	ad. No. 58, 1997 am. No. 52, 1999; No. 140, 2002
S. 151AB	ad. No. 58, 1997 am. No. 52, 1999; No. 140, 2002; No. 45, 2005
Ss. 151AC–151AG	ad. No. 58, 1997
S. 151AH	ad. No. 58, 1997 am. No. 159, 2007
S. 151AI	ad. No. 58, 1997
Division 2	
S. 151AJ	ad. No. 58, 1997 am. No. 200, 1997; No. 52, 1999; No. 131, 2006; No. 159, 2007
S. 151AK	ad. No. 58, 1997
Division 3	
Subdivision A	
S. 151AKA	ad. No. 52, 1999 am. No. 140, 2002
Heading to s. 151AL	am. No. 52, 1999
S. 151AL	ad. No. 58, 1997 am. No. 200, 1997; No. 52, 1999
S. 151AM	ad. No. 58, 1997 am. No. 200, 1997
S. 151AN	ad. No. 58, 1997 am. No. 200, 1997; No. 52, 1999
Heading to s. 151AO	am. No. 52, 1999

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Provision affected	How affected
S. 151AO	ad. No. 58, 1997 am. No. 52, 1999
Ss. 151AOA, 151AOB	ad. No. 52, 1999
S. 151AP	ad. No. 58, 1997 am. No. 140, 2002
S. 151AQ	ad. No. 58, 1997
S. 151AQA	ad. No. 52, 1999 am. No. 194, 1999
Subhead. to s. 151AQB(3)	ad. No. 140, 2002
Subhead. to s. 151AQB(5)	ad. No. 140, 2002
S. 151AQB	ad. No. 52, 1999 am. No. 46, 2001; No. 140, 2002
S. 151AR	ad. No. 58, 1997
Subdivision B	
Ss. 151AS, 151AT	ad. No. 58, 1997
S. 151AU	am. No. 140, 2002
Ss. 151AV–151AX	ad. No. 58, 1997
Heading to s. 151AY	am. No. 131, 2006
S. 151AY	ad. No. 58, 1997 am. No. 131, 2006
S. 151AZ	ad. No. 58, 1997
Ss. 151BA–151BH	ad. No. 58, 1997
S. 151BI	ad. No. 58, 1997 rep. No. 146, 2001
Subdivision C	
S. 151BJ	ad. No. 58, 1997
Division 4	
Ss. 151BK–151BR	ad. No. 58, 1997
S. 151BS	ad. No. 58, 1997 rep. No. 146, 2001
S. 151BT	ad. No. 58, 1997
Division 5	
S. 151BTA	ad. No. 58, 1997 am. No. 146, 2001
Division 6	
Heading to Div. 6 of Part XIB	rs. No. 52, 1999
S. 151BU	ad. No. 58, 1997 am. No. 52, 1999
Note to s. 151BU(4)	rep. No. 52, 1999
S. 151BUAA	ad. No. 140, 2002
S. 151BUAAA	ad. No. 140, 2002
S. 151BUAB	ad. No. 140, 2002
Ss. 151BUA–151BUC	ad. No. 52, 1999 am. No. 52, 1999; No. 146, 2001
S. 151BUD	ad. No. 52, 1999
Ss. 151BUDA–151BUDC	ad. No. 140, 2002
Ss. 151BUE, 151BUF	ad. No. 52, 1999
S. 151BV	ad. No. 58, 1997 am. No. 146, 2001
Division 7	
Heading to Div. 7 of Part XIB	rs. No. 52, 1999
Heading to s. 151BW	am. No. 52, 1999
S. 151BW	ad. No. 58, 1997

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Provision affected	How affected
	am. No. 52, 1999
Heading to s. 151BX	am. No. 52, 1999
S. 151BX	ad. No. 58, 1997 am. No. 52, 1999; No. 119, 2005
S. 151BY	ad. No. 58, 1997 am. No. 52, 1999
Heading to s. 151BZ	am. No. 52, 1999
S. 151BZ	ad. No. 58, 1997 am. No. 52, 1999; No. 146, 2001
Ss. 151CA–151CC	ad. No. 58, 1997 am. No. 52, 1999
S. 151CD	ad. No. 58, 1997
S. 151CE	ad. No. 58, 1997 am. No. 52, 1999
S. 151CF	ad. No. 58, 1997
Division 8	
S. 151CG	ad. No. 58, 1997
Division 9	
S. 151CH	ad. No. 58, 1997
Division 10	
S. 151CI	ad. No. 58, 1997 am. No. 52, 1999
Subhead. to s. 151CJ(3)	ad. No. 140, 2002
S. 151CJ	ad. No. 58, 1997 am. No. 140, 2002
S. 151CK	ad. No. 58, 1997
Division 11	
S. 151CL	ad. No. 58, 1997
Division 12	
S. 151CM	ad. No. 58, 1997 am. No. 52, 1999; No. 46, 2001
Division 12A	
Div. 12A of Part XIB	ad. No. 52, 1999
Ss. 151CMA–151CMC	ad. No. 52, 1999
Division 13	
S. 151CN	ad. No. 58, 1997
Division 14	
Div. 14 of Part XIB	ad. No. 119, 2005
S. 151CP	ad. No. 119, 2005
S. 152	rep. No. 173, 1991
Part XIC	
Part XIC	ad. No. 58, 1997
Division 1	
S. 152AA	ad. No. 58, 1997 am. No. 140, 2002
S. 152AB	ad. No. 58, 1997 am. No. 119, 2005
S. 152AC	ad. No. 58, 1997 am. No. 52, 1999; No. 140, 2002; Nos. 45 and 119, 2005
Ss. 152AD–152AH	ad. No. 58, 1997
S. 152AI	ad. No. 58, 1997 rep. No. 140, 2002
Ss. 152AJ, 152AK	ad. No. 58, 1997

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Provision affected	How affected
Division 2	
S. 152AL	ad. No. 58, 1997 am. No. 140, 2002; No. 7, 2008
S. 152ALA	ad. No. 140, 2002 am. No. 7, 2008
S. 152AM	ad. No. 58, 1997 am. No. 140, 2002; No. 45, 2005
S. 152AN	ad. No. 58, 1997 am. No. 52, 1999; No. 140, 2002
S. 152AO	ad. No. 58, 1997 am. No. 140, 2002; No.119, 2005
S. 152AP	ad. No. 58, 1997 rep. No. 140, 2002
S. 152AQ	ad. No. 58, 1997 am. No. 140, 2002
S. 152AQA	ad. No. 124, 2001 am. No. 140, 2002
Subhead. to s. 152AQB(6)	am. No. 45, 2005
S. 152AQB	ad. No. 140, 2002 am. No. 45, 2005
S. 152AQC	ad. No. 7, 2008
Division 3	
S. 152AR	ad. No. 58, 1997 am. No. 140, 2002
Heading to s. 152AS	am. No. 140, 2002
S. 152AS	ad. No. 58, 1997
Note to s. 152AS(2)	ad. No. 119, 2005
Note to s. 152AS	ad. No. 119, 2005
S. 152ASA	ad. No. 140, 2002
Note to s. 152ASA(2)	ad. No. 119, 2005
Note to s. 152ASA	ad. No. 119, 2005
Heading to s. 152AT	am. No. 140, 2002
Subhead. to s. 152AT(1)	ad. No. 140, 2002
Subhead. to s. 152AT(3)	ad. No. 140, 2002
Subhead. to s. 152AT(4)	ad. No. 140, 2002
Subhead. to s. 152AT(5)	ad. No. 140, 2002
Subhead. to s. 152AT(8)	ad. No. 140, 2002
Subhead. to s. 152AT(9)	ad. No. 140, 2002
S. 152AT	ad. No. 58, 1997 am. No. 140, 2002; No. 119, 2005
Note to s. 152AT(5)	ad. No. 119, 2005
S. 152ATA	ad. No. 140, 2002 am. No. 119, 2005
Note to s. 152ATA(4)	ad. No. 119, 2005
S. 152AU	ad. No. 58, 1997 am. No. 140, 2002; No. 119, 2005
S. 152AV	ad. No. 58, 1997 am. No. 140, 2002
S. 152AW	ad. No. 58, 1997 rs. No. 140, 2002
S. 152AX	ad. No. 58, 1997 am. No. 140, 2002
S. 152AXA	ad. No. 140, 2002
S. 152AY	ad. No. 58, 1997
S. 152AYA	ad. No. 52, 1999

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Provision affected	How affected
S. 152AZ	ad. No. 58, 1997 am. No. 52, 1999
S. 152BA	ad. No. 58, 1997 am. No. 52, 1999
S. 152BB	ad. No. 58, 1997 am. No. 52, 1999; No. 119, 2005
S. 152BBAA	ad. No. 119, 2005
Ss. 152BBA–152BBC	ad. No. 52, 1999
S. 152BBD	ad. No. 124, 2001
Division 4	
Subdiv. A of Div. 4 of Part XIC	rep. No. 140, 2002
Ss. 152BC–152BI	ad. No. 58, 1997 rep. No. 140, 2002
Heading to Subdiv. B of Div. 4 of Part XIC	rep. No. 140, 2002
S. 152BJ	ad. No. 58, 1997 rs. No. 140, 2002
Heading to s. 152BK	am. No. 140, 2002
S. 152BK	ad. No. 58, 1997 am. No. 140, 2002
Heading to s. 152BL	am. No. 140, 2002
S. 152BL	ad. No. 58, 1997 am. No. 140, 2002
Heading to s. 152BM	am. No. 45, 2005
S. 152BM	ad. No. 58, 1997 am. No. 140, 2002; No. 45, 2005
Heading to s. 152BN	am. No. 140, 2002; No. 45, 2005
S. 152BN	ad. No. 58, 1997 am. No. 140, 2002; No. 45, 2005
S. 152BO	ad. No. 58, 1997 rep. No. 140, 2002
Subdiv. C of Div. 4 of Part XIC	rep. No. 140, 2002
Ss. 152BP, 152BQ	ad. No. 58, 1997 rep. No. 140, 2002
Heading to Subdiv. D of Div. 4 of Part XIC	rep. No. 140, 2002
S. 152BR	ad. No. 58, 1997 am. No. 140, 2002
Division 5	
Subdivision A	
Heading to Subdiv. A of Div. 5 of Part XIC	ad. No. 140, 2002
Heading to s. 152BS	am. No. 140, 2002
S. 152BS	ad. No. 58, 1997 am. No. 140, 2002
Note to s. 152BS(1)	ad. No. 140, 2002
S. 152BT	ad. No. 58, 1997 am. No. 140, 2002; No. 119, 2005
Subhead. to s. 152BU(2)	ad. No. 140, 2002
Subhead. to s. 152BU(3)	ad. No. 140, 2002
S. 152BU	ad. No. 58, 1997 am. No. 140, 2002; No. 119, 2005
Ss. 152BV–152BX	ad. No. 58, 1997 am. No. 140, 2002

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Provision affected	How affected
Subhead. to s. 152BY(3)	ad. No. 140, 2002
Subhead. to s. 152BY(5)	ad. No. 140, 2002
Ss. 152BY, 152BZ	ad. No. 58, 1997 am. No. 140, 2002; No. 119, 2005
Ss. 152CA, 152CB	ad. No. 58, 1997 am. No. 140, 2002
Subdivision B	
Subdiv. B of Div. 5 of Part XIC	ad. No. 140, 2002
S. 152CBA	ad. No. 140, 2002
Ss. 152CBB, 152CBC	ad. No. 140, 2002 am. No. 119, 2005
Ss. 152CBD–152CBF	ad. No. 140, 2002
Ss. 152CBG, 152CBH	ad. No. 140, 2002 am. No. 119, 2005
Ss. 152CBI, 152CBJ	ad. No. 140, 2002
Subdivision C	
Heading to Subdiv. C of Div. 5 of Part XIC	ad. No. 140, 2002
S. 152CC	ad. No. 58, 1997
S. 152CD	ad. No. 58, 1997 am. No. 140, 2002
S. 152CDA	ad. No. 119, 2005
S. 152CE	ad. No. 58, 1997 am. No. 140, 2002
S. 152CF	ad. No. 58, 1997 rs. No. 140, 2002
S. 152CG	ad. No. 58, 1997 am. No. 140, 2002
Ss. 152CGA, 152CGB	ad. No. 140, 2002
Division 6	
S. 152CH	ad. No. 58, 1997
Note 1 to s. 152CH(1)	rep. No. 140, 2002
Notes 1A, 1B to s. 152CH(1)	ad. No. 140, 2002
Note 2 to s. 152CH(1)	am. No. 140, 2002
Note 3 to s. 152CH(1)	am. No. 140, 2002
Note 3A to s. 152CH(1)	ad. No. 140, 2002
Note 5 to s. 152CH(1)	am. No. 140, 2002
S. 152CI	ad. No. 58, 1997 am. No. 140, 2002
S. 152CJ	ad. No. 58, 1997
Division 7	
S. 152CK	ad. No. 58, 1997 am. No. 140, 2002
Division 8	
Subdivision A	
S. 152CL	ad. No. 58, 1997 am. No. 52, 1999
S. 152CLA	ad. No. 124, 2001 am. No. 140, 2002; No. 119, 2005
Note to s. 152CLA	am. No. 140, 2002
Subdivision B	
S. 152CM	ad. No. 58, 1997
Subhead. to s. 152CN(3)	ad. No. 124, 2001

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Provision affected	How affected
S. 152CN	ad. No. 58, 1997 am. No. 52, 1999; No. 124, 2001
Subdivision C	
Ss. 152CO, 152CP	ad. No. 58, 1997
S. 152CPA	ad. No. 52, 1999 am. No. 124, 2001; No. 119, 2005
S. 152CQ	ad. No. 58, 1997 am. No. 140, 2002
S. 152CR	ad. No. 58, 1997 am. No. 52, 1999
S. 152CRA	ad. No. 124, 2001
S. 152CS	ad. No. 58, 1997
Heading to s. 152CT	am. No. 52, 1999
S. 152CT	ad. No. 58, 1997 am. No. 200, 1997; No. 52, 1999
S. 152CU	ad. No. 58, 1997
Subdivision D	
S. 152CV	ad. No. 58, 1997 am. No. 52, 1999; No. 124, 2001
S. 152CW	ad. No. 58, 1997 rs. No. 124, 2001
S. 152CWA	ad. No. 46, 2001 rs. No. 124, 2001
Subhead. to s. 152CX(3)	ad. No. 124, 2001
S. 152CX	ad. No. 58, 1997 am. No. 124, 2001
Ss. 152CY, 152CZ	ad. No. 58, 1997
Notes 1, 2 to s. 152CZ(1)	ad. No. 124, 2001
S. 152DA	ad. No. 58, 1997
S. 152DB	ad. No. 58, 1997 am. No. 119, 2005
Note to s. 152DB(1)	ad. No. 124, 2001
S. 152DBA	ad. No. 124, 2001
Ss. 152DC, 152DD	ad. No. 58, 1997
Ss. 152DE–152DG	ad. No. 58, 1997 am. No. 146, 2001
Ss. 152DH–152DJ	ad. No. 58, 1997
S. 152DK	ad. No. 58, 1997 am. No. 119, 2005
Ss. 152DL, 152DM	ad. No. 58, 1997
S. 152DMA	ad. No. 124, 2001 am. No. 119, 2005
Subdivision E	
S. 152DN	ad. No. 58, 1997 rs. No. 52, 1999 am. No. 140, 2002
S. 152DNA	ad. No. 52, 1999 am. No. 124, 2001; No. 140, 2002
S. 152DNB	ad. No. 52, 1999 am. No. 194, 1999
S. 152DNC	ad. No. 140, 2002
Subdiv. F of Div. 8 of Part XIC	rep. No. 140, 2002
S. 152DO	ad. No. 58, 1997 am. No. 52, 1999; No. 124, 2001 rep. No. 140, 2002

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Provision affected	How affected
S. 152DOA	ad. No. 124, 2001 rep. No. 140, 2002
S. 152DP	ad. No. 58, 1997 rep. No. 140, 2002
S. 152DPA	ad. No. 124, 2001 rep. No. 140, 2002
S. 152DQ	ad. No. 58, 1997 rep. No. 140, 2002
S. 152DR	ad. No. 58, 1997 rs. No. 124, 2001 rep. No. 140, 2002
S. 152DS	ad. No. 58, 1997 rep. No. 140, 2002
Subdivision G	
S. 152DT	ad. No. 58, 1997 am. No. 52, 1999
Subdivision H	
S. 152DU	ad. No. 58, 1997 am. No. 52, 1999
Ss. 152DV–152DZ	ad. No. 58, 1997
Subdivision I	
S. 152EA	ad. No. 58, 1997
S. 152EAA	ad. No. 124, 2001
S. 152EB	ad. No. 58, 1997
Division 9	
Ss. 152EC–152EE	ad. No. 58, 1997
Division 10	
Heading to Div. 10 of Part XIC	rs. No. 140, 2002
Heading to s. 152EF	am. No. 140, 2002
S. 152EF	ad. No. 58, 1997 am. No. 140, 2002
Heading to s. 152EG	am. No. 140, 2002
S. 152EG	ad. No. 58, 1997
Ss. 152EH–152EL	ad. No. 58, 1997
Division 10A	
Div. 10A of Part XIC	ad. No. 119, 2005
Ss. 152ELA–152ELC	ad. No. 119, 2005
Division 11	
Ss. 152EM–152EP	ad. No. 58, 1997
S. 152EQ	ad. No. 119, 2005
S. 153	rep. No. 173, 1991
Part XID	
Part XID	ad. No. 131, 2006
Division 1	
S. 154	rep. No. 34, 1989 ad. No. 131, 2006
S. 154A	ad. No. 131, 2006
Division 2	
Ss. 154B, 154C	ad. No. 131, 2006
Division 3	
S. 154D	ad. No. 131, 2006 am. No. 159, 2007
Ss. 154E, 154F	ad. No. 131, 2006

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Provision affected	How affected
Division 4	
Subdivision A	
Ss. 154G, 154H	ad. No. 131, 2006
S. 154J	ad. No. 131, 2006
Subdivision B	
Ss. 154K, 154L	ad. No. 131, 2006
Subdivision C	
Ss. 154M, 154N	ad. No. 131, 2006
Subdivision D	
Ss. 154P–154R	ad. No. 131, 2006
Subdivision E	
Ss. 154S–154W	ad. No. 131, 2006
Subdivision F	
Ss. 154X–154Z	ad. No. 131, 2006
Subdivision G	
S. 154ZA	ad. No. 131, 2006
Division 5	
Ss. 154ZB, 154ZC	ad. No. 131, 2006
Part XII	
S. 155	am. No. 81, 1977; No. 17, 1986; No. 70, 1990; No. 88, 1995; No. 58, 1997; No. 52, 1999; No. 146, 2001; No. 128, 2002; No. 134, 2003; No. 131, 2006; Nos. 68, 138 and 159, 2007; Nos. 116 and 139, 2008
Note to s. 155(7A)	ad. No. 146, 2001
S. 155AAA	ad. No. 85, 2007 am. No. 68, 2007; No. 139, 2008
Heading to s. 155AA	am. No. 61, 1999; No. 85, 2007
S. 155AA	ad. No. 88, 1995 am. No. 61, 1999; No. 131, 2006; No. 85, 2007
S. 155AB	ad. No. 58, 1997 am. No. 52, 1999; No. 140, 2002; No. 131, 2006 rep. No. 85, 2007
S. 155A	ad. No. 70, 1990 am. No. 88, 1995; No. 159, 2007
S. 155B	ad. No. 70, 1990 am. No. 88, 1995; No. 146, 2001
S. 156	am. No. 70, 1990; No. 88, 1995
S. 157	am. No. 81, 1977; No. 17, 1986; No. 101, 1998; No. 63, 2001; No. 131, 2006
S. 157AA	ad. No. 131, 2006
S. 157A	ad. No. 108, 2004
Ss. 158, 159	am. No. 81, 1977; No. 88, 1995
Ss. 160, 161	am. No. 81, 1977; No. 17, 1986; No. 88, 1995; No. 146, 2001
Note to s. 161(2)	ad. No. 146, 2001
S. 162	rs. No. 81, 1977 am. No. 17, 1986; No. 88, 1995; No. 58, 1997; No. 146, 2001; No. 108, 2004
S. 162A	ad. No. 17, 1986 am. No. 146, 2001; No. 108, 2004
Notes 1, 2 to s. 162A	ad. No. 146, 2001

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Provision affected	How affected
S. 163	am. No. 88, 1976; No. 17, 1986; No. 20, 1988; No. 70, 1990; No. 106, 1998; No. 57, 2000; No. 131, 2006
Heading to s. 163A	rs. No. 57, 2000
S. 163A	ad. No. 88, 1976 am. No. 81, 1977; No. 39, 1983; No. 88, 1995; No. 58, 1997; No. 61, 1999; No. 57, 2000; No. 63, 2001; No. 108, 2004
S. 164	rep. No. 81, 1977
S. 165	am. No. 17, 1986
S. 166	am. No. 88, 1976; No. 81, 1977
S. 167	am. No. 70, 1990; No. 88, 1995; No. 108, 2004
S. 168	rep. No. 81, 1977
S. 169	rs. No. 88, 1976 rep. No. 81, 1977
S. 170	am. No. 88, 1976; No. 81, 1977; No. 61, 1981; No. 17, 1986; No. 106, 1992; No. 88, 1995; No. 36, 1998; No. 146, 1999; No. 131, 2006
S. 171	am. No. 88, 1976; No. 88, 1995; No. 63, 2001; Nos. 92 and 131, 2006
S. 171A	ad. No. 136, 1991
S. 171B	ad. No. 58, 1997
S. 172	am. No. 81, 1977; No. 136, 1991; No. 141, 1994; No. 88, 1995; No. 108, 2004; No. 131, 2006; No. 45, 2007
S. 173	ad. No. 106, 1998
Schedule	
Heading to Schedule	rs. No. 61, 1999
Schedule	ad. No. 88, 1995 am. No. 88, 1995; No. 60, 1996; Nos. 61 and 176, 1999; No. 69, 2000; No. 63, 2001; No. 63, 2002; No. 131, 2006; No. 159, 2007; No. 116, 2008

Table A

Application, saving or transitional provisions

Workplace Relations and Other Legislation Amendment Act 1996 (No. 60, 1996)

Schedule 17

29 Definitions

In this Part:

amended TP Act means the *Trade Practices Act 1974* as in force after the commencement.

amended WR Act means the Workplace Relations Act as in force after the commencement.

commencement means the commencement of this Schedule.

Commission has the same meaning as in the amended WR Act.

conduct includes threatened, impending or probable conduct.

jurisdiction transfer day means the transfer day as defined in Part 3 of Schedule 16.

old TP Act means the *Trade Practices Act 1974* as in force immediately before the commencement.

old WR Act means the Workplace Relations Act as in force immediately before the commencement.

30 Conciliation proceedings in progress under Division 7 of Part VI of old WR Act

If:

(a) before the commencement, the Commission was exercising conciliation powers under Division 7 of Part VI of the old WR Act in relation to a dispute about conduct; and

(b) that conduct continues after the commencement; and

(c) paragraphs 156(a) and (b) of the amended WR Act are satisfied in relation to the dispute;

the Commission may exercise conciliation powers under the amended WR Act in relation to the dispute as if the Commission had been notified of the dispute under section 157 of the amended WR Act.

31 If certificate under section 163D of old WR Act granted in relation to conduct that ended before commencement

If, before the commencement, the Commission granted a certificate under section 163D of the old WR Act in relation to a dispute about conduct and the conduct ended before the commencement:

(a) the old WR Act continues to apply to that conduct as though the amendments made by this Schedule had not been made; and

(b) subject to paragraph (c), a reference in Division 7 of Part VI of the old WR Act as so applying to the "Court" is to be taken, on and after the jurisdiction transfer day, to be a reference to the Federal Court of Australia; and

(c) if, under Part 3 of Schedule 16, the Industrial Relations Court continues to have jurisdiction in relation to proceedings begun before the jurisdiction transfer day in relation to that conduct, that Court may, in accordance with that Part of that Schedule, continue to exercise jurisdiction in the proceedings.

Note: If no certificate was granted under section 163D of the old WR Act in relation to conduct that ended before the commencement, then (subject to item 30) no relief is available under the old WR Act or the amended TP Act in relation to that conduct.

32 If certificate under section 163D of old WR Act granted in relation to conduct that continues after commencement

(1) This item applies if, before the commencement, the Commission granted a certificate under section 163D of the old WR Act in relation to a dispute about conduct and the conduct continues after the commencement.

(2) In relation to so much of the conduct as occurred before the commencement:

(a) the old WR Act continues to apply to that conduct as though the amendments made by this Schedule had not been made; and

(b) subject to paragraph (c), a reference in Division 7 of Part VI of the old WR Act as so applying to the "Court" is to be taken, on and after the jurisdiction transfer day, to be a reference to the Federal Court of Australia; and

(c) if, under Part 3 of Schedule 16, the Industrial Relations Court continues to have jurisdiction in relation to proceedings begun before the jurisdiction transfer day in relation to that conduct, that Court may, in accordance with that Part of that Schedule, continue to exercise jurisdiction in the proceedings.

(3) In relation to so much of the conduct as occurs after the commencement, the amended TP Act applies as if that conduct had started on the commencement.

33 If no certificate under section 163D of old WR Act granted in relation to conduct that continues after commencement

If:

(a) before the commencement, there was a dispute about conduct to which Division 7 of Part VI of the old WR Act applied; and

(b) no certificate under section 163D of the old WR Act was granted in relation to the dispute before the commencement; and

(c) the conduct continues after the commencement;

then, in relation to so much of the conduct as occurs after the commencement, the amended TP Act applies as if that conduct had started on the commencement.

Note: If no certificate was granted under section 163D of the old WR Act in relation to conduct that continues after the commencement, then (subject to item 30) no relief is available under the old WR Act or the amended TP Act in relation to so much of the conduct as occurred before the commencement.

34 If conduct to which section 45D of old TP Act applied ended before commencement

If conduct to which section 45D of the old TP Act applied ended before the commencement, the old TP Act continues to apply to that conduct as though the amendments made by this Schedule had not been made.

35 If conduct to which section 45D of old TP Act applied continues after commencement

(1) This item applies if conduct to which section 45D of the old TP Act applied started before the commencement and continues after the commencement.

(2) In relation to so much of the conduct as occurred before the commencement, the old TP Act continues to apply to that conduct as though the amendments made by this Schedule had not been made.

(3) In relation to so much of the conduct as occurs after the commencement, the amended TP Act applies as if that conduct started on the commencement.

36 Power to vary or rescind orders and injunctions made under repealed provisions

(1) An order or injunction:

(a) made by a court before the commencement under or in relation to a repealed provision; or

(b) made by a court after the commencement under or in relation to a repealed provision as the provision continues to apply because of this Part;

may, subject to subsection (2), be varied or rescinded by the court after the commencement, despite the repeal of the provision, as if the amendments made by this Schedule had not been made.

(2) If the court that made the order or injunction is or was the Industrial Relations Court of Australia, the power to vary or rescind the order or injunction given by subsection (1) is, on or after the jurisdiction transfer day, to be exercised by the Federal Court of Australia, unless Part 3 of Schedule 16 provides for the Industrial Relations Court of Australia to continue to exercise jurisdiction in proceedings for the variation or rescission of the order or injunction.

(3) In this section:

repealed provision means:

(a) a provision of Division 7 of Part VI of the old WR Act; or

(b) section 45D of the old TP Act.

37 Power to vary or revoke decisions of Commission made under repealed provisions

(1) A decision of the Commission:

(a) made before the commencement under or in relation to a repealed provision; or

(b) made after the commencement under or in relation to a repealed provision as the provision continues to apply because of this Part;

may be varied or revoked by the Commission after the commencement, despite the repeal of the provision, as if the amendments made by this Schedule had not been made.

(2) In this section:

decision includes an order, direction or determination.

repealed provision means a provision of Division 7 of Part VI of the old WR Act.

Trade Practices Amendment (Telecommunications) Act 1997 (No. 58, 1997)

Schedule 1

15 Application—amendments of section 163A of the Trade Practices Act

The amendments of section 163A of the *Trade Practices Act 1974* made by this Schedule do not apply to a proceeding instituted before the commencement of this item.

Gas Pipelines Access (Commonwealth) Act 1998 (No. 101, 1998)

Schedule 1

36 Saving provision

Despite the repeal of subsection 89(3), the register of applications in place under that subsection immediately before the day item 35 commences continues to have effect on and after that date as if it had been created for the purposes of subsection 89(3) of the *Trade Practices Act 1974* as amended by this Act.

47 Saving provision

If, before the commencement of item 46:

(a) the Commission had given notice under paragraph 91(4)(a) of the *Trade Practices Act 1974* in relation to the authorization; but

(b) the Commission had not made a determination under paragraph 91(4)(b) of that Act;

subsection 91(4) of that Act continues in force as if the amendments of that Act made by items 27 to 56 had not been made.

50 Saving provision

Any application made by a person for review of a determination under subsection 101(1) of the *Trade Practices Act 1974* as in force before the commencement of item 49 has effect, on and after the commencement of that item, as if it were an application for that determination made under subsection 101(1) of the *Trade Practices Act 1974* as amended by that item.

Telecommunications Legislation Amendment Act 1999 (No. 52, 1999)

Schedule 1

72 Transitional—section 151CM of the *Trade Practices Act 1974*

(1) This item applies to a report under subsection 151CM(1) of the *Trade Practices Act 1974* for the financial year in which this item commenced.

(2) To avoid doubt, that report must deal with matters covered by paragraphs 151CM(1)(b) and (c) of that Act in relation to the whole of that financial year.

73 Transitional—interim determinations

An interim determination may be made in relation to an arbitration under Division 8 of Part XIC of the *Trade Practices Act 1974*, whether the access dispute was notified before, at or after the commencement of this item.

74 Transitional—backdating of final determinations

A final determination made by the Commission under Division 8 of Part XIC of the *Trade Practices Act 1974* has no effect to the extent (if any) to which any provision of the determination is expressed to have taken effect on a date earlier than the date of commencement of this item.

75 Transitional—pre-commencement competition notices

(1) Despite the amendments made by items 6, 8, 11, 12, 14, 15, 16, 17, 18, 19, 21, 37, 41, 42 and 43 of this Schedule, Part XIB of the *Trade Practices Act 1974* continues to apply, after the commencement of this item, in relation to a competition notice in force immediately before the commencement of this item, as if those amendments had not been made.

(2) Subsection 151AOA(2) of the *Trade Practices Act 1974* applies to a competition notice in force immediately before the commencement of this item in a corresponding way to the way in which it applies to a Part A competition notice.

76 Transitional—section 152CT of the *Trade Practices Act 1974*

The amendments of section 152CT of the *Trade Practices Act 1974* made by this Schedule do not affect the continuity of a direction in force under that section immediately before the commencement of this item.

77 Transitional—interpretation of pre-commencement provisions of the *Trade Practices Act 1974*

In determining the meaning that a provision of the *Trade Practices Act 1974* had before the commencement of this item, the amendments made by this Schedule are to be disregarded.

Schedule 3

81 Transitional—section 151CM of the *Trade Practices Act 1974*

Section 151CM of the *Trade Practices Act 1974* has effect, after the commencement of this item, as if the reference in that section to Part 9 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* included a reference to repealed Part 6 of the *Telstra Corporation Act 1991*.

Schedule 4

28 Transitional—section 151CM of the *Trade Practices Act 1974*

Section 151CM of the *Trade Practices Act 1974* has effect, after the commencement of this item, as if the reference in that section to Division 5 of Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* included a reference to repealed Division 5 of Part 7 of the *Telecommunications Act 1997*.

Schedule 1

171 Transitional—declarations under subsection 10.03(1) of the *Trade Practices Act 1974*

(1) This item applies to a declaration if:

(a) the declaration was made under subsection 10.03(1) of the *Trade Practices Act 1974*; and

(b) the declaration was in force immediately before the commencement of this item.

(2) The declaration has effect, after the commencement of this item, as if:

(a) the declaration had been made under subsection 10.03(1) of the *Trade Practices Act 1974* as amended by this Schedule; and

(b) a reference in the declaration to a designated peak shipper body were a reference to a designated outwards peak shipper body.

(3) The Registrar must take such action, by way of modifying the register of designated shipper bodies, as is necessary to ensure that the register is consistent with subitem (2).

172 Transitional—declarations under subsection 10.03(2) of the *Trade Practices Act 1974*

(1) This item applies to a declaration if:

(a) the declaration was made under subsection 10.03(2) of the *Trade Practices Act 1974*; and

(b) the declaration was in force immediately before the commencement of this item.

(2) The declaration has effect, after the commencement of this item, as if:

(a) the declaration had been made under subsection 10.03(2) of the *Trade Practices Act 1974* as amended by this Schedule; and

(b) a reference in the declaration to a designated secondary shipper body were a reference to a designated outwards secondary shipper body.

(3) The Registrar must take such action, by way of modifying the register of designated shipper bodies, as is necessary to ensure that the register is consistent with subitem (2).

173 Transitional—notices under section 10.29 of the *Trade Practices Act 1974*

(1) This item applies to a notice if:

(a) the notice was given under subsection 10.29(3) of the *Trade Practices Act 1974*; and

(b) the notice was in force immediately before the commencement of this item.

(2) The notice has effect, after the commencement of this item, as if:

(a) the notice had been given under subsection 10.29(3) of the *Trade Practices Act 1974* as amended by this Schedule; and

(b) a reference in the notice to a designated secondary shipper body were a reference to a designated outwards secondary shipper body.

(3) The Registrar must take such action, by way of modifying the register of designated shipper bodies, as is necessary to ensure that the register is consistent with subitem (2).

174 Transitional—notices under section 10.41 of the *Trade Practices Act 1974*

(1) This item applies to a notice if:

(a) the notice was given under paragraph (b) of the definition of ***relevant designated shipper body*** in subsection 10.41(3) of the *Trade Practices Act 1974*; and

(b) the notice was in force immediately before the commencement of this item.

(2) The notice has effect, after the commencement of this item, as if:

(a) the notice had been given under subparagraph (a)(ii) of the definition of ***relevant designated shipper body*** in subsection 10.41(3) of the *Trade Practices Act 1974* as amended by this Schedule; and

(b) a reference in the notice to a designated secondary shipper body were a reference to a designated outwards secondary shipper body.

(3) The Registrar must take such action, by way of modifying the register of designated shipper bodies, as is necessary to ensure that the register is consistent with subitem (2).

175 Transitional—pre-commencement directions under section 10.44 of the *Trade Practices Act 1974*

(1) This item applies to a direction under section 10.44 of the *Trade Practices Act 1974* that was given before the commencement of this item.

(2) Despite the amendments of section 10.45 and subsections 10.46(1) and (3), 10.47(1) and 10.48(1) of the *Trade Practices Act 1974* made by this Schedule, those provisions continue to apply after the commencement of this item, in relation to that direction, as if those amendments had not been made.

176 Transitional—notices under section 10.52 of the *Trade Practices Act 1974*

(1) This item applies to a notice if:

(a) the notice was given under paragraph (b) of the definition of ***relevant designated shipper body*** in subsection 10.52(3) of the *Trade Practices Act 1974*; and

(b) the notice was in force immediately before the commencement of this item.

(2) The notice has effect, after the commencement of this item, as if:

(a) the notice had been given under subparagraph (a)(ii) of the definition of ***relevant designated shipper body*** in subsection 10.52(3) of the *Trade Practices Act 1974* as amended by this Schedule; and

(b) a reference in the notice to a designated secondary shipper body were a reference to a designated outwards secondary shipper body.

(3) The Registrar must take such action, by way of modifying the register of designated shipper bodies, as is necessary to ensure that the register is consistent with subitem (2).

177 Transitional—pre-commencement inquiries

(1) This item applies if, before the commencement of this item, a question was referred to the Tribunal under section 10.50 or 10.63 of the *Trade Practices Act 1974* for inquiry and report.

(2) Despite the amendments and repeals made by items 2, 65, 120, 121, 123, 124, 125, 137, 138, 139, 140, 145, 147, 152 and 153 of this Schedule, subsection 40(3) and Part X of the *Trade Practices Act 1974* continue to apply after the commencement of this item, in relation to that inquiry and report, as if those amendments and repeals had not been made.

178 Application—review of decisions of Commission

Division 14A of Part X of the *Trade Practices Act 1974* applies to decisions of the Commission made after the commencement of this item.

179 Application—review of decisions of the Minister

Division 14B of Part X of the *Trade Practices Act 1974* applies to decisions of the Minister made after the commencement of this item.

180 Transitional—pre-commencement inwards liner cargo shipping services

Despite the repeals made by items 155 to 164 (inclusive) of this Schedule, the provisions of the *Trade Practices Act 1974* repealed by those items continue to apply after the commencement of this item, in relation to an inwards liner cargo shipping service provided wholly or partly before the commencement of this item, as if those repeals had not been made.

Communications and the Arts Legislation Amendment Act 2001 (No. 46, 2001)

6 Saving of notices

A notice in force under subsection 151AQB(2) of the *Trade Practices Act 1974* immediately before the commencement of this section is taken, after the commencement of this section, to be an advisory notice in force under subsection 151AQB(1) of that Act.

Trade Practices Amendment Act (No. 1) 2001 (No. 63, 2001)

Schedule 1

5 Application of items 3 and 4

The amendments made by items 3 and 4 apply in relation to a law of a State or Territory made before, on or after the commencement of those items.

8 Application of items 6 and 7

The amendments made by items 6 and 7 apply in relation to goods supplied on or after the commencement of those items.

10 Application of item 9

The amendment made by item 9 only applies in relation to conduct engaged in on or after the commencement of that item.

13 Application of item 12

The amendment made by item 12 only applies in relation to conduct engaged in on or after the commencement of that item.

15 Application of item 14

The amendment made by item 14 does not apply in relation to a proceeding instituted under this Act in relation to a person if, before the commencement of that item, the Court:

(a) ordered the person to pay a pecuniary penalty; or

(b) imposed a fine on the person.

17 Saving

Despite the repeal of section 80A of the *Trade Practices Act 1974* made by item 16, an order made under that section that is in force immediately before the commencement of that item continues in force as if the repeal had not been made.

19 Application of item 18

The amendment made by item 18 only applies in relation to conduct engaged in on or after the commencement of that item.

21 Application of item 20

(1) The amendment made by item 20 applies in relation to conduct engaged in on or after the commencement of that item.

(2) The amendment made by item 20 also applies in relation to conduct engaged in before the commencement of that item, but only if the period that:

(a) relates to the conduct; and

(b) applied under subsection 82(2) of the *Trade Practices Act 1974* before the commencement of that item;

had not ended when that item commenced.

23 Application of item 22

The amendment made by item 22 only applies in relation to conduct engaged in on or after the commencement of that item.

25 Application of item 24

The amendment made by item 24 only applies in relation to conduct engaged in on or after the commencement of that item.

27 Application of item 26

The amendment made by item 26 only applies in relation to conduct engaged in on or after the commencement of that item.

29 Application of item 28

The amendment made by item 28 only applies to conduct engaged in on or after the commencement of that item.

32 Application of item 31

(1) The amendment made by item 31 applies in relation to conduct engaged in on or after the commencement of that item.

(2) The amendment made by item 31 also applies in relation to conduct engaged in before the commencement of that item, but only if the period that:

(a) relates to the conduct; and

(b) applied under subsection 87(1CA) of the *Trade Practices Act 1974* before the commencement of that item;

had not ended when that item commenced.

34 Application of item 33

The amendment made by item 33 only applies in relation to proceedings instituted on or after the commencement of that item.

36 Application of item 35

The amendment made by item 35 only applies in relation to conduct engaged in on or after the commencement of that item.

38 Application of item 37

The amendment made by item 37 only applies in relation to matters arising on or after the commencement of that item.

Schedule 2

3 Application of items 1 and 2

The amendments made by items 1 and 2 only apply in relation to conduct engaged in on or after the commencement of those items.

5 Application of item 4

The amendment made by item 4 only applies in relation to conduct engaged in on or after the commencement of that item.

8 Application of items 6 and 7

The amendments made by items 6 and 7 only apply in relation to conduct engaged in on or after the commencement of those items.

Treasury Legislation Amendment (Application of Criminal Code) Act (No. 3) 2001 (No. 117, 2001)

4 Application of amendments

(1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.

(2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

Schedule 1

23 Application of amendments

(1) The amendment made by item 1 applies in relation to:

(a) services that are declared to be declared services after the commencement of this Act; and

(b) declared services that are varied after the commencement of this Act.

(2) The amendments made by items 4, 5, 6 and 16 apply in relation to access disputes that are notified after the commencement of this Act.

(3) The amendment made by item 7 applies in relation to determinations that are made after the commencement of this Act.

(4) The amendments made by items 14 and 15 apply in relation to access disputes that are notified either before or after the commencement of this Act.

(5) The amendments made by items 17, 18 and 19 apply in relation to applications for review that are made after the commencement of this Act.

(6) The amendment made by item 20 applies in relation to applications for review, or applications for a writ or injunction, that are made after the commencement of this Act.

(7) The amendment made by item 21 applies in relation to appeals that are made after the commencement of this Act.

24 Transitional—backdating final determinations

(1) This item applies to a final determination made after the commencement of this Act in respect of an access dispute notified after the commencement of this Act.

(2) Despite the amendment made by item 16, the final determination has no effect to the extent (if any) to which any provision of the determination is expressed to have taken effect on a date earlier than the date of commencement of this Act.

(3) In this item:

final determination means a final determination made by the Commission under Division 8 of Part XIC of the *Trade Practices Act 1974.*

Treasury Legislation Amendment (Application of Criminal Code) Act (No. 2) 2001 (No. 146, 2001)

4 Application of amendments

(1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.

(2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

Trade Practices Amendment Act (No. 1) 2002 (No. 128, 2002)

Schedule 1

4 Application

The amendments made by items 1 to 3 apply only to conduct engaged in after the commencement of this Schedule.

7 Application

The amendments made by items 5 and 6 apply only to a contravention of a provision of Part VC of the *Trade Practices Act 1974* that occurs after the commencement of this Schedule.

9 Application

The amendment made by item 8 applies only to a contravention of subsection 155(5) or (6) of the *Trade Practices Act 1974* that occurs after the commencement of this Schedule.

Telecommunications Competition Act 2002 (No. 140, 2002)

Schedule 2

9 Transitional—review of determinations

(1) This item applies if:

(a) a final determination was made by the Commission under Division 8 of Part XIC of the *Trade Practices Act 1974* before the commencement of this item; or

(b) both:

(i) a final determination is made by the Commission under Division 8 of Part XIC of the *Trade Practices Act 1974* after the commencement of this item; and

(ii) the final determination relates to an access dispute that was notified under section 152CM of the *Trade Practices Act 1974* before 26 September 2002.

(2) Despite the amendments made by this Part, the *Trade Practices Act 1974* continues to apply, in relation to a review of the final determination, as if those amendments had not been made.

15 Transitional—section 152ALA of the *Trade Practices Act 1974*

(1) This item applies to a declaration if:

(a) the declaration was made under section 152AL of the *Trade Practices Act 1974*; and

(b) the declaration was in force immediately before the commencement of this item.

(2) Section 152ALA of the *Trade Practices Act 1974* does not apply to the declaration unless and until the Commission makes a determination in relation to the declaration under subitem (3).

(3) The Commission may, by notice published in the *Gazette*, determine that section 152ALA of the *Trade Practices Act 1974* has effect, in relation to a declaration specified in the

determination, as if a date specified in the determination had been specified in the declaration as the expiry date of the declaration.

(4) The specified date must occur within the 5-year period beginning on the commencement of this item.

(5) The Commission must take all reasonable steps to ensure that each declaration is covered by a determination under subitem (3) within 6 months after the commencement of this item.

19 Transitional—section 152CQ of the *Trade Practices Act 1974*

To avoid doubt, the amendments of section 152CQ of the *Trade Practices Act 1974* made by this Part do not affect the validity of a determination made before the commencement of this item.

21 Transitional—section 152CQ of the *Trade Practices Act 1974*

To avoid doubt, the amendment of section 152CQ of the *Trade Practices Act 1974* made by this Part does not affect the validity of a determination made before the commencement of this item.

69 Application—section 152AW of the *Trade Practices Act 1974*

(1) Subsections 152AW(1), (2) and (3) of the *Trade Practices Act 1974* as amended by this Part apply in relation to:

(a) an application under section 152AV of the *Trade Practices Act 1974* that was made after the commencement of this item; or

(b) an application under section 152AV of the *Trade Practices Act 1974* that was made before the commencement of this item, so long as the Tribunal did not make a decision on the review under subsection 152AW(1) of that Act before the commencement of this item.

(2) Subsections 152AW(4) to (7) of the *Trade Practices Act 1974* as amended by this Part apply in relation to an application under section 152AV of the *Trade Practices Act 1974* that was made after the commencement of this item.

(3) Despite the repeal of subsection 152AW(4) of the *Trade Practices Act 1974* by this Part, that subsection continues to apply, in relation to an application under section 152AV of the *Trade Practices Act 1974* that was made before the commencement of this item, as if that repeal had not happened.

110 Transitional—subsection 152BS(6A) of the *Trade Practices Act 1974*

To avoid doubt, an access undertaking given before the commencement of subsection 152BS(6A) of the *Trade Practices Act 1974* is as valid as it would have been if that subsection had been in force when the undertaking was given.

111 Application—section 152CF of the *Trade Practices Act 1974*

(1) Subsections 152CF(1), (2) and (3) of the *Trade Practices Act 1974* as amended by this Part apply in relation to:

(a) an application under section 152CE of the *Trade Practices Act 1974* that was made after the commencement of this item; or

(b) an application under section 152CE of the *Trade Practices Act 1974* that was made before the commencement of this item, so long as the Tribunal did not make a

decision on the review under subsection 152CF(1) of that Act before the commencement of this item.

(2) Subsections 152CF(4) to (8) of the *Trade Practices Act 1974* as amended by this Part apply in relation to an application under section 152CE of the *Trade Practices Act 1974* that was made after the commencement of this item.

(3) Despite the repeal of subsection 152CF(4) of the *Trade Practices Act 1974* by this Part, that subsection continues to apply, in relation to an application under section 152CE of the *Trade Practices Act 1974* that was made before the commencement of this item, as if that repeal had not happened.

113 Transitional—paragraph 152AR(3)(b) of the *Trade Practices Act 1974*

The amendment made by this Part is to be disregarded in determining the meaning that paragraph 152AR(3)(b) of the *Trade Practices Act 1974* had before the commencement of this item.

115 Transitional—section 151CJ of the *Trade Practices Act 1974*

Subsections 151CJ(1) and (2) of the *Trade Practices Act 1974* as amended by this Part apply in relation to:

(a) an application under section 151CI of the *Trade Practices Act 1974* that was made after the commencement of this item; or

(b) an application under section 151CI of the *Trade Practices Act 1974* that was made before the commencement of this item, so long as the Tribunal did not make a decision on the review under subsection 151CJ(1) of that Act before the commencement of this item.

Industry, Tourism and Resources Legislation Amendment Act 2003 (No. 21, 2003)

Schedule 1

29 Application of amendments

The amendments made by items 25 to 28 apply in respect of conduct engaged in, or representations made, after those items commence.

Trade Practices Legislation Amendment Act 2003 (No. 134, 2003)

Schedule 2

44 Definitions

In this Part:

ACCC means the Australian Competition and Consumer Commission.

commencement time means the time when this Part commences.

PSA means the *Prices Surveillance Act 1983*, as in force before the commencement time.

TPA means the *Trade Practices Act 1974*.

45 General

(1) This item applies to a thing mentioned in column 2 of the following table that:

(a) occurred before the commencement time under the provision of the PSA mentioned in that column; and

(b) is in force immediately before that time.

(2) For the purposes of Part VIIA of the TPA, the thing has effect after that time as if it were a thing mentioned in column 3 of the table that occurred:

(a) under the provision of that Part mentioned in that column; and

(b) at the time it occurred under the PSA.

Operation of Part VIIA of the TPA

Column 1 Item	Column 2 Occurrence under the PSA	Column 3 Occurrence under Part VIIA of the TPA
1	A direction given under section 20	A direction given under subsection 95ZH(1)
2	A declaration made under paragraph 21(1)(a)	A declaration made under subsection 95X(1)
3	A declaration made under paragraph 21(1)(b)	A declaration made under subsection 95X(2)
4	A declaration made under paragraph 21(1)(c)	A declaration made under section 95B
5	A notice given under subsection 25(1)	A notice given under subsection 95N(5)
6	A summons given under subsection 34(2)	A summons given under subsection 95S(3)

46 Price inquiries

(1) This item applies if:

(a) before the commencement time, the Minister had made an instrument under subsection 18(1) of the PSA; and

(b) the ACCC had not submitted a report on the inquiry concerned before that time.

(2) Part VIIA of the TPA has effect after that time as if the instrument were a notice given:

(a) under subsection 95H(1) or (2) of the TPA (as the case requires); and

(b) at the time the instrument was made under the PSA.

Note: One of the effects of this subitem is that the ACCC is able to begin an inquiry, complete an inquiry or give a report on an inquiry under Part VIIA of the TPA.

(3) Subitem (4) applies to a thing mentioned in column 2 of the following table that occurred before the commencement time (in relation to the inquiry) under the provision of the PSA mentioned in that column.

(4) For the purposes of Part VIIA of the TPA, the thing has effect after that time as if it were a thing mentioned in column 3 of the table that occurred:

(a) under the provision of that Part mentioned in that column; and

(b) at the time it occurred under the PSA.

Operation of Part VIIA of the TPA		
Column 1 Item	**Column 2 Occurrence under the PSA**	**Column 3 Occurrence under Part VIIA of the TPA**
1	An instrument made under subsection 18(6)	A notice given under subsection 95K(3)
2	A notice served under paragraph 19(1)(a)	A notice given under subsection 95L(1)
3	A notice served under paragraph 19(1)(b)	A notice given under subsection 95L(3)
4	A notice served under subsection 19(2)	A notice given under section 95M

47 Price inquiry obligations

(1) This item applies if:

(a) before the commencement time, a person received a copy of a report on an inquiry held under the PSA in relation to the supply by the person of goods or services; and

(b) the period applicable under subsection 24(2) or paragraph 27(1)(a) of the PSA had not ended before that time.

(2) Subsection 95N(8) or 95Q(2) of the TPA, as the case requires, has effect after that time as if the person had received the copy of the report:

(a) under the TPA; and

(b) at the time the person received the copy under the PSA.

48 Price notifications

(1) This item applies if:

(a) before the commencement time, a person had given the ACCC a notice (the ***locality notice***) under paragraph 22(2)(a) of the PSA; and

(b) the prescribed period in relation to the notice (worked out under section 22 of the PSA) had not ended before that time.

(2) Part VIIA of the TPA has effect after that time as if the notice were a notice given:

(a) under subsection 95Z(5) of the TPA; and

(b) at the time it was given under the PSA.

(3) Subitem (4) applies to a thing mentioned in column 2 of the following table that occurred before the commencement time (as a result of the locality notice being given) under the provision of the PSA mentioned in that column.

(4) For the purposes of Part VIIA of the TPA, the thing has effect after that time as if it were a thing mentioned in column 3 of the table that occurred:

(a) under the provision of that Part mentioned in that column; and

(b) at the time it occurred under the PSA.

Operation of Part VIIA of the TPA		
Column 1 Item	**Column 2 Occurrence under the PSA**	**Column 3 Occurrence under Part VIIA of the TPA**
1	A notice served under subparagraph 22(2)(b)(ii)	A notice given under paragraph 95Z(6)(b)
2	A notice served under subparagraph 22(2)(b)(iii)	A notice given under subparagraph 95Z(6)(c)(i)
3	A notice given under subparagraph 22(2)(b)(iii)	A notice given under subparagraph 95Z(6)(c)(ii)
4	A notice given under paragraph 22(4)(a)	A notice given under subsection 95ZA(1)
5	A determination made under subsection 22(6)	A determination made under subsection 95ZB(2)

49 Register of price notifications

The register in place under subsection 23(1) of the PSA immediately before the commencement time is taken, immediately after that time, to be the register in place under subsection 95ZC(1) of the TPA.

50 Delegations in relation to price notifications

Giving of notices

(1) A delegation in force under paragraph 29(b) of the PSA immediately before the commencement time has effect after that time as if it were a delegation (made under paragraph 95ZD(1)(a) of the TPA) of the ACCC's price notification powers in relation to the notices concerned.

Withdrawal of notices

(2) A delegation in force under paragraph 29(c) of the PSA immediately before the commencement time has effect after that time as if it were a delegation (made under paragraph 95ZD(1)(b) of the TPA) of the power under section 95ZJ of the TPA relating to a notice given in the exercise of the ACCC's price notification powers.

Definition

(3) In this item:

price notification powers means the ACCC's powers under paragraph 95Z(6)(b) or (c) of the TPA.

51 Price monitoring

(1) This item applies if:

(a) before the commencement time, the Minister had given a direction under section 27A of the PSA; and

(b) the direction required the ACCC to report to the Minister on the monitoring concerned at a specified time, or at specified intervals, occurring after the commencement time.

(2) Part VIIA of the TPA has effect after the commencement time as if the direction were a direction given:

(a) under section 95ZE or 95ZF of the TPA (as the case requires); and

(b) at the time it was given under the PSA.

52 Information gathering under Part VIIA of the TPA

(1) This item applies if:

(a) before the commencement time, a notice was served on a person under subsection 32(1) of the PSA; and

(b) the period for complying with the notice had not ended before that time.

(2) The notice has effect after that time as if it were a notice given:

(a) under subsection 95ZK(1) of the TPA; and

(b) at the time it was served under the PSA.

(3) If the notice was in relation to the matter mentioned in the provision of the PSA referred to in column 2 of the following table, it has effect after that time as if it were a notice in relation to the matter mentioned in the provision of the TPA referred to in column 3 of the table.

Information gathering under Part VIIA of the TPA

Column 1 Item	Column 2 Provision of the PSA	Column 3 Provision of the TPA
1	Paragraph 32(1)(c)	Paragraph 95ZK(1)(a)
2	Paragraph 32(1)(d)	Paragraph 95ZK(1)(b)
3	Paragraph 32(1)(e)	Paragraph 95ZK(1)(c) or (d) (as the case requires)

53 Inspection of documents etc.

(1) This item applies to documents furnished or produced before the commencement time in circumstances mentioned in section 38 of the PSA.

(2) Section 95ZL of the TPA has effect after that time as if the documents were given or produced after that time in circumstances mentioned in that section.

56 Information gathering under Part XII of the TPA

Refusal or failure to comply with notices

(1) Paragraph 155(2A)(a) of the TPA has effect after the commencement time as if a reference to a notice under subsection 95ZK(1) or (2) of the TPA included a reference to a notice under subsection 32(1) of the PSA.

Refusal or failure to answer questions

(2) Paragraph 155(2A)(b) of the TPA has effect after the commencement time as if a reference to an inquiry under Part VIIA of the TPA included a reference to an inquiry under the PSA.

Refusal or failure to produce documents

(3) Paragraph 155(2A)(c) of the TPA has effect after the commencement time as if a reference to a summons under subsection 95S(3) of the TPA included a reference to a summons under subsection 34(2) of the PSA.

Trade Practices Amendment (Personal Injuries and Death) Act (No. 2) 2004 (No. 113, 2004)

Schedule 1

11 Application

The amendments made by this Schedule (other than item 10) apply to contraventions of Part IVA, of Division 1A or 2A of Part V or of Part VA of the *Trade Practices Act 1974* that occur after this Schedule commences.

Telecommunications Legislation Amendment (Competition and Consumer Issues) Act 2005 (No. 119, 2005)

Schedule 4

2 Application of amendment

The amendment of section 151BX of the *Trade Practices Act 1974* made by this Schedule applies to a contravention of the competition rule if:

(a) in the case of a contravention that continued during a period—the period began after the commencement of this item; or

(b) otherwise—the contravention occurred after the commencement of this item.

Trade Practices Amendment (Personal Injuries and Death) Act 2006 (No. 11, 2006)

Schedule 1

8 Application

The amendments made by this Schedule apply in relation to contraventions of Division 1 of Part V of the *Trade Practices Act 1974* that occur after this Schedule commences.

Jurisdiction of the Federal Magistrates Court Legislation Amendment Act 2006 (No. 23, 2006)

Schedule 1

2 Application of amendment of subsection 86(1A)

The amendment of subsection 86(1A) of the *Trade Practices Act 1974* made by this Schedule applies in relation to matters arising before, on or after the commencement of this Schedule.

5 Application of amendments of section 86AA

The amendments of section 86AA of the *Trade Practices Act 1974* made by this Schedule apply to:

(a) proceedings instituted in the Federal Magistrates Court after the commencement of this Schedule; and

(b) proceedings instituted in another court before, on or after the commencement of this Schedule and transferred to the Federal Magistrates Court after the commencement of this Schedule.

Trade Practices Amendment (National Access Regime) Act 2006
(No. 92, 2006)

Schedule 1

114 Application—Council annual report

The amendment made by item 3 applies in relation to financial years ending after the commencement of that item.

115 Application—objects of Part IIIA

The amendments made by the items mentioned in column 2 of the table apply in relation to the matter mentioned in column 3 of the table:

Objects of Part IIIA		
Column 1	**Column 2** **Items**	**Column 3** **Matter**
1	Items 12 and 17	Applications made to the Council after the commencement of those items.
2	Items 20 and 24	Declaration recommendations made to the designated Minister after the commencement of those items (where the applications for the recommendations were also made after that commencement).
3	Items 28 and 30	Revocation recommendations made to the designated Minister after the commencement of those items.
4	Item 37	Applications made to the Council after the commencement of that item.
5	Item 41	Recommendations made to the Commonwealth Minister after the commencement of that item (where the applications for the recommendations were also made after that commencement).
6	Item 65	Access disputes notified after the commencement of that item.
7	Item 88	Applications made to the Commission after the commencement of that item.

Objects of Part IIIA		
Column 1	**Column 2** **Items**	**Column 3** **Matter**
8	Item 92, in so far as it inserts paragraph 44ZZA(3)(aa) of the *Trade Practices Act 1974*	Access undertakings given to the Commission after the commencement of that item.
9	Item 100, in so far as it inserts paragraph 44ZZAA(3)(aa) of the *Trade Practices Act 1974*	Access codes given to the Commission after the commencement of that item.

116 Application—target time limits

The amendments made by the items mentioned in column 2 of the table apply in relation to the matter mentioned in column 3 of the table:

Target time limits		
Column 1	**Column 2** **Items**	**Column 3** **Matter**
1	Item 18, in so far as it inserts section 44GA of the *Trade Practices Act 1974*	Applications made to the Council after the commencement of that item.
2	Item 31	Revocation recommendations made to the designated Minister after the commencement of that item.
3	Item 44, in so far as it inserts section 44NC of the *Trade Practices Act 1974*	Applications made to the Council after the commencement of that item.
4	Item 44, in so far as it inserts section 44ND of the *Trade Practices Act 1974*	Recommendations made to the Commonwealth Minister after the commencement of that item.
5	Item 69	Access disputes notified after the commencement of that item.
6	Item 108, in so far as it inserts section 44ZZBC of the *Trade Practices Act 1974*	Access undertaking applications and access code applications made to the Commission after the commencement of that item.
7	Item 112	Applications for review made to the Tribunal after the commencement of that item.

117 Application—competition test

(1) The amendment made by item 16 applies in relation to applications made to the Council after the commencement of that item.

(2) The amendment made by item 23 applies in relation to declaration recommendations made to the designated Minister after the commencement of that item (where the applications for the recommendations were also made after that commencement).

118 Application—public consultation

(1) The amendments made by items 18 (in so far as it inserts section 44GB of the *Trade Practices Act 1974*) and 44 (in so far as it inserts section 44NE of that Act) apply in relation to applications made to the Council after the commencement of those items.

(2) The amendments made by items 96, 103 and 108 (in so far as it inserts section 44ZZBD of the *Trade Practices Act 1974*) apply in relation to access undertaking applications and access code applications made to the Commission after the commencement of those items.

119 Application—publication of decisions

(1) The amendments made by items 18 (in so far as it inserts section 44GC of the *Trade Practices Act 1974*) and 44 (in so far as it inserts section 44NF of that Act) apply in relation to recommendations made by the Council after the commencement of those items.

(2) The amendments made by items 25, 27, 43, 44 (in so far as it inserts section 44NG of the *Trade Practices Act 1974*) and 108 (in so far as it inserts section 44ZZBE of that Act) apply in relation to decisions made after the commencement of those items.

120 Application—deemed decision not to declare a service

The amendment made by item 26 applies in relation to declaration recommendations made to the designated Minister after the commencement of that item.

121 Application—extensions of access regimes, access undertakings and access codes

(1) The amendment made by item 44 (in so far as it inserts section 44NA of the *Trade Practices Act 1974*) applies in relation to decisions made by the Commonwealth Minister before or after the commencement of that item that an access regime is an effective access regime.

(2) The amendment made by item 108 (in so far as it inserts section 44ZZBB of the *Trade Practices Act 1974*) applies in relation to decisions made by the Commission before or after the commencement of that item to accept an access undertaking or an access code.

122 Transitional—review applications on effective access regime decisions

An application made to the Tribunal under subsection 44O(1) of the *Trade Practices Act 1974* before the commencement of this item has effect, after that commencement, as if it had been made under that subsection after that commencement.

123 Application—interim determinations

The amendment made by item 58 applies in relation to access disputes notified to the Commission before or after the commencement of that item.

124 Transitional—existing determinations continue in operation

A determination:

(a) made by the Commission under subsection 44V(1) of the *Trade Practices Act 1974* before the commencement of this item; and

(b) that is in operation under that Act immediately before that commencement;

has effect, after that commencement, as if it were a final determination made by the Commission under subsection 44V(1) of that Act.

125 Application—interconnections to facilities

The amendments made by items 60, 63 and 66 apply:

(a) in relation to access disputes notified after the commencement of those items; and

(b) in relation to access disputes notified before that commencement in respect of which no determination has been made under subsection 44V(1) of the *Trade Practices Act 1974* before that commencement.

126 Application—pricing principles

The amendments made by items 67, 92 (in so far as it inserts paragraph 44ZZA(3)(ab) of the *Trade Practices Act 1974*) and 100 (in so far as it inserts paragraph 44ZZAA(3)(ab) of that Act) apply in relation to access disputes notified, and access undertakings and access codes given, to the Commission after the commencement of those items.

127 Application—joint arbitration hearings

The amendment made by item 71 applies in relation to access disputes notified to the Commission either before or after the commencement of that item.

128 Application—arbitration reports

The amendment made by item 72 applies in relation to access disputes notified to the Commission after the commencement of that item.

129 Application—backdating of final determinations

The amendment made by item 75 applies in relation to access disputes notified to the Commission after the commencement of that item. However, a day specified under subsection 44ZO(3) of the *Trade Practices Act 1974* after that commencement cannot be a day occurring before that commencement.

130 Application—assessment of access undertakings and access codes

The amendments made by items 93, 95, 101, 102 and 107 apply in relation to access undertakings and access codes given to the Commission after the commencement of those items.

131 Application—when access undertakings and access codes come into operation

The amendments made by items 97, 104 and 108 (in so far as it inserts section 44ZZBA of the *Trade Practices Act 1974*) apply in relation to decisions made by the Commission after the commencement of those items.

132 Transitional—old access undertakings and access codes continue in operation

An access undertaking or access code, that is in operation under section 44ZZA or 44ZZAA of the *Trade Practices Act 1974* immediately before the commencement of this item, continues in operation after that commencement under section 44ZZBA of that Act.

Note: The effect of this item is to allow extensions of the undertaking or code after the commencement of this item under section 44ZZBB of that Act.

133 Application—variation of access undertakings and access codes

The amendments made by items 98 and 105 apply in relation to variations sought after the commencement of those items.

134 Application—review of access undertaking decisions and access code decisions

The amendment made by item 108 (in so far as it inserts section 44ZZBF of the *Trade Practices Act 1974*) applies in relation to decisions of the Commission made after the commencement of that item.

135 Application—deferral of access disputes or access undertakings

The amendment made by item 110 (in so far as it inserts section 44ZZCB of the *Trade Practices Act 1974*) applies in relation to access disputes notified, and access undertakings given, to the Commission after the commencement of that item.

136 Application—Commission annual report

The amendment made by item 113 applies in relation to financial years ending after the commencement of that item.

Trade Practices Legislation Amendment Act (No. 1) 2006 (No. 131, 2006)

Schedule 1

52 Application of amendments

The amendments made by this Schedule apply in relation to applications for clearances or authorisations made after the commencement of this item.

53 Transitional

(1) A person cannot make an application (the ***new application***), after the commencement of this item, for an authorisation under Division 3 of Part VII of the *Trade Practices Act 1974* in relation to an acquisition of shares or assets if, before the commencement of this item, the person made an application (the ***old application***) under subsection 88(9) of that Act for an authorisation in relation to the acquisition.

(2) However, the person can make the new application if:

(a) the Commission has not made a determination on the old application; and

(b) the person withdraws the old application.

Schedule 2

13 Application

The amendments made by this Schedule apply in relation to applications made after the commencement of this Schedule.

14 Saving

(1) Regulations in force for the purposes of subsection 89(1) of the *Trade Practices Act 1974* immediately before the commencement of this Schedule have effect, after that

commencement, as if they had been made for the purposes of that subsection after that commencement.

(2) An application made in accordance with subsection 89(1) of the *Trade Practices Act 1974* before the commencement of this Schedule has effect, after that commencement, as if it had been made in accordance with that subsection after that commencement.

Schedule 3

28 Application

The amendments made by this Schedule apply in relation to contracts or arrangements made, or understandings arrived at, after the commencement of this Schedule.

29 Saving

(1) Regulations in force for the purposes of subsection 93(1) of the *Trade Practices Act 1974* immediately before the commencement of this Schedule have effect, after that commencement, as if they had been made for the purposes of subsection 93(1A) of that Act after that commencement.

(2) A notice given in accordance with subsection 93(1) of the *Trade Practices Act 1974* before the commencement of this Schedule has effect, after that commencement, as if it had been given in accordance with subsection 93(1A) of that Act after that commencement.

Schedule 4

2 Application

The amendment made by this Schedule applies in relation to proceedings instituted after the commencement of this Schedule (whether the contract or arrangement was made, or the understanding was arrived at, before or after that commencement).

Schedule 5

4 Application

(1) The amendments made by items 1 and 3 apply in relation to contracts or arrangements made, or understandings arrived at, before or after the commencement of this Schedule.

(2) The amendment made by item 2 applies in relation to proceedings instituted after the commencement of this Schedule (whether the contract or arrangement was made, or the understanding was arrived at, before or after that commencement).

Schedule 6

20 Application

(1) The amendments made by items 1, 4, 7, 8, 9 and 19 apply in relation to arrangements made after the commencement of those items.

(2) The amendment made by item 2 applies in relation to conduct engaged in after the commencement of that item.

Schedule 7

18 Application

The amendment made by item 17 applies in relation to notifications made after the commencement of that item.

33 Application

The amendments made by this Part apply in relation to conduct engaged in after the commencement of this Part.

35 Application

The amendment made by this Part applies in relation to notices given after the commencement of this Part (whether or not the application for authorisation was dismissed before or after that commencement).

Schedule 8

28 Application

The amendment made by item 4 applies in relation to contraventions occurring either before or after the commencement of that item.

29 Transitional—old authorisations

Subsection 155(2) of the *Trade Practices Act 1974*, as in force immediately before the commencement of this item, continues to apply after that commencement in relation to an authorisation given under that subsection before that commencement, but only in relation to any entry to premises under that authorisation that occurs before the 14th day after that commencement.

Schedule 9

15 Application

The amendments made by this Part apply in relation to contraventions occurring after the commencement of this Part.

21 Application

The amendments made by this Part apply in relation to contraventions occurring after the commencement of this Part.

24 Application

The amendments made by this Part apply in relation to contraventions occurring after the commencement of this Part.

Trade Practices Legislation Amendment Act (No. 1) 2007 (No. 159, 2007)

Schedule 1

4 No effect on existing appointment

The amendments made by items 2 and 3 of this Schedule do not affect the validity of an appointment under subsection 10(1) of the *Trade Practices Act 1974* that is in force immediately before the commencement of this item.

Schedule 2

12 Application of amendments

(1) The amendments made by items 1, 2 and 3 of this Schedule apply in relation to contraventions of section 46 of the *Trade Practices Act 1974* (as amended by this Act) that occur after the commencement of those items.

(2) The amendments made by items 4 to 8 of this Schedule apply in relation to contraventions of section 151AK of the *Trade Practices Act 1974* (as amended by this Act) that occur after the commencement of those items.

(3) The amendments made by items 9, 10 and 11 of this Schedule apply in relation to contraventions of section 46 of the Schedule to the *Trade Practices Act 1974* (as amended by this Act) that occur after the commencement of those items.

Schedule 3

9 Application of amendments

The amendments made by this Schedule apply in relation to conduct engaged in after the commencement of the amendments in relation to contracts for the supply or acquisition of goods or services made before or after commencement.

Trade Practices Legislation Amendment Act 2008 (No. 116, 2008)

Schedule 3

13 Application of item 12

The amendments made by item 12 of this Schedule apply in relation to conduct engaged in after the commencement of that item, including conduct in relation to contracts for the supply or acquisition of goods or services whether made before or after that commencement.

15 Application of item 14

(1) Item 14 applies in relation to a matter referred to in subsection 155(1) of the *Trade Practices Act 1974* whether the matter arose before or after the commencement of that item.

(2) Without limiting subitem (1), item 14 of this Schedule applies even if an interim injunction has been granted in relation to the matter.

Trade Practices Amendment (Clarity in Pricing) Act 2008 (No. 126, 2008)

Schedule 1

5 Application

The amendments made by this Schedule apply in relation to conduct engaged in after the commencement of this Schedule.

Schedule 2 (Part 2)

52 Application—search warrants

The amendments of the following provisions made by this Schedule:

(a) section 154A of the *Trade Practices Act 1974* (to the extent to which that section relates to Division 4 of Part XID of that Act);

(b) Division 4 of Part XID of the *Trade Practices Act 1974*;

apply in relation to search warrants issued after the commencement of this item.

53 Application—giving answers and producing documents etc.

(1) The amendments of subsection 155(7) of the *Trade Practices Act 1974* made by this Schedule apply in relation to notices under section 155 of that Act served after the commencement of this item.

(2) The amendments of section 159 of the *Trade Practices Act 1974* made by this Schedule apply in relation to:

(a) requirements to give evidence; and

(b) requirements to produce documents;

imposed after the commencement of this item.