Trade Practices Act 1974

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Volume 1: sections 1-110
Volume 2: sections 10.01-173
Schedule
Endnotes

Each volume has its own contents

This compilation was rectified to take into account retrospective amendments made by Act No. 69, 2000 and Act No. 63, 2002. The original compilation and any other previous compilations for this point in time are available in the replacement history on the Federal Register of Legislation.

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About this compilation

This compilation

This is a compilation of the *Trade Practices Act 1974* that shows the text of the law as amended and in force on 22 December 1999 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au).

Application, saving and transitional provisions

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Presentational changes

The *Legislation Act 2003* provides for First Parliamentary Counsel to make presentational changes to a compilation. Presentational changes are applied to give a more consistent look and feel to legislation published on the Register, and enable the user to more easily navigate those documents.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. Any modifications affecting the law are accessible on the Register.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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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;

(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.

(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 outwards 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;

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(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.

10.02 Interpretation

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

agreement means any contract, agreement, arrangement or understanding, whether made in or outside Australia;

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;

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

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includes, or is proposed to include, the provision of liner cargo shipping services;

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 a varying conference agreement;

designated peak shipper body means an association specified in a notice under subsection 10.03(1);

designated secondary shipper body means an association specified in a notice under subsection 10.03(2);

designated shipper body means a designated peak shipper body or a designated secondary shipper body;

freight rate charges, in relation to a 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;

international liner cargo shipping service means a liner cargo shipping service for the transport of cargo by sea from a place in Australia to a place outside Australia or from a place outside Australia to a place in Australia;

inwards liner cargo shipping service means an international liner cargo shipping service commencing at a place outside Australia;

liner 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;

loyalty agreement means an agreement:

(a) between an ocean carrier or conference and a shipper or designated shipper body; and

(b) that makes provision, in relation to outwards liner cargo shipping services, having the purpose or effect of giving

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certain benefits to the shipper, or a shipper represented by the designated 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;

ocean carrier means a person who provides, or proposes to provide, international liner cargo shipping services;

outwards liner cargo shipping service means an international liner cargo shipping service commencing at a place in Australia;

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, 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;

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

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(c) substituting new provisions or parties for any of the provisions of, or parties to, the agreement;

varying conference agreement means an agreement:

(a) that varies a conference agreement; or

(b) that otherwise affects a conference agreement (including an agreement referred to in subsection (3)).

(2) A reference in this Part to the minimum level of outwards liner cargo shipping services provided, or proposed to be provided, under a 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.

(3) A reference in this Part to an agreement that affects a 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.

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 declare that the

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association is a designated 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 secondary shipper body for the purposes of this Part,

the Minister may declare that the association is a designated secondary shipper body for the purposes of this Part.

(3) Where the Minister declares that an association is a designated peak shipper body, or a designated 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 peak shipper body or a designated secondary shipper body.

(5) The Minister may 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.

(7) A declaration under subsection (1) or (2), and a guideline under subsection (5), must be made in writing, and are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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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.

10.05 Discrimination between shippers prohibited

(1) An ocean carrier shall not discriminate between shippers requiring similar outwards liner cargo shipping services on a particular trade route (whether the discrimination is in relation to freight rates, levels of shipping services, the provision of equipment and facilities or otherwise) if the discrimination is of such a magnitude or such a recurring or systematic character that it has, or is likely to have, the effect of substantially lessening competition in a market for goods or services, being a market in which the shippers supply goods or the ocean carrier supplies outwards liner cargo shipping services.

(2) In a proceeding against an ocean carrier for contravention of subsection (1), it is a defence if the ocean carrier proves:

(a) that the discrimination made only reasonable allowance for differences in the cost or likely cost of providing outwards liner cargo shipping services resulting from:

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(i) the different ports from or to which the services were required;
(ii) the different quantities of cargo required to be carried; or
(iii) the different kinds of cargo required to be carried;

(b) that the discrimination made only reasonable allowance for:
(i) the capacity of the ocean carrier to carry cargo or a particular kind of cargo, whether at all times or particular times; or
(ii) the different times at which the outwards liner cargo shipping services were required to be provided; or

(c) that the discrimination was constituted by the doing of an act in good faith to meet freight rates, levels of service, equipment or facilities, or benefits, offered by a competitor of the ocean carrier.

(3) A person shall not:
(a) knowingly induce, or attempt to induce, an ocean carrier to discriminate between shippers in contravention of subsection (1); or
(b) enter into a transaction that, to the knowledge of the person, would result in the person receiving the benefit of a discrimination between shippers that contravenes subsection (1).

(4) In a proceeding against a person for a contravention of subsection (3), it is a defence if the person proves:
(a) that the discrimination was of a kind referred to in subsection (2); or
(b) that the person reasonably believed that the discrimination was of a kind referred to in subsection (2).

(5) Section 5 and Part VI apply in relation to subsections (1) to (4) (inclusive) as if those subsections were provisions of Part IV.

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Division 3—Minimum standards for conference agreements

10.06 Application of Australian law to conference agreements and withdrawal from agreements

(1) A 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) A 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

A conference agreement must contain provisions specifying the minimum level of outwards liner cargo shipping services to be provided under the agreement.

10.08 Conference agreements may include only certain restrictive trade practice provisions

(1) If a conference agreement includes a provision:

(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 an exclusionary provision or has or is likely to have that effect, must either:

(c) deal only with the following matters:

(i) the fixing or other regulation of freight rates;

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(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 Australian exporters.

(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 Australian exporters.

(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).

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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;

(b) a register of designated shipper bodies;

(c) a register of non-conference ocean carriers with substantial market power;

(d) a register of obligations concerning unfair pricing practices; and

(e) a register of ocean carrier agents.

(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).

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(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) and 10.57(1);

(b) particulars of decisions made by the Commission under subsections 10.48(2) 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.

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Division 5—Exemptions from certain restrictive trade practice prohibitions

Subdivision A—Exemptions relating to conference agreements

10.14 Exemptions apply only to *blue-water* parts of service and activities outside Australia etc.

(1) Subject to subsection (2), where an outwards liner cargo shipping service consists of the transport of cargo by sea and other activities (including, for example, stevedoring operations and the transport of the cargo by land or air), the exemptions provided by this Subdivision apply only in relation to:

(a) the parts of the service that consist of the transport of the cargo by sea; and

(b) activities that take place outside Australia.

(2) The exemptions provided by this Subdivision extend to:

(a) the fixing of door-to-door freight rates for an outwards liner cargo shipping service, if freight rates are also fixed for shippers wishing to use only those parts of the service that consist of:

(i) the transport of cargo by sea;

(ii) activities that take place in Australia within the limits of a wharf appointed under section 15 of the *Customs Act 1901*, being the limits fixed under that section; and

(iii) activities that take place outside Australia at a wharf or adjacent terminal facilities; and

(b) the determination of common terms and conditions for bills of lading for use in relation to an outwards liner cargo shipping service.

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10.15 When do exemptions commence to apply in relation to registered conference agreements?

The exemptions provided by this Subdivision apply in relation to the operation of a registered conference agreement only after the end of 30 days after the conference agreement is finally registered.

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, the exemptions provided by this Subdivision 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 section 45

(1) Section 45 does 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) Section 45 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.

10.17A Exemptions from section 45 for conference agreements to the extent that they specify freight rates

(1) Section 45 does not apply to the making of the freight rate charges in a conference agreement.

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(2) Section 45 does not apply to conduct engaged in by a party to a conference agreement so far as the conduct gives effect to the freight rate charges in the 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.

(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 conference agreements to the extent that they specify freight rates

(1) Section 47 does not apply to conduct engaged in by a party to a conference agreement so far as the conduct gives effect to the freight rate charges in the agreement.

(2) The exemption provided by subsection (1) does not apply in relation to subsections 47(6) and (7).

Subdivision B—Exemptions relating to loyalty agreements

10.19 Exemptions from section 45

(1) Section 45 does 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) Section 45 does 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.

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10.20 Exemption from sections 47 and 10.05

(1) Sections 47 and 10.05 do 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.

(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 C—Exemption relating to inwards liner cargo shipping services

10.22 Exemption applies only to *blue-water* parts of service and activities outside Australia etc.

(1) Subject to subsection (2), where an inwards liner cargo shipping service consists of the transport of cargo by sea and other activities (including, for example, stevedoring operations and the transport of the cargo by land or air), the exemption provided by this Subdivision applies only in relation to:

(a) the parts of the service that consist of the transport of the cargo by sea; and

(b) activities that take place outside Australia.

(2) The exemption provided by this Subdivision extends to:

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(a) the fixing of door-to-door freight rates for an inwards liner cargo shipping service, if freight rates are also fixed for shippers wishing to use only those parts of the service that consist of:
  (i) the transport of cargo by sea;
  (ii) activities that take place in Australia within the limits of a wharf appointed under section 15 of the *Customs Act 1901*, being the limits fixed under that section; and
  (iii) activities that take place outside Australia at a wharf or adjacent terminal facilities; and
(b) the determination of common terms and conditions for bills of lading for use in relation to an inwards liner cargo shipping service.

10.23 Exemption from sections 45 and 47

(1) Sections 45 and 47 do not apply in relation to conduct engaged in by a person so far as the conduct relates to the provision, or proposed provision, of an inwards liner cargo shipping service.

(2) The exemption provided by subsection (1) does not apply in relation to subsections 47(6) and (7).

Subdivision D—Other exemptions

10.24 Exemptions from sections 45 and 47 in relation to certain negotiations

(1) Sections 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 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:

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(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).

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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:

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(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 outwards liner cargo shipping services to be provided under the agreement or a 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.

10.28 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;

(b) that the agreement complies with section 10.06 (application of Australian law to 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

(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.);

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(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.

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 conference agreement shall:

(a) take part in negotiations with the designated peak shipper bodies or, if there is not at that time a designated peak shipper body, the designated 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

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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) Subsection (1) does 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.

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(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;

(b) that the agreement complies with section 10.07 (minimum levels of shipping services to be specified in conference agreements) and section 10.08 (conference agreements may include only certain restrictive trade practice provisions) or, if the agreement varies or otherwise affects another

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conference agreement, that the other conference agreement as varied or affected complies with those sections;

(c) 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

(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.

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.

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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:

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(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) that granting the request would not disadvantage Australian exporters; 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.

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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:

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(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 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 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.

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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:

negotiable shipping arrangements means the arrangements for, or the terms and conditions applicable to, outwards liner cargo shipping services provided, or proposed to be provided, under the

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conference agreement (including, for example, freight rates, frequency of sailings and ports of call);

relevant designated shipper body means:

(a) a designated peak shipper body; or

(b) a designated 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 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 provided, or that would, but for the agreement, have been provided, by the other ocean carriers,

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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.

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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.

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(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.

10.45 Circumstances in which Minister may exercise powers in relation to registered conference agreements

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) that the agreement does not comply with one or more of the following provisions:

(A) section 10.06 (application of Australian law to conference agreements and withdrawal from agreements);

(B) section 10.07 (minimum levels of shipping services to be specified in conference agreements);

(C) section 10.08 (conference agreements may include only certain restrictive trade practice provisions);

(ii) that parties to the agreement have contravened, or propose to contravene, either or both of the following provisions:

(A) section 10.41 (parties to registered conference agreement to negotiate with certain designated shipper bodies etc.);

(B) subsection 10.43(1) (parties to registered conference agreement to notify happening of affecting events etc.);

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(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 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) 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;

(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

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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.

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(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(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.

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(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.

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(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 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(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.

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(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) an Australian flag shipping operator;

(d) a shipper who uses, or may reasonably be expected to need to use, outwards 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.

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(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.

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Division 9—Obligations of non-conference ocean carriers with substantial market power

10.50 Inquiries by Tribunal into market power of ocean carriers

(1) The Minister may refer to the Tribunal for inquiry and report the question whether an ocean carrier has a substantial degree of market power in the provision of outwards liner cargo shipping services on a trade route otherwise than because the ocean carrier is a party to a conference agreement.

(2) The Tribunal shall hold an inquiry into the question and report to the Minister.

(3) In its inquiry, the Tribunal shall give special consideration to any matters specified in the reference as matters to be given special consideration by the Tribunal.

10.51 Determination by Minister of market power of ocean carriers

(1) Where:

(a) the Tribunal 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 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.

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(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:

negotiable shipping arrangements means the arrangements for, or the terms and conditions applicable to, outwards liner cargo shipping services provided, or proposed to be provided, by the

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ocean carrier on the relevant trade route (including, for example, freight rates, frequency of sailings and ports of call);

relevant designated shipper body means:

(a) a designated peak shipper body; or

(b) a designated 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.

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.

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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 that the ocean carrier concerned has contravened, or proposes to contravene, either or both of the following provisions:

(i) section 10.52 (non-conference ocean carrier with substantial market power to negotiate with certain designated shipper bodies etc.);

(ii) 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

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(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.

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(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.

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.

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(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) an Australian flag shipping operator;
  (c) a shipper who uses, or may reasonably be expected to need to use, outwards 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.

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(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.

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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 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 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 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

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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 Tribunal has reported to the Minister under section 10.63 in relation to the ocean carrier in relation to outwards liner cargo shipping services provided on the trade route and the Minister has taken the report into account.

10.63 Inquiry and report by Tribunal

(1) The Minister may, on the complaint of an affected person or otherwise, refer to the Tribunal for inquiry 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 provided on a trade route, of the matters referred to in paragraph 10.62(a).

(2) The Tribunal shall hold an inquiry into the question and report to the Minister.

(3) In its inquiry, the Tribunal shall give special consideration to any matters specified in the reference as matters to be given special consideration by the Tribunal.

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.

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(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 Tribunal 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 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).

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(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

In determining whether a pricing practice 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.

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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

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(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.

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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.

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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.

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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 section 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 section 10.63).

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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.

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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.

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(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) and 10.57(1); and

(b) decisions made by it under subsections 10.48(2) and 10.58(2) to hold investigations.

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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,

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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, 10.57 or 10.58;

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

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(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,

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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—$600; and

(b) in the case of an application for final registration of a conference agreement—$350; and

(c) in the case of an application for the registration of a person as an ocean carrier's agent—$80; and

(ca) in the case of variation of the register of ocean carrier agents following a notice under subsection 10.72(1)—$80; 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—$100.

10.91 Application of section 155 to investigations under Part

(1) Section 155 applies 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.

10.92 Constitution of Tribunal for inquiries under Part etc.

For the purposes of an inquiry under this Part:

(a) the Tribunal shall, subject to section 43, be constituted by a Division of the Tribunal consisting of a presidential member and 2 members who are not presidential members;

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(b) section 43 applies as if the holding of the inquiry, and the making of a report on the inquiry, were the hearing and determining of proceedings; and

(c) sections 109 and 110 do not apply.

10.93 Participation in inquiries by Tribunal under Part etc.

(1) In an inquiry by the Tribunal under this Part in relation to an ocean carrier, each of the following persons is entitled to participate:

(a) the Minister;

(b) the ocean carrier;

(c) a designated peak shipper body;

(d) a designated secondary shipper body that the Tribunal is satisfied has a sufficient interest in the inquiry.

(2) The Tribunal may grant leave to participate to any other person or association appearing to it to have a sufficient interest in the inquiry.

(3) The representation of a person or body shall be by:

(a) a barrister, solicitor, barrister and solicitor or legal practitioner of the High Court or the Supreme Court of a State or Territory; or

(b) a person approved by the Tribunal.

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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;

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;

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(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;

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(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

The Federal Court may exercise jurisdiction (whether original or appellate) conferred on that Court by an application law 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 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 Competition Code.

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:

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(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 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.

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(2) The Minister may, by further notice in the *Gazette*, revoke a notice published under subsection (1).

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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

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(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.

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150O Federal Court may exercise jurisdiction under application laws

The Federal Court may exercise jurisdiction (whether original or appellate) conferred on that Court by an application law 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.

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(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.

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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.

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- 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 for inspection and purchase. The direction is called a ***disclosure direction***.

151AB Definitions

In this Part, unless the contrary intention appears:

ACA means the Australian Communications 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*.

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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.

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) or 151BUC(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*.

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.

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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:

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(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,

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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

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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.

(6) Subsection (5), does 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.

(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.

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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 with the effect, or likely effect, of substantially lessening competition in that or any other telecommunications market; or
    (ii) takes advantage of that power, 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.

(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 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 45, 45B, 46, 47 or 48, it is to be assumed that each reference in those sections to a corporation included a reference to a carrier, or a carriage service provider, that is not a corporation.

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(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 paragraph 46(1)(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 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

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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 45, 45B, 46, 47 or 48:

(a) because an authorisation is in force; or

(b) because of the operation of section 93.

(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.

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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

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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.

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.

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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.

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(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).

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(3) The Commission must take all reasonable steps to ensure that the first instrument under subsection (2) is made before 1 July 1997.

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) 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

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(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.

151AQB Advisory notices

(1) This section applies if a Part A competition notice is in force in relation to a carrier or carriage service provider.

(2) The Commission may give the carrier or carriage service provider a written notice advising the carrier or carriage service provider of the action it should take, or consider taking, in order to ensure that it does not engage, or continue to engage, in the kind of conduct dealt with in the Part A competition notice.

(3) A notice under subsection (2) is an instrument of an advisory character.

(4) A notice under subsection (2) that relates to a Part A competition notice ceases to be in force if the Part A competition notice ceases to be in force.

(5) The Commission may vary or revoke a notice under subsection (2).

(6) If a notice under subsection (2) 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 a notice under subsection (2) is revoked, the Commission must give the carrier or carriage service provider concerned a written notice stating that the notice under subsection (2) has been revoked.

151AR Register of competition notices

(1) The Commission must keep a Register in relation to competition notices.

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(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

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(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.

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,

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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 section 93 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); 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

(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.

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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:

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(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.

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(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:

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(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:

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(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.

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151BI False or misleading information supplied in connection with application for an exemption order

A person who, in connection with an application for an exemption order, intentionally or recklessly:

(a) gives information to the Commission that is false or misleading in a material particular; or

(b) omits from information given to the Commission any matter or thing without which the information is misleading in a material particular,

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*.

Subdivision C—Miscellaneous

151BJ *Conduct* includes proposed conduct

A reference in this Division to ***conduct*** includes a reference to proposed conduct.

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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,

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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

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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.

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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.

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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:

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(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.

151BS False or misleading tariff information

A person who, in purported compliance with a tariff filing direction, intentionally or recklessly:
(a) gives information to the Commission that is false or misleading in a material particular; or
(b) omits from information given to the Commission any matter or thing without which the information is misleading in a material particular,

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*.

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Section 151BT

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.

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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;

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(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.

(12) Section 151BS applies to information given to the Commission in purported compliance with this section in a corresponding way to the way in which it applies to information given to the Commission in purported compliance 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.

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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).

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(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).

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:

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(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.

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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.

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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 intentionally or recklessly contravenes subsection (7) is guilty of an offence punishable on conviction by a fine not exceeding 20 penalty units.

(11) A person who intentionally or recklessly 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.

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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*.

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(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

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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 intentionally or recklessly contravenes subsection (9) is guilty of an offence punishable on conviction by a fine not exceeding 20 penalty units.

(13) A person who intentionally or recklessly contravenes subsection (11) is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

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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

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(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:

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(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

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must comply with the terms and conditions (if any) that are specified in the direction.

Offences

(12) A person who intentionally or recklessly contravenes subsection (9) is guilty of an offence punishable on conviction by a fine not exceeding 20 penalty units.

(13) A person who intentionally or recklessly 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

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(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*.

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

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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 intentionally or recklessly 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*.

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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,

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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, 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

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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:

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(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 section 151BS (which deals with false or misleading tariff information).

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

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(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:

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(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:

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(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

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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.

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(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,

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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).

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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

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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.

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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).

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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.

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(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

(1) On a review of a decision of the Commission of a kind mentioned in section 151CI, 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.

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.

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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*.

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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 5 of Part 7 of the *Telecommunications Act 1997* (which deals with regulation of universal 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:

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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*.

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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:

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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

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(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.

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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.

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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.

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- An 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 access to a declared service.

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;

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(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, the infrastructure by which listed services are 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 technically feasible for the services to be supplied and charged for, having regard to:

(i) the technology that is in use or available; and

(ii) whether the costs that would be involved in supplying, and charging for, the services are 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;

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(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 the infrastructure by which the services are 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.

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:

ACA means the Australian Communications Authority.

ACCC telecommunications access code means an ACCC telecommunications access code under Division 4.

access has the meaning given by section 152AF.

access seeker has the meaning given by section 152AG.

access undertaking means an undertaking under Division 5.

approved TAF telecommunications access code means the approved TAF telecommunications access code under Division 4.

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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.

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draft TAF telecommunications access code means a draft TAF telecommunications access code under Division 4.

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.

nominated carrier has the same meaning as in the *Telecommunications Act 1997*.

person includes a partnership.

Note: Section 152EN sets out additional rules about partnerships.

service provider has the same meaning as in the *Telecommunications Act 1997*.

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

TAF has the meaning given by section 152AI.

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.

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(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

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(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.

152AI The Telecommunications Access Forum

(1) The Commission may, by notice in the *Gazette*, declare a specified body or association to be the Telecommunications Access Forum (the ***TAF***) for the purposes of this Part if:

(a) the membership of the body or association is open to all carriers and carriage service providers; and

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(b) the body or association is capable of generating recommendations relating to declarations under section 152AL; and

(c) the body or association is capable of generating a draft telecommunications access code; and

(d) the body or association has a written constitution.

(2) The declaration has effect accordingly.

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.

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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 on recommendation of TAF

(2) The Commission may, by written instrument, declare that a specified eligible service is a ***declared service*** if:

(a) the declaration is in accordance with a recommendation of the TAF; and

(b) the Commission is satisfied that the TAF has given representatives of persons who are likely to be access seekers in relation to the eligible service a reasonable opportunity to comment on a proposal to make the recommendation; and

(c) the Commission is satisfied that the TAF has given representatives of consumers a reasonable opportunity to comment on a proposal to make the recommendation.

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

Declaration made after public inquiry

(3) The Commission may, by written instrument, declare that a specified eligible service is a ***declared service*** if:

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(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.

152AM Inquiries about proposals to declare services

(1) This section applies to a public inquiry of a kind mentioned in paragraph 152AL(3)(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.

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(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 ACA and the TAF 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).

(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.

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(2) The Commission must not vary or revoke a declaration under subsection 152AL(2) unless the Commission has held a public inquiry under Part 25 of the *Telecommunications Act 1997* about the proposed variation or revocation. However, this rule does not apply to a variation if the variation is of a minor nature.

(3) If a variation of a declaration under subsection 152AL(3) is 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.

152AP Inquiries about revocation of declared services

(1) This section applies to a public inquiry of a kind mentioned in subsection 152AO(2).

(2) The Commission must give the ACA and the TAF a copy of the report about the inquiry prepared in accordance with section 505 of the *Telecommunications Act 1997*.

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 subsection 152AO(2) 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

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(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.

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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:

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(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.

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

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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

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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 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

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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.

(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*.

152AT Individual exemptions from standard access obligations

(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.

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(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.

(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.

(5) An order under paragraph (3)(a) may be unconditional or subject to such conditions or limitations as are specified in the order.

(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.

(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.

(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.

(10) 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.

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152AU Individual exemptions—request for further information

(1) This section applies to an application under subsection 152AT(1).

(2) The Commission may request the applicant to give the Commission further information about the application.

(3) The Commission may refuse to consider the application until the applicant gives the Commission the information.

152AV Review by Tribunal of exemption order decision

(1) A person whose interests are affected by a decision of the Commission under section 152AT 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

(1) On a review of a decision of the Commission under section 152AT, 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

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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.

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.

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

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(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.

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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.

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(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.

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;

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(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.

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(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.

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(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

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mediated at, negotiations in relation to the matter in accordance with a request under this section.

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Division 4—Telecommunications access code

Subdivision A—TAF telecommunications access code

152BC The TAF may submit a draft TAF telecommunications access code to the Commission for approval

(1) The TAF may give the Commission a draft TAF telecommunications access code.

(2) The draft code must be in writing.

(3) A draft code may be expressed to replace the approved TAF telecommunications access code.

152BD Content of draft or approved TAF telecommunications access code

(1) A draft or approved TAF 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 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 code must be consistent with the standard access obligations.

152BE Approval of draft TAF telecommunications access code by Commission

(1) This section applies if the TAF gives the Commission a draft TAF telecommunications access code.

(2) The Commission must:

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(a) approve the draft code; or
(b) refuse to approve the draft code.

(3) If the Commission approves a draft TAF telecommunications access code, the code becomes the ***approved TAF telecommunications access code***.

(4) The Commission must ensure that not more than one code is in force at a particular time.

152BF Criteria for approval of draft TAF telecommunications access code

The Commission must not approve a draft TAF telecommunications access code unless the Commission is satisfied that:

(a) the TAF has carried out a process of consultation on the code with representatives of persons who are likely to become access seekers in relation to the declared services covered by the code; and
(b) the TAF has carried out a process of consultation on the code with representatives of consumers; and
(c) the code is consistent with the standard access obligations; and
(d) 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
(e) 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.

152BG Notification of decision

(1) After deciding whether to approve a draft TAF telecommunications access code, the Commission must notify the TAF and the ACA in writing of the decision.

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(2) If the Commission refuses to approve a draft TAF telecommunications access code, the Commission must notify the TAF in writing of the Commission's reasons for the refusal.

152BH Commission must invite public submissions on draft TAF telecommunications access codes

The Commission must not approve a TAF telecommunications access code unless the Commission has first:

(a) published the draft code and invited people to make submissions to the Commission on the draft code; and

(b) considered any submissions that were received within the time limit specified by the Commission when it published the draft code.

152BI Commission must consult the ACA

Before deciding whether to approve a draft TAF telecommunications access code, the Commission must consult the ACA.

Subdivision B—ACCC telecommunications access code

152BJ Commission may make telecommunications access code

(1) If:

(a) an approved TAF telecommunications access code (the ***current code***) is in force at a particular time; and

(b) the Commission is satisfied that, if it were assumed that the TAF were to give the Commission a draft TAF telecommunications access code in the same terms as the current code, the Commission would refuse to approve that code; and

(c) the Commission gives the TAF a written notice setting out the Commission's reasons for being satisfied as mentioned in paragraph (b) and:

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(i) requesting the TAF to give the Commission, within the period specified in the notice, a variation of the current code; or

(ii) requesting the TAF to give the Commission, within the period specified in the notice, a fresh draft TAF telecommunications access code that is expressed to replace the current code; and

(d) either:

(i) the TAF does not comply with the request; or

(ii) the TAF complies with the request, but, under section 152BE or 152BQ, the Commission subsequently refuses to approve the variation or the fresh code, as the case may be,

the Commission may, by written instrument:

(e) revoke the current code; and

(f) make a telecommunications access code.

The code made by the Commission is to be known as an ***ACCC telecommunications access code***.

(2) If:

(a) no approved TAF telecommunications access code is in force at a particular time; and

(b) the Commission gives the TAF a written notice requesting the TAF to give the Commission, within the period specified in the notice, a draft TAF telecommunications access code; and

(c) either:

(i) the TAF does not comply with the request; or

(ii) the TAF complies with the request, but, under section 152BE, the Commission subsequently refuses to approve the draft code,

the Commission may, by written instrument, make a telecommunications access code. The code made by the Commission is to be known as an ***ACCC telecommunications access code***.

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(3) A period specified in a notice as mentioned in paragraph (1)(c) or (2)(b):

(a) must run for at least 30 days; and

(b) must not exceed 180 days.

(4) An ACCC telecommunications access code is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(5) The Commission must ensure that not more than one code is in force at a particular time.

Note: Under section 152BO, if an ACCC telecommunications access comes into force, this Part has effect as if that code were the approved TAF telecommunications access code.

152BK Content of ACCC telecommunications access code

(1) An ACCC 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 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 an ACCC 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.

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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 ACCC telecommunications access code

The Commission must not make an ACCC 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 ACA about code

Before making an ACCC telecommunications access code, the Commission must consult the ACA.

152BN Copy of code to be given to TAF and the ACA

If the Commission makes an ACCC telecommunications access code, the Commission must give the TAF and the ACA a copy of the code.

152BO Effect of ACCC telecommunications access code

If an ACCC telecommunications access code is made at a particular time, this Part (other than sections 152BD to 152BI (inclusive)) has effect as if that code were an approved TAF telecommunications access code that had been approved at that time.

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Subdivision C—Duration, variation and revocation of telecommunications access codes

152BP Duration of approved TAF telecommunications access code

The approved TAF telecommunications access code comes into force when it is approved and remains in force until:

(a) a fresh approved TAF telecommunications access code that is expressed to replace the first-mentioned code comes into force; or

(b) the first-mentioned code is revoked.

152BQ Variation or revocation of approved TAF telecommunications access codes

(1) The TAF may, with the approval of the Commission, vary the approved TAF telecommunications access code.

(2) The TAF may, with the approval of the Commission, revoke the approved TAF telecommunications access code.

(3) The Commission must not give an approval under this section unless the Commission has first:

(a) published a proposal to give the approval and invited people to make submissions to the Commission on the proposal; and

(b) considered any submissions that were received within the time limit specified by the Commission when it published the proposal.

Subdivision D—Register of telecommunications access codes

152BR Register of telecommunications access codes

(1) The Commission must maintain a Register that includes:

(a) all approved TAF telecommunications access codes (including those that are no longer in force); and

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(b) all approved variations of approved TAF 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.

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Division 5—Access undertakings

152BS What is an *access undertaking*?

(1) For the purposes of this Part, an ***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.

(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 approved TAF 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.

(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.

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(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).

(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 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.

(3) The Commission may refuse to consider the undertaking until the carrier or provider gives the Commission the information.

152BU Commission to accept or reject access undertaking

(1) This section applies if an access undertaking is given to the Commission by a carrier or carriage service provider.

(2) After considering the undertaking, the Commission must:

(a) accept the undertaking; or

(b) reject the undertaking.

(3) If the Commission accepts the access 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 access undertaking, the Commission must give the carrier or provider a written notice:

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(a) stating that the undertaking has been rejected; and
(b) setting out the reasons for the rejection.

152BV Acceptance of access undertaking—model terms and conditions in access code not adopted

(1) This section applies if:
(a) an 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 approved TAF 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.

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152BW Acceptance of access undertaking—model terms and conditions in access code adopted

(1) This section applies if:

(a) an 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 approved TAF telecommunications access code.

(2) The Commission must accept the undertaking.

152BX Duration of access undertaking

(1) This section applies if an 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 approved TAF 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.

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152BY Variation of access undertakings

(1) This section applies if an 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.

(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 of a minor nature, the Commission is not required to comply with paragraph 152BV(2)(a) in relation to the variation.

(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.

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 access undertaking.

(2) The Commission may request the carrier or provider to give the Commission further information about the variation.

(3) The Commission may refuse to consider the variation until the carrier or provider gives the Commission the information.

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152CA Voluntary withdrawal of undertaking

(1) This section applies if an 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 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 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.

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.

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(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 carrier or carriage service provider is in operation.

(2) If:

(a) the Commission; or

(b) any person whose interests are affected by the undertaking,

thinks that the carrier or provider has breached the access undertaking, the Commission or person may apply to the Federal Court for an order under subsection (3).

(3) If the Federal Court is satisfied that the carrier or provider has breached the undertaking, the Court may make all or any of the following orders:

(a) an order directing the carrier or provider to comply with the undertaking;

(b) an order directing the carrier or 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.

(4) The Federal Court may discharge or vary an order granted under this section.

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152CE Review by Tribunal

(1) A person whose interests are affected by a decision of the Commission under subsection 152BU(2) or 152BY(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

(1) On a review of a decision of the Commission under subsection 152BU(2) or 152BY(3), 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.

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) or 152BY(3).

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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 1: Section 152BF provides that the Commission must not approve a TAF telecommunications access code dealing with price or a method of ascertaining price unless the code is consistent with any Ministerial pricing determination.

Note 2: Subsection 152BK(3) provides that the Commission must not make an ACCC 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 access undertaking dealing with price or a method of ascertaining price 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 approved TAF 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.

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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 approved TAF 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.

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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).

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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.

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:

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(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

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(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

(1) A notification may be withdrawn as follows (and not otherwise):

(a) if the carrier or provider notified the dispute:

(i) the carrier or provider may withdraw the notification at any time before the Commission makes its final determination;

(ii) the access seeker may withdraw the carrier's notification or provider's notification, as the case may be, at any time after the Commission issues a draft final determination, but before it makes its final determination;

(b) if the access seeker notified the dispute—the access seeker may withdraw the notification at any time before the Commission makes its final determination.

(2) Despite subparagraph (1)(a)(ii), if the carrier or provider notified a dispute over variation of a final determination, the access seeker may not withdraw the carrier's notification or provider's notification.

(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

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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

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(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.

Objection by access seeker

(3) The Commission must not make an interim determination if, at any time within the objection period, the access seeker gave the Commission a written notice objecting to the determination. For this purpose, the ***objection period*** is the period specified in a written notice issued by the Commission at the same time as a draft of the determination was issued by the Commission. The specified

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period must not be shorter than 7 business days after the draft of the determination was issued by the Commission.

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.

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.

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(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.

Definition

(12) In this section:

business day means a day that is not a Saturday, a Sunday or a public holiday in the Australian Capital Territory.

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

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anticipated requirements, measured at the time when the dispute was notified;

(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 dispute was notified;

(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 some or all 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

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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:

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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.

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(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).

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

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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

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(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.

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(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 2 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

(1) Subject to subsection (2), the Chairperson is to preside at an arbitration.

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(2) If the Chairperson is not a member of the Commission as constituted under section 152CV in relation to a particular arbitration, the Chairperson must nominate a member of the Commission to preside at the arbitration.

152CX 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.

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.

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152CZ 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.

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.

(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.

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(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.

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),

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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

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.

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

152DF 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

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(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*.

(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).

152DG Giving false or misleading evidence

A person appearing before the Commission to give evidence under section 152DD must not knowingly 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.

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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*.

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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.

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.

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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.

Subdivision E—Effect of determinations

152DN Operation of determinations

(1) A final determination has effect 21 days after the determination is made.

Stay of determination by the Tribunal

(2) However, if a party to an arbitration applies to the Tribunal under section 152DO for a review of the Commission's final determination, the Tribunal may make any orders staying or otherwise affecting the operation or implementation of the final determination that the Tribunal thinks appropriate to secure the effectiveness of the review by the Tribunal.

(3) If an order is in force under subsection (2) (including an order previously varied under this subsection), the Tribunal 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 finalisation of the review;

whichever is earlier.

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Interim determination to remain in force if final determination stayed

(5) If:

(a) an order is made under subsection (2) in connection with a final determination relating to an access dispute; and

(b) an interim determination relating to the access dispute was in force immediately before the final determination took effect;

the interim determination remains in force until:

(c) the end of any period for the operation of the order that is specified in the order; or

(d) the finalisation of the review; or

(e) the revocation of the interim determination;

whichever is earliest.

Commission may make interim determination while final determination stayed

(6) If:

(a) an order is made under subsection (2) in connection with a final determination relating to an access dispute; and

(b) no interim determination relating to the access dispute was in force immediately before the final determination took effect;

this Part does not prevent the Commission from making an interim determination relating to the access dispute while the order is in force. Such an interim determination ceases to have effect:

(c) at the end of any period for the operation of the order that is specified in the order; or

(d) on the finalisation of the review; or

(e) on the revocation of the interim determination;

whichever is earliest.

Duration of interim determination

(7) Subsections (5) and (6) have effect despite anything in section 152CPA.

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When final determination takes effect

(8) For the purposes of subsections (5) and (6), in determining the time when a final determination took effect, an order under subsection (2) is to be disregarded.

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 of notification of the access dispute concerned.

(3) For the purposes of subsections 152CPA(9) and 152DN(5) and (6), 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 subsection 152DN(1).

152DNB Stay of determinations

(1) Paragraphs 15(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.

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Subdivision F—Review of determinations

152DO Review by Tribunal

(1) A party to a final determination may apply in writing to the Tribunal for a review of the final determination.

(2) The application must be made within 21 days after the Commission made the determination.

(3) A review by the Tribunal is a re-arbitration of the access dispute.

(4) For the purposes of the review, the Tribunal has the same powers as the Commission. To avoid doubt, the Tribunal has power to make, vary or revoke an interim determination.

(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) A decision of the Tribunal takes effect from when it is made.

152DP 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 determination made by the Commission.

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152DQ 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 152DO.

(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.

152DR 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

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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.

152DS 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 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 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.

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(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.

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(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.

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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.

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(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.

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.

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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.

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(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

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(b) cannot enforce the agreement by any other means.

(2) Subsection (1) does not have effect before 1 July 1997.

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Division 10—Hindering access to declared services

152EF Prohibition on hindering access to declared service

(1) A person must not engage in conduct for the purpose of preventing or hindering access by a service provider to a declared service if:

(a) the person is:

(i) a carrier or a carriage service provider who supplies a declared service; or

(ii) a service provider to whom a declared service is being supplied by a carrier or carriage service provider; or

(iii) a body corporate that is related to a carrier or provider referred to in subparagraph (i) or (ii); and

(b) either:

(i) that access is in accordance with any of the standard access obligations; or

(ii) that access is in accordance with a 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) Subsection (1) does not have effect before 1 July 1997.

152EG 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 152EF, the Court may make all or any of the following orders:

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(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.

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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.

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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:

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(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).

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Part XII—Miscellaneous

155 Power to obtain information, documents and evidence

(1) Subject to subsection (2A), if the Commission, the Chairperson or the 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 is relevant to a designated telecommunications matter (as defined by subsection (9)) or is relevant to the making of a decision by the Commission under subsection 93(3) or (3A), 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 at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents.

(2) Subject to subsection (2A), if the Commission, the Chairperson or the Deputy Chairperson has reason to believe that a person has engaged or is engaging in conduct that constitutes, or may constitute, 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*, a member of the Commission may, for the purpose of ascertaining by the examination of documents in the possession or control of the person whether the person has engaged or is engaging in that conduct, authorise, by writing signed by the member, a member of the staff assisting the Commission (in this section referred to as an ***authorised officer***) to enter any premises, and to inspect any

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documents in the possession or under the control of the person and make copies of, or take extracts from, those documents.

(2A) A member of the Commission may not give a notice under subsection (1) or an authorisation under subsection (2) merely because:

(a) a person has refused or failed to comply with a notice under subsection 32(1) of the *Prices Surveillance Act 1983* 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 member presiding at an inquiry under that Act, 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 34(2) of that Act, on the ground that production of the document would tend to incriminate the person, or to expose the person to a penalty.

(3) The Commission may require the evidence referred to in paragraph (1)(c) to be given on oath or affirmation and for that purpose any member of the Commission may administer an oath or affirmation.

(4) Where:

(a) particulars of an agreement were furnished to the Commissioner of Trade Practices under section 42 of the *Restrictive Trade Practices Act 1971* or of that Act as amended; or

(b) particulars of an agreement were furnished to the Commissioner of Trade Practices under section 42 of the *Trade Practices Act 1965* or of that Act as amended, being particulars that would have been required to be furnished under section 42 of the *Restrictive Trade Practices Act 1971* if that Act had been in force when they were furnished,

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and it appears to a member of the Commission that the agreement would, if still in force:

(c) constitute a contract, arrangement or understanding to which section 45 of this Act applies; or

(d) provide for the engaging in conduct that is prohibited by this Act,

the member of the Commission may, by notice in writing served on a person who appeared from those particulars to be a party to the agreement, require that person to inform 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, whether any action was taken by the parties to the agreement to terminate the agreement and, if so, the nature and full particulars of that action.

(5) A person shall not:

(a) refuse or fail to comply with a notice under this section to the extent that the person is capable of complying with it;

(b) in purported compliance with such a notice, knowingly furnish information or give evidence that is false or misleading; or

(c) obstruct or hinder an authorised officer acting in pursuance of subsection (2).

(6) The occupier or person in charge of any premises that an authorised officer enters in pursuance of subsection (2) shall provide the authorised officer with all reasonable facilities and assistance for the effective exercise of his or her powers under that subsection.

(6A) A person who contravenes subsection (5) or (6) 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 $2,000 or imprisonment for 12 months; or

(b) in the case of a person being a body corporate—by a fine not exceeding $10,000.

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(7) A person is not excused from furnishing information or producing or permitting the inspection of a document in pursuance of this section on the ground that the information or document may tend to incriminate the person, but the answer by a person to any question asked in a notice under this section or the furnishing by a person of any information in pursuance of such a notice, or any document produced in pursuance of such a notice or made available to an authorised officer for inspection, is not admissible in evidence against the person:

(a) in the case of a person not being a body corporate—in any criminal proceedings other than proceedings under this section; or

(b) in the case of a body corporate—in any criminal proceedings other than proceedings under this Act.

(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 or permit inspection of 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 or permit inspection of a document, that would disclose the deliberations of the Cabinet of a State or Territory.

(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 telecommunications 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.

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155AA Protection of Part IV or VB information

(1) A Commission official must not disclose any protected Part IV information or 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 by law to disclose the information.

(2) Paragraph (1)(a) does not allow a Commission official to disclose protected Part IV information or 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 IV information means information that:

(a) was obtained by the Commission under section 155; and

(b) relates to a matter arising under Part IV.

protected Part VB information means:

(a) information that:

(i) was obtained by the Commission under section 155; and

(ii) relates to a matter arising under Part VB; or

(b) information that was obtained by the Commission under section 75AY.

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155AB Protection of Part XIB or XIC information

(1) A Commission official must not disclose any protected Part XIB or XIC 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 by law to disclose the information.

(2) Paragraph (1)(a) does not allow a Commission official to disclose protected Part XIB or XIC 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; or

(b) a person referred to in subsection 27(1); or

(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 XIB or XIC information means information that:

(a) was obtained by the Commission under:

(i) section 151AU, 152AU, 152BT, 152BZ or 155; or

(ii) rules in force under section 151BU; and

(b) relates to a matter arising under Part XIB or XIC.

155A Power to obtain information and documents in New Zealand relating to trans-Tasman markets

(1) Where the Commission, the Chairperson or the 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,

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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:

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(a) without reasonable excuse, 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:

(a) in the case of a person other than a body corporate—$2,000; and

(b) in the case of a body corporate—$10,000.

(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 authorised 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.

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(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 authorised by that person, to inspect and make copies of or take extracts from the document.

157 Disclosure of documents by Commission

(1) Where:

(a) a corporation makes an application to the Commission under section 88, 91A, 91B or 91C; or

(b) the Commission proposes the revocation of an authorisation under subsection 91B(3) or the revocation of an authorisation and the substitution of another authorisation under subsection 91C(3); or

(c) a proceeding is instituted against a corporation or other person under section 77, 80 or 81; or

(d) an application is made under section 80A 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 connection with the matter to which the application, notice or proceeding relates and tends to establish the case of the corporation or other person; and

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(f) 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 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.

(2) If the Commission does not comply with a request under subsection (1), 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.

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.

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(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 him or her.

(2) Evidence given by a person before the Commission is not admissible against him or her in any criminal proceedings other than proceedings for offences against 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, 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 Tribunal.

(2) A person who contravenes subsection (1) 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 $2,000 or imprisonment for 12 months; or
  (b) in the case of a person being a body corporate—by a fine not exceeding $10,000.

161 Refusal to be sworn or to answer questions

(1) A person appearing as a witness before the Tribunal shall not, without reasonable excuse:
  (a) refuse or fail to be sworn or to make an affirmation;

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(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.

(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.

(3) A person who contravenes subsection (1) 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 $2,000 or imprisonment for 12 months; or

(b) in the case of a person being a body corporate—by a fine not exceeding $10,000.

162 Contempt

(1) A person shall not:

(a) insult a member of the Tribunal or a member of the Commission 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:

(a) in the case of a person not being a body coroporate—by a fine not exceeding $2,000 or imprisonment for 12 months; or

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(b) in the case of a person being a body corporate—by a fine not exceeding $10,000.

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 or to the Tribunal 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:

(c) in the case of a person not being a body corporate—by a fine not exceeding $2,000 or imprisonment for 12 months; and

(d) in the case of a person being a body corporate—by a fine not exceeding $10,000.

163 Prosecutions

(1) Prosecutions for offences against this Act shall be brought only in the Court.

(2) Jurisdiction is conferred on the Court to hear and determine prosecutions under this Act.

(4) Proceedings before the Court under this section, other than proceedings instituted by:

(a) the Commission;

(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.

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(5) A prosecution for an offence against section 118, 155 or 155B may be commenced at any time after the commission of the offence.

163A Jurisdiction of Court to make declarations and orders

(1) Subject to this section, a person may institute a proceeding in the Court seeking, in relation to a matter arising under this Act, 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, and the Court has jurisdiction to hear and determine the proceeding.

(2) Subject to subsection (2A), the Minister may institute a proceeding in the Court under this section and may intervene in any proceeding instituted in the Court under this section or in a proceeding instituted in any other court 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.

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(3) The Commission is not entitled to institute a proceeding in the Court under this section but may intervene in a proceeding instituted in the Court or in any other court, being a proceeding:

(a) that involves a matter arising under Part IV other than a matter arising under section 48; and

(b) in which a party is seeking the making of a declaration of a kind mentioned in paragraph (1)(a) or (aa).

(4) The jurisdiction of the Court 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.

(5) In this section, ***proceeding*** includes a cross-proceeding.

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); 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 authorised 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

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(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.

(4) A copy of a determination of the Commission, certified to be a true copy by a person authorised 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.

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(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 or Deputy Registrar and of the fact that that person holds or has held that office; and

(b) the official seal of the Tribunal or of the Commission,

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 Chairperson, Deputy Chairperson, 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 authorised by law or by consent of parties to receive evidence.

170 Legal and financial assistance

(1) A person:

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(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***) authorised 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, authorise 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; and

(b) a reference to a proceeding before the Tribunal is a reference to an application to the Tribunal for a declaration under subsection 50A(1) or 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.

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(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).

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.

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(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 connection with the procedure of the Tribunal and the Commission; 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.

(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;

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(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.

(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.

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Schedule—The Schedule versions of Parts IV and VB

Section 150A

Part 1—Schedule version of Part IV

Note: See section 150A.

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.

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(3) For the purposes of this section and section 45A, ***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

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(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 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.

(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

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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.

(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 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,

but nothing in this subsection prevents the giving effect by a person to such a provision from constituting a contravention of subsection (2).

45A Contracts, arrangements or understandings in relation to prices

(1) Without limiting the generality of section 45, a provision of a contract, arrangement or understanding, or of a proposed contract, arrangement or understanding, shall be deemed for the purposes of that section to have the purpose, or to have or to be likely to have the effect, of substantially lessening competition if the provision has the purpose, or has or is likely to have the effect, as the case may be, 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 or to be supplied or acquired by the parties to the contract, arrangement or understanding or the proposed parties to the proposed contract, arrangement or understanding, or by any of them, or by any bodies corporate that are related to any of them, in competition with each other.

(2) Subsection (1) does not apply to a provision of a contract or arrangement made or of an understanding arrived at, or of a

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proposed contract or arrangement to be made or of a proposed understanding to be arrived at, for the purposes of a joint venture to the extent that the provision relates or would relate to:

(a) the joint supply by 2 or more of the parties to the joint venture, or the supply by all the parties to the joint venture in proportion to their respective interests in the joint venture, of goods jointly produced by all the parties in pursuance of the joint venture;

(b) the joint supply by 2 or more of the parties to the joint venture of services in pursuance of the joint venture, or the supply by all the parties to the joint venture in proportion to their respective interests in the joint venture of services in pursuance of, and made available as a result of, the joint venture; or

(c) in the case of a joint venture carried on by a body corporate as mentioned in subparagraph 4J(a)(ii):

(i) the supply by that body corporate of goods produced by it in pursuance of the joint venture; or

(ii) the supply by that body corporate of services in pursuance of the joint venture, not being services supplied on behalf of the body corporate by:

(A) a person who is the owner of shares in the capital of the body corporate; or

(B) a body corporate that is related to such a person.

(4) Subsection (1) does not apply to a provision of a contract, arrangement or understanding, or of a proposed contract, arrangement or understanding, being a provision:

(a) in relation to the price for goods or services to be collectively acquired, whether directly or indirectly, by parties to the contract, arrangement or understanding or by proposed parties to the proposed contract, arrangement or understanding; or

(b) for the joint advertising of the price for the re-supply of goods or services so acquired.

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(5) For the purposes of this Act, a provision of a contract, arrangement or understanding, or of a proposed contract, arrangement or understanding, shall not be taken not to have the purpose, or not 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 by reason only of:

(a) the form of, or of that provision of, the contract, arrangement or understanding or the proposed contract, arrangement or understanding; or

(b) any description given to, or to that provision of, the contract, arrangement or understanding or the proposed contract, arrangement or understanding by the parties or proposed parties.

(6) For the purposes of this Act but without limiting the generality of subsection (5), a provision of a contract, arrangement or understanding, or of a proposed contract, arrangement or understanding, shall not be taken not to have the purpose, or not 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 by reason only that the provision recommends, or provides for the recommending of, such a price, discount, allowance, rebate or credit if in fact the provision has that purpose or has or is likely to have that effect.

(7) For the purposes of the preceding provisions of this section but without limiting the generality of those provisions, a provision of a contract, arrangement or understanding, or of a proposed contract, arrangement or understanding, 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 (1) if the provision has the purpose, or 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,

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allowance, rebate or credit in relation to a re-supply of the goods or services by persons to whom the goods or services are or would be supplied by the parties to the contract, arrangement or understanding or the proposed parties to the proposed contract, arrangement or understanding, or by any of them, or by any bodies corporate that are related to any of them.

(8) 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.

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

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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:

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(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 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.

(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:

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(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 authorisation to require the giving of, or to give, the covenant; and

(b) the person applies for the grant of such an authorisation 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.

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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

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(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,

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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.

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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:

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(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

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(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

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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:

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(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 an industrial 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 an industrial 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.

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For this purpose, ***industrial body***, ***industrial dispute*** and ***industrial instrument*** have the meanings given by subsection 298B(1) of the *Workplace Relations Act 1996*.

*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 170MT of the *Workplace Relations Act 1996* 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***).

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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

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(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

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(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

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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 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

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(c) deterring or preventing a person from engaging in competitive conduct in that or any other market.

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

(a) the reference in paragraph (1)(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) 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.

(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

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(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.

(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 and 50, by reason that an authorisation is in force or by reason of the operation of section 93.

(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

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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;

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(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

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(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.

(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

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particular kind or description directly or indirectly from another 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:

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(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:

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(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,

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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.

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.

(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;

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(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 an authorisation to acquire the shares or assets; and

(c) the person applied for the grant of such an authorisation 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 authorisation 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 an authorisation 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 authorisation; or

(b) if an application is made to the Tribunal for a review of the determination by the Commission of the application for the

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authorisation—at the expiration of 14 days after the date of the making by the Tribunal of a determination on the review.

(6) 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 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:

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(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

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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

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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 authorising 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:

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(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 authorised 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.

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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

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(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.

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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.

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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.

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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.

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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:

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(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.

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

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(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.

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Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

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Endnote 1—About the endnotes

can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and "(md not incorp)" is added to the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

C[x] = Compilation No. x

ch = Chapter(s)

cl = clause(s)

cont. = continued

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

Ord = Ordinance

orig = original

p = page(s)

para = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

pt = Part(s)

r = regulation(s)/Court rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s) /rule(s)/subrule(s)/order(s)/suborder(s)

sch = Schedule(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

sub ch = Sub-Chapter(s)

sub div = Subdivision(s)

sub pt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Trade Practices Act 1974 (C2004A00109)	51, 1974	24 Aug 1974	s 1, 2: 24 Aug 1974 (s 2(1)) s 55: 27 Sept 1975 (s 2(2) and gaz 1975, No S178) Remainder: 1 Oct 1974 (s 2(3) and gaz 1974, No 75B)	
Postal and Telecommunications Commissions (Transitional Provisions) Act 1975 (C2004A00278)	56, 1975	12 June 1975	sch 2: 1 July 1975 (s 2(1) and gaz 1975, No S122)	—
Trade Practices Act 1975 (C2004A00285)	63, 1975	19 June 1975	19 June 1975 (s 2)	—
Trade Practices Amendment Act 1976 (C2004A01519)	88, 1976	31 Aug 1976	31 Aug 1976 (s 2)	s 3(a), 6(2), 8, 17
Federal Court of Australia (Consequential Provisions) Act 1976 (C2004A01587)	157, 1976	9 Dec 1976	Sch: 1 Feb 1977 (s 2 and gaz 1977, No S3)	—
Trade Practices Amendment Act 1977 (C2004A01719)	81, 1977	16 June 1977	s 3-80, 82: 1 July 1977 (s 2)	s 8(2)-(6), 22(2), 40(2), 41(2), 42(2), 43(2), 47(2), 52(2), 54(2)-(7), 58(2), 62(2), 63(2), 82

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Endnote 3—Legislation history

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Remuneration and Allowances Amendment Act 1977 (C2004A01749)	111, 1977	28 Oct 1977	s 18, 19(2): 28 Oct 1977 (s 2(1)) s 19(1): 1 June 1977 (s 2(2))	s 19(2)
Trade Practices Amendment Act (No. 2) 1977 (C2004A01789)	151, 1977	10 Nov 1977	10 Nov 1977 (s 2)	s 6
Trade Practices Amendment Act 1978 (C2004A02005)	206, 1978	6 Dec 1978	6 Dec 1978 (s 2)	s 8(2), 20
Trade Practices Amendment Act (No. 2) 1978 (C2004A02006)	207, 1978	6 Dec 1978	6 Dec 1978 (s 2)	—
Trade Practices (Boycotts) Amendment Act 1980 (C2004A02274)	73, 1980	29 May 1980	29 May 1980 (s 2)	—
Statute Law Revision Act 1981 (C2004A02439)	61, 1981	12 June 1981	sch 1: 12 June 1981 (s 2(1))	—
Statute Law (Miscellaneous Amendments) Act 1981 (C2004A02553)	176, 1981	2 Dec 1981	sch 1: 30 Dec 1981 (s 2(12))	—
Statute Law (Miscellaneous Amendments) Act (No. 2) 1982 (C2004A02639)	80, 1982	22 Sept 1982	s 279: 20 Oct 1982 (s 2(16))	—

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Endnote 3—Legislation history

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law (Miscellaneous Provisions) Act (No. 1) 1983 (C2004A02756)	39, 1983	20 June 1983	s 7(1), (3), (4) , sch 1: 18 July 1983 (s 2(1))	s 7(1), (3), (4)
Public Service Reform Act 1984 (C2004A02927)	63, 1984	25 June 1984	s 151(9), sch 4: 1 July 1984 (s 2(4) and gaz 1984, No S245)	s 151(9)
Remuneration and Allowances Amendment Act 1984 (C2004A02937)	73, 1984	25 June 1984	s 22: 25 June 1984 (s 2)	—
Statute Law (Miscellaneous Provisions) Act (No. 2) 1984 (C2004A03029)	165, 1984	25 Oct 1984	s 2(32): 22 Nov 1984 (s 2(1)) sch 1: 25 Oct 1984 (s 2(28))	s 2(32)
as amended by				
Trade Practices Revision Act 1986 (C2004A03258)	17, 1986	13 May 1986	s 75, 76: 25 Oct 1984 (s 2(2))	—
Statute Law (Miscellaneous Provisions) Act (No. 1) 1985 (C2004A03104)	65, 1985	5 June 1985	sch 1: 3 July 1985 (s 2(1))	—
Trade Practices (Transfer of Market Dominance) Amendment Act 1986 (C2004A03249)	8, 1986	1 May 1986	1 June 1986 (s 2 and gaz 1986, No S251)	—

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Endnote 3—Legislation history

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Trade Practices Revision Act 1986 (C2004A03258)	17, 1986	13 May 1986	s 4-30, 32-34, 36-48, 49(2), 50, 51(2)-63, 64(2), 65-73: 1 June 1986 (s 2(4) and gaz 1986, No S251) s 31, 35: 1 July 1986 (s 2(3)) s 49(1), 51(1), 64(1): 13 May 1986 (s 2(1))	s 27(2), 31(2), 33(2), 34(2), 47(2), 50(2), 59(3), 65(2)
Statute Law (Miscellaneous Provisions) Act (No. 2) 1986 (C2004A03409)	168, 1986	18 Dec 1986	s 5(1), sch 1: 18 Dec 1986 (s 2(1))	s 5(1)
Jurisdiction of Courts (Miscellaneous Amendments) Act 1987 (C2004A02432)	23, 1987	26 May 1987	s 4: 26 May 1987 (s 2(1)) sch: 1 Sept 1987 (s 2(2) and gaz 1987, No S217)	s 4
Statute Law (Miscellaneous Provisions) Act 1987 (C2004A03550)	141, 1987	18 Dec 1987	s 5(1): 18 Dec 1987 (s 2(1)) sch 1: 1 Apr 1989 (s 2(32) and gaz 1989, No S88)	s 5(1)
Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988 (C2004A03601)	8, 1988	5 Apr 1988	s 41, 42: 1 July 1988 (s 2(3)) and gaz 1988, No S191)	—
Trade Practices Amendment Act 1988 (C2004A03613)	20, 1988	11 May 1988	s 4: 1 July 1988 (s 2(2)) Remainder: 11 May 1988 (s 2(1))	—

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Endnote 3—Legislation history

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Industrial Relations (Consequential Provisions) Act 1988 (C2004A03680)	87, 1988	8 Nov 1988	sch 2: 1 Mar 1989 (s 2(2))	—
as amended by				
Industrial Relations Legislation Amendment Act (No. 2) 1990 (C2004A04039)	108, 1990	18 Dec 1990	s 24(d): 1 Mar 1989 (s 2(2))	—
Circuit Layouts Act 1989 (C2004A03776)	28, 1989	22 May 1989	sch: 1 Oct 1990 (s 2(2) and gaz 1990, No S261)	—
Trade Practices (International Liner Cargo Shipping) Amendment Act 1989 (C2004A03782)	34, 1989	30 May 1989	1 Aug 1989 (s 2(1) and gaz 1989, No S260)	s 6
Law and Justice Legislation Amendment Act 1989 (C2004A03942)	11, 1990	17 Jan 1990	s 58, 59: 14 Feb 1990 (s 2(1))	—
Trade Practices (Misuse of Trans-Tasman Market Power) Act 1990 (C2004A04001)	70, 1990	16 June 1990	s 4-15: 1 July 1990 (s 2(1) and gaz 1990, No S172)	—
Trade Practices Amendment Act 1991 (C2004A04124)	49, 1991	24 Apr 1991	21 Dec 1990 (s 2)	—
Industrial Relations Legislation Amendment Act 1991 (C2004A04197)	122, 1991	27 June 1991	Sch: 10 Dec 1991 (s 2(3) and gaz 1991, No. S332))	s 31(2)

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Endnote 3—Legislation history

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Law and Justice Amendment Act 1991 (C2004A04211)	136, 1991	12 Sept 1991	s 23-25: 10 Oct 1991 (s 2(1))	s 25
Transport and Communications Legislation Amendment Act 1991 (C2004A04248)	173, 1991	25 Nov 1991	s 49-56: 25 Nov 1991 (s 2(1))	—
Special Broadcasting Service Act 1991 (C2004A04255)	180, 1991	25 Nov 1991	Sch: 23 Dec 1991 (s 2(1))	—
Law and Justice Legislation Amendment Act 1992 (C2004A04313)	22, 1992	13 Apr 1992	Sch: 13 Apr 1992 (s 2(1))	—
Territories Law Reform Act 1992 (C2004A04395)	104, 1992	30 June 1992	sch 4: 1 July 1992 (s 2(3))	—
Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992 (C2004A04396)	105, 1992	9 July 1992	sch 2: 5 Oct 1992 (s 2)	—
Trade Practices Amendment Act 1992 (C2004A04397)	106, 1992	9 July 1992	9 July 1992 (s 2)	s 3
Trade Practices Legislation Amendment Act 1992 (C2004A04513)	222, 1992	24 Dec 1992	s 2-18, 21, sch 1: 21 Jan 1993	s 10(2), 16(2), 18(2), 21
Industrial Relations Reform Act 1993 (C2004A04653)	98, 1993	22 Dec 1993	s 43-47, 54 and sch 3: 30 Mar 1994 (s 2(6) and gaz 1994, No S104)	s 54

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Endnote 3—Legislation history

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Insurance Laws Amendment Act (No. 2) 1994 (C2004A04725)	49, 1994	7 Apr 1994	sch (item 19): 7 Apr 1994 (s 2(1))	—
Law and Justice Legislation Amendment Act (No. 2) 1994 (C2004A04814)	141, 1994	28 Nov 1994	sch 1 (items 21-26): 28 Nov 1994 (s 2(1))	—
Competition Policy Reform Act 1995 (C2004A04938)	88, 1995	20 July 1995	s 3-30, 88-90, 92, sch 1: 17 Aug 1995 (s 2(1) s 35-76, 78: 6 Nov 1995 (s 2(2), (3) and gaz 1995, No S423) s 80-87, 91: 20 July 1996 (s 2(4), (5))	s 33, 34, 78, 88-90, 92
Statute Law Revision Act 1996 (C2004A05059)	43, 1996	25 Oct 1996	sch 4 (items 1, 147): 25 Oct 1996 (s 2(1))	—
Workplace Relations and Other Legislation Amendment Act 1996 (C2004A05064)	60, 1996	25 Nov 1996	sch 17 (items 1–11, 14–24, 29–37): 17 Jan 1997 (s 2(2) and gaz 1997, No S18)	sch 17 (items 29–37)
Trade Practices Amendment (Industry Access Codes) Act 1997 (C2004A05135)	28, 1997	10 Apr 1997	10 Apr 1997 (s 2)	—
Trade Practices Amendment (Telecommunications) Act 1997 (C2004A05156)	58, 1997	30 Apr 1997	30 Apr 1997 (s 2)	sch 1 (item 15)

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Endnote 3—Legislation history

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Audit (Transitional and Miscellaneous) Amendment Act 1997 (C2004A05249)	152, 1997	24 Oct 1997	sch 2 (item 1260): 1 Jan 1998 (s 2(2))	—
Telecommunications Legislation Amendment Act 1997 (C2004A05315)	200, 1997	16 Dec 1997	sch 2 (items 30-34): 30 Apr 1997 (s 2(4))	—
Trade Practices Amendment (Fair Trading) Act 1998 (C2004A05347)	36, 1998	22 Apr 1998	sch 2: 1 July 1998 (s 2(2)(b)(i) and gaz 1998, No S301) Remainder: 22 Apr 1998 (s 2(1))	
Financial Sector Reform (Consequential Amendments) Act 1998 (C2004A00330)	48, 1998	29 June 1998	sch 1 (item 194) and sch 2 (items 24–29): 1 July 1998 (s 2(2))	—
Gas Pipelines Access (Commonwealth) Act 1998 (C2004A00365)	101, 1998	30 July 1998	sch 1 (items 11–26): 30 July 1998 (s 2(1)) sch 1 (items 27–56): 30 July 1998 (s 2(3))	sch 1 (items 36, 47, 50)
Trade Practices Amendment (Country of Origin Representations) Act 1998 (C2004A00363)	106, 1998	30 July 1998	sch 1: 13 Aug 1998 (s 2(2) and gaz 1998, No S398) Remainder: 30 July 1998 (s 2(1))	—
A New Tax System (Trade Practices Amendment) Act 2000 (C2004A00661)	69, 2000	22 June 2000	Sch 2 (item 1): 6 Nov 1995 (s 2(2)) Sch 2 (item 2): 10 Apr 1997 (s 2(3)) Remainder: 22 June 2000 (s 2(1))	—

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Endnote 3—Legislation history

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Telecommunications Legislation Amendment Act 1999 (C2004A00443)	52, 1999	5 July 1999	sch 1 (items 6-77): 5 July 1999 (s 2(1)) sch 3 (items 69-76, 81): 2 Aug 1999 (s 2(4)) sch 4 (items 17-20, 28): 1 July 1999 (s 2(6))	sch 1 (items 72-77), sch 3 (item 81), sch 4 (item 28)
A New Tax System (Trade Practices Amendment) Act 1999 (C2004A00451)	61, 1999	8 July 1999	9 July 1999 (s 2)	—
Public Employment (Consequential and Transitional) Amendment Act 1999 (C2004A00537)	146, 1999	11 Nov 1999	sch 1 (items 944–955): 5 Dec 1999 (s 2(1), (2))	—
A New Tax System (Indirect Tax and Consequential Amendments) Act 1999 (C2004A00565)	176, 1999	22 Dec 1999	sch 4: 22 Dec 1999 (s 2(1))	—
Statute Law Revision Act 2002 (C2004A00988)	63, 2002	3 July 2002	sch 1 (items 34, 35, 38): 1 July 1999 s 2(1) items 27, 29) sch 1 (items 36, 37): 3 July 2002 (s 2(1) item 28)	—

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Endnote 4—Amendment history

Provision affected	How affected
Part I	
s 2	rep No 81, 1977
	ad No 88, 1995
s 2A	ad No 81, 1977
	am No 88, 1995
s 2B	ad No 88, 1995
	am No 58, 1997; No 61, 1999
s 2C	ad No 88, 1995
s 2D	ad No 88, 1995
s 4	am No 88, 1976; No 157, 1976; No 81, 1977; No 206, 1978; No 17, 1986; No 8, 1988; No 70, 1990; No 104, 1992; No 222, 1992; No 88, 1995; No 60, 1996; No 48, 1998
s 4A	ad No 81, 1977
	am No 88, 1995
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
s 4G	ad No 81, 1977
s 4H	ad No 81, 1977
s 4J	ad No 81, 1977
s 4K	ad No 81, 1977
s 4L	ad No 81, 1977

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Endnote 4—Amendment history

Provision affected	How affected
	am No 17, 1986
s 4M	ad No 81, 1977
s 4N	ad No 101, 1998
s 5	am No 17, 1986; No 70, 1990; No 222, 1992; No 106, 1998; No 61, 1999
s 6	am No 88, 1976; No 81, 1977; No 206, 1978; No 207, 1978; No 73, 1980; No 17, 1986; No 70, 1990; No 106, 1992; No 222, 1992; No 98, 1993; No 88, 1995; No 60, 1996; No 58, 1997; No 106, 1998; No 61, 1999
Part II	
Part II heading	rs No 88, 1995
s 6A	ad No 81, 1977
	am No 88, 1995
s 7	rs No 81, 1977
	am No 88, 1995; No 106, 1998
s 8	am No 81, 1977; No 88, 1995
s 8A	ad No 81, 1977
	am No 88, 1995
s 9	am No 81, 1977; No 88, 1995
s 10	am No 81, 1977; No 88, 1995
s 11	am No 88, 1976; No 17, 1986; No 88, 1995
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 122, 1991 (md not incorp); 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

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Endnote 4—Amendment history

Provision affected	How affected
	rs No 17, 1986
	am No 88, 1995
s 18	am No 17, 1986; No 88, 1995
s 19	am No 88, 1995
s 20	rep No 81, 1977
	ad No 88, 1995
	rep No 152, 1997
s 21	rep No 81, 1977
s 22	rep No 81, 1977
s 23	rep No 81, 1977
s 24	am No 88, 1976
	rep No 81, 1977
s 25	am No 58, 1997; No 52, 1999
s 26	am No 81, 1977
	rep No 65, 1985
	ad No 48, 1998
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
Part IIA	
Part IIA	ad No 88, 1995
s 29A	ad No 88, 1995
s 29B	ad No 88, 1995
	am No 101, 1998
s 29C	ad No 88, 1995
s 29D	ad No 88, 1995
s 29E	ad No 88, 1995
s 29F	ad No 88, 1995
s 29G	ad No 88, 1995

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Endnote 4—Amendment history

Provision affected	How affected
	am No 146, 1999
s 29H	ad No 88, 1995
s 29I	ad No 88, 1995
s 29J	ad No 88, 1995
s 29K	ad No 88, 1995
s 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
Part III	
Part III heading	rs No 88, 1995
s 30	am No 88, 1995
s 31	am No 81, 1977; No 88, 1995
s 31A	ad No 111, 1977
	am No 88, 1995
s 32	am No 88, 1995
s 33	rs No 88, 1976; No 111, 1977
	am No 73, 1984; No 88, 1995; 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
s 40	rs No 17, 1986
	am No 88, 1995
s 43	am No 88, 1995
s 43A	ad No 88, 1995
s 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

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Endnote 4—Amendment history

Provision affected	How affected
Part IIIA	
Part IIIA	ad No 88, 1995
Division 1	
s 44B	ad No 88, 1995
	am No 28, 1997
s 44C	ad No 88, 1995
s 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
s 44G	ad No 88, 1995
	am No 101, 1998
Subdivision B	
s 44H	ad No 88, 1995
	am No 101, 1998
s 44I	ad No 88, 1995
s 44J	ad No 88, 1995
s 44K	ad No 88, 1995
s 44L	ad No 88, 1995
Subdivision C	
s 44M	ad No 88, 1995
	am No 101, 1998
s 44N	ad No 88, 1995
	am No 101, 1998
s 44O	ad No 88, 1995
s 44P	ad No 88, 1995
	am No 101, 1998
s 44Q	ad No 88, 1995
	am No 101, 1998

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Endnote 4—Amendment history

Provision affected	How affected
Division 3	
Subdivision A	
s 44R	ad No 88, 1995
Subdivision B	
s 44S	ad No 88, 1995
s 44T	ad No 88, 1995
Subdivision C	
s 44U	ad No 88, 1995
s 44V	ad No 88, 1995
s 44W	ad No 88, 1995
s 44X	ad No 88, 1995
s 44Y	ad No 88, 1995
Subdivision D	
s 44Z	ad No 88, 1995
s 44ZA	ad No 88, 1995
s 44ZB	ad No 88, 1995
s 44ZC	ad No 88, 1995
s 44ZD	ad No 88, 1995
s 44ZE	ad No 88, 1995
s 44ZF	ad No 88, 1995
s 44ZG	ad No 88, 1995
s 44ZH	ad No 88, 1995
s 44ZI	ad No 88, 1995
s 44ZJ	ad No 88, 1995
s 44ZK	ad No 88, 1995
s 44ZL	ad No 88, 1995
s 44ZM	ad No 88, 1995
s 44ZN	ad No 88, 1995
Subdivision E	
s 44ZO	ad No 88, 1995

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Endnote 4—Amendment history

Provision affected	How affected
Subdivision F	
s 44ZP	ad No 88, 1995
s 44ZQ	ad No 88, 1995
s 44ZR	ad No 88, 1995
s 44ZS	ad No 88, 1995
s 44ZT	ad No 88, 1995
Subdivision G	
s 44ZU	ad No 88, 1995
Division 4	
s 44ZV	ad No 88, 1995
s 44ZW	ad No 88, 1995
s 44ZX	ad No 88, 1995
s 44ZY	ad No 88, 1995
Division 5	
s 44ZZ	ad No 88, 1995
Division 6	
s 44ZZA	ad No 88, 1995
	am No 28, 1997; No 69, 2000
s 44ZZAA	ad No 28, 1997
s 44ZZB	ad No 88, 1995
s 44ZZC	ad No 88, 1995
	rs No 28, 1997
Division 7	
s 44ZZD	ad No 88, 1995
s 44ZZE	ad No 88, 1995
s 44ZZF	ad No 88, 1995
s 44ZZG	ad No 88, 1995
s 44ZZH	ad No 88, 1995
s 44ZZI	ad No 88, 1995
s 44ZZJ	ad No 88, 1995
s 44ZZK	ad No 88, 1995

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Endnote 4—Amendment history

Provision affected	How affected
s 44ZZL	ad No 88, 1995
s 44ZZM	ad No 88, 1995
	rs No 101, 1998
s 44ZZN	ad No 88, 1995
s 44ZZNA	ad No 28, 1997
s 44ZZO	ad No 88, 1995
s 44ZZOA	ad No 101, 1998
s 44ZZP	ad No 88, 1995
s 44ZZQ	ad No 88, 1995
Part IV	
s 45	rs No 81, 1977
	am No 17, 1986; No 222, 1992; No 88, 1995
s 45A	ad No 81, 1977
	am No 206, 1978; No 88, 1995
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
s 45DA	ad No 60, 1996
s 45DC	ad No 60, 1996
s 45DD	ad No 60, 1996
s 45E	ad No 73, 1980
	rep No 98, 1993
	ad No 60, 1996
s 45EA	ad No 60, 1996
s 45EB	ad No 60, 1996
s 46	rs No 81, 1977
	am No 17, 1986; No 222, 1992

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Endnote 4—Amendment history

Provision affected	How affected
s 46A	ad No 70, 1990
	am No 222, 1992
s 46B	ad No 70, 1990
s 47	am No 88, 1976
	rs No 81, 1977
	am No 206, 1978; No 88, 1995
s 49	am No 81, 1977
	rep No 88, 1995
s 50	rs No 81, 1977
	am No 8, 1986; No 17, 1986; No 168, 1986; No 49, 1991; No 222, 1992
s 50A	ad No 17, 1986
	am No 22, 1992; No 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
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 (prev s 52A)	renum No 222, 1992
s 51AC	ad No 36, 1998
Part IVB	
Part IVB	ad No 36, 1998
s 51ACA	ad No 36, 1998
s 51AD	ad No 36, 1998
s 51AE	ad No 36, 1998
Part V	
Division 1	
s 51AF	ad No 48, 1998

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Endnote 4—Amendment history

Provision affected	How affected
s 51A	ad No 17, 1986
s 52	am No 81, 1977; No 106, 1998
s 52A	ad No 17, 1986
	am and renum No 222, 1992
s 53	am No 81, 1977; No 17, 1986
	am 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
s 54	am No 81, 1977
s 55A	ad No 81, 1977
s 56	am No 81, 1977; No 17, 1986
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
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; No 17, 1986; No 168, 1986
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

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Endnote 4—Amendment history

Provision affected	How affected
Division 1AA	
Division 1AA	ad No 106, 1998
Subdivision A	
Subdivision A	
s 65AA	ad No 106, 1998
s 65AB	ad No 106, 1998
s 65AC	ad No 106, 1998
s 65AD	ad No 106, 1998
s 65AE	ad No 106, 1998
s 65AF	ad No 106, 1998
Subdivision B	
Subdivision B	
s 65AG	ad No 106, 1998
s 65AH	ad No 106, 1998
s 65AJ	ad No 106, 1998
s 65AK	ad No 106, 1998
s 65AL	ad No 106, 1998
s 65AM	ad No 106, 1998
Subdivision C	
Subdivision C	
s 65AN	ad No 106, 1998
Division 1A	
Division 1A	ad No 17, 1986
s 65B	ad No 17, 1986
s 65C	ad No 17, 1986
s 65D	ad No 17, 1986
s 65E	ad No 17, 1986
s 65F	ad No 17, 1986
	am No 141, 1994
s 65G	ad No 17, 1986
s 65H	ad No 17, 1986

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Endnote 4—Amendment history

Provision affected	How affected
s 65J	ad No 17, 1986
	am No 88, 1995
s 65K	ad No 17, 1986
s 65L	ad No 17, 1986
s 65M	ad No 17, 1986
s 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 88, 1995
s 65R	ad No 17, 1986
	am No 141, 1994
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 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
s 73A	ad No 17, 1986
s 73B	ad No 17, 1986
s 74	am No 81, 1977; No 17, 1986; No 88, 1995
Division 2A	
Division 2A	ad No 206, 1978

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Endnote 4—Amendment history

Provision affected	How affected
s 74A	ad No 206, 1978
	am No 17, 1986
s 74B	ad No 206, 1978
	am No 17, 1986
s 74C	ad No 206, 1978
	am No 17, 1986
s 74D	ad No 206, 1978
	am No 17, 1986; No 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
s 74K	ad No 206, 1978
s 74L	ad No 206, 1978
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
s 75AA	ad No 106, 1992
s 75AB	ad No 106, 1992
s 75AC	ad No 106, 1992
s 75AD	ad No 106, 1992
s 75AE	ad No 106, 1992
s 75AF	ad No 106, 1992

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Endnote 4—Amendment history

Provision affected	How affected
s 75AG	ad No 106, 1992
s 75AH	ad No 106, 1992
s 75AI	ad No 106, 1992
s 75AJ	ad No 106, 1992
s 75AK	ad No 106, 1992
s 75AL	ad No 106, 1992
s 75AM	ad No 106, 1992
s 75AN	ad No 106, 1992
s 75AO	ad No 106, 1992
s 75AP	ad No 106, 1992
s 75AQ	ad No 106, 1992
	am No 88, 1995
s 75AR	ad No 106, 1992
s 75AS	ad No 106, 1992
	am No 106, 1998
Part VB	
Part VB	ad No 61, 1999
s 75AT	ad No 61, 1999
	am No 176, 1999
s 75AU	ad No 61, 1999
	am No 176, 1999
s 75AV	ad No 61, 1999
s 75AW	ad No 61, 1999
s 75AX	ad No 61, 1999
s 75AY	ad No 61, 1999
s 75AZ	ad No 61, 1999
Part VI	
s 75B	ad No 81, 1977
	am No 23, 1987; No 222, 1992; No 36, 1998; No 61, 1999
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

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Endnote 4—Amendment history

Provision affected	How affected
s 77	am No 88, 1976; No 88, 1995
s 78	ad No 61, 1999
s 79	am No 81, 1977; No 17, 1986; No 222, 1992
s 79A	ad No 17, 1986
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
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
s 80AB	ad No 60, 1996
s 80A	ad No 81, 1977
	am No 39, 1983 No 17, 1986; No 222, 1992; No 88, 1995; No 36, 1998
s 80B	ad No 61, 1999
s 81	am No 88, 1976
	rs No 81, 1977
	am No 17, 1986; No 222, 1992; No 88, 1995
s 82	rs No 81, 1977
	am No 17, 1986; No 222, 1992; No 36, 1998
s 83	rs No 81, 1977
	am No 222, 1992; No 36, 1998
s 84	rs No 17, 1986
	am No 70, 1990; No 222, 1992; No 36, 1998; No 61, 1999
s 85	am No 81, 1977; No 17, 1986; No 88, 1995
s 86	rs No 23, 1987
	am No 222, 1992; No 36, 1998; No 106, 1998
s 86A	ad No 23, 1987
	am No 222, 1992; No 36, 1998; No 106, 1998
s 86B	ad No 8, 1988
	am No 222, 1992; No 106, 1998

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Endnote 4—Amendment history

Provision affected	How affected
s 87	am No 81, 1977; No 39, 1983; No 17, 1986; No 168, 1986; No 222, 1992; No 49, 1994; No 88, 1995; No 36, 1998
s 87A	ad No 17, 1986
	am No 222, 1992
s 87AA	ad No 60, 1996
s 87B	ad No 222, 1992
s 87C	ad No 141, 1994
Part VII	
Heading to Part VII	am No 81, 1977; No 206, 1978
Division 1	
s 87D	ad No 101, 1998
s 88	rs No 81, 1977
	am No 206, 1978; No 207, 1978; No 73, 1980; No 17, 1986; No 222, 1992; No 98, 1993; No 88, 1995; No 60, 1996; No 101, 1998
s 89	am No 88, 1976; No 81, 1977; No 17, 1986; No 222, 1992; No 88, 1995; No 101, 1998
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
s 90A	ad No 81, 1977
	am No 17, 1986; No 88, 1995
s 91	am No 81, 1977; No 17, 1986; No 101, 1998
s 91A	ad No 101, 1998
s 91B	ad No 101, 1998
s 91C	ad No 101, 1998
Division 2	
Heading to Division 2	rs No 81, 1977
	am No 206, 1978
s 92	rep No 81, 1977
s 93	rs No 81, 1977
	am No 206, 1978; No 17, 1986; No 88, 1995

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Endnote 4—Amendment history

Provision affected	How affected
s 93A	ad No 81, 1977
	am No 88, 1995
s 94	rep No 81, 1977
s 95	rs No 81, 1977
	am No 17, 1986; No 222, 1992; No 88, 1995; No 36, 1998
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	
s 101	am No 88, 1976; No 81, 1977; No 17, 1986;' No 88, 1995; No 101, 1998
s 101A	ad No 81, 1977
	am No 88, 1995
s 102	rs No 81, 1977
	am No 222, 1992; No 88, 1995; No 101, 1998
Division 2	
s 104	am No 88, 1995
s 109	am No 81, 1977; No 88, 1995
s 110	am No 88, 1976
Part X	
Part X	rs No 34, 1989
Division 1	
s 111	am No 88, 1976
s 10.01	ad No 34, 1989
s 10.02	ad No 34, 1989
	am No 173, 1991
s 10.03	ad No 34, 1989

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Endnote 4—Amendment history

Provision affected	How affected
Division 2	
s 10.04	ad No 34, 1989
s 10.05	ad No 34, 1989
Division 3	
s 10.06	ad No 34, 1989
s 10.07	ad No 34, 1989
s 10.08	ad No 34, 1989
s 10.09	ad No 34, 1989
Division 4	
s 10.10	ad No 34, 1989
s 10.11	ad No 34, 1989
s 10.12	ad No 34, 1989
s 10.13	ad No 34, 1989
Division 5	
Subdivision A	
s 10.14	ad No 34, 1989
s 10.15	ad No 34, 1989
s 10.16	ad No 34, 1989
s 10.17	ad No 34, 1989
s 10.17A	ad No 173, 1991
s 10.18	ad No 34, 1989
s 10.18A	ad No 173, 1991
Subdivision B	
s 10.19	ad No 34, 1989
s 10.20	ad No 34, 1989
s 10.21	ad No 34, 1989
Subdivision C	
s 10.22	ad No 34, 1989
s 10.23	ad No 34, 1989
Subdivision D	
s 10.24	ad No 34, 1989

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Endnote 4—Amendment history

Provision affected	How affected
Division 6	
Subdivision A	
s 10.25	ad No 34, 1989
s 10.26	ad No 34, 1989
s 10.27	ad No 34, 1989
	am No 173, 1991
s 10.28	ad No 34, 1989
s 10.29	ad No 34, 1989
Subdivision B	
s 10.30	ad No 34, 1989
s 10.31	ad No 34, 1989
s 10.32	ad No 34, 1989
	am No 173, 1991
s 10.33	ad No 34, 1989
Subdivision C	
s 10.34	ad No 34, 1989
s 10.35	ad No 34, 1989
s 10.36	ad No 34, 1989
s 10.37	ad No 34, 1989
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
Division 7	
s 10.41	ad No 34, 1989
s 10.42	ad No 34, 1989
	am No 173, 1991
s 10.43	ad No 34, 1989
Division 8	
s 10.44	ad No 34, 1989

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Provision affected	How affected
s 10.45	ad No 34, 1989
	am No 88, 1995
s 10.46	ad No 34, 1989
s 10.47	ad No 34, 1989
s 10.48	ad No 34, 1989
s 10.49	ad No 34, 1989
Division 9	
s 10.50	ad No 34, 1989
s 10.51	ad No 34, 1989
s 10.52	ad No 34, 1989
s 10.53	ad No 34, 1989
Division 10	
s 10.54	ad No 34, 1989
s 10.55	ad No 34, 1989
	am No 88, 1995
s 10.56	ad No 34, 1989
s 10.57	ad No 34, 1989
s 10.58	ad No 34, 1989
s 10.59	ad No 34, 1989
s 10.60	ad No 34, 1989
Division 11	
s 10.61	ad No 34, 1989
s 10.62	ad No 34, 1989
s 10.63	ad No 34, 1989
s 10.64	ad No 34, 1989
s 10.65	ad No 34, 1989
s 10.66	ad No 34, 1989
s 10.67	ad No 34, 1989
Division 12	
s 10.68	ad No 34, 1989
s 10.69	ad No 34, 1989

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Endnote 4—Amendment history

Provision affected	How affected
s 10.70	ad No 34, 1989
s 10.71	ad No 34, 1989
s 10.72	ad No 34, 1989
Division 13	
s 10.73	ad No 34, 1989
s 10.74	ad No 34, 1989
s 10.75	ad No 34, 1989
s 10.76	ad No 34, 1989
Division 14	
s 10.77	ad No 34, 1989
s 10.78	ad No 34, 1989
s 10.79	ad No 34, 1989
s 10.80	ad No 34, 1989
	am No 146, 1999
s 10.81	ad No 34, 1989
s 10.82	ad No 34, 1989
Division 15	
s 10.83	ad No 34, 1989
s 10.84	ad No 34, 1989
s 10.85	ad No 34, 1989
s 10.86	ad No 34, 1989
s 10.87	ad No 34, 1989
s 10.88	ad No 34, 1989
s 10.89	ad No 34, 1989
s 10.90	ad No 34, 1989
s 10.91	ad No 34, 1989
s 10.92	ad No 34, 1989
s 10.93	ad No 34, 1989
s 111	am No 88, 1976
	rep No 34, 1989
s 137	am No 88, 1976

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Endnote 4—Amendment history

Provision affected	How affected
	rep No 34, 1989
s 140	am No 88, 1976
	rep No 34, 1989
Part XI	rep No 88, 1995
s 147	rep No 88, 1995
s 148	rep No 88, 1995
s 149	am No 88, 1976; No 81, 1977; No 88, 1995
s 150	rep No 88, 1995
s 151	rep No 88, 1995
s 152	rep No 88, 1995
s 153	rep No 88, 1995
s 154	rep No 34, 1989
Part XIA	
Part XIA	ad No 88, 1995
s 150A	ad No 88, 1995
	am No 61, 1999
s 150B	ad No 88, 1995
s 150C	ad No 88, 1995
s 150D	ad No 88, 1995
s 150E	ad No 88, 1995
s 150F	ad No 88, 1995
s 150G	ad No 88, 1995
s 150H	ad No 88, 1995
s 150I	ad No 88, 1995
s 150J	ad No 88, 1995
s 150K	ad No 88, 1995
Part XIAA	
Part XIAA	ad No 61, 1999
s 150L	ad No 61, 1999
s 150M	ad No 61, 1999
s 150N	ad No 61, 1999

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Endnote 4—Amendment history

Provision affected	How affected
s 150O	ad No 61, 1999
s 150P	ad No 61, 1999
s 150Q	ad No 61, 1999
s 150R	ad No 61, 1999
s 150S	ad No 61, 1999
s 150T	ad No 61, 1999
Part XIB	
Part XIB	ad No 58, 1997
Division 1	
s 151AA	ad No 58, 1997
	am No 52, 1999; No 61, 1999
s 151AB	ad No 58, 1997
	am No 52, 1999
s 151AC	ad No 58, 1997
s 151AD	ad No 58, 1997
s 151AE	ad No 58, 1997
s 151AF	ad No 58, 1997
s 151AG	ad No 58, 1997
s 151AH	ad No 58, 1997
s 151AI	ad No 58, 1997
Division 2	
s 151AJ	ad No 58, 1997
	am No 52, 1999
s 151AK	ad No 58, 1997
Division 3	
Subdivision A	
s 151AKA	ad No 52, 1999
s 151AL	ad No 58, 1997
	am No 52, 1999
s 151AM	ad No 58, 1997
s 151AN	ad No 58, 1997

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Provision affected	How affected
	am No 52, 1999
s 151AO	ad No 58, 1997
	am No 52, 1999
s 151AOA	ad No 52, 1999
s 151AOB	ad No 52, 1999
s 151AP	ad No 58, 1997
s 151AQ	ad No 58, 1997
s 151AQA	ad No 52, 1999
s 151AQB	ad No 52, 1999
s 151AR	ad No 58, 1997
Subdivision B	
s 151AS	ad No 58, 1997
s 151AT	ad No 58, 1997
s 151AU	ad No 58, 1997
s 151AV	ad No 58, 1997
s 151AW	ad No 58, 1997
s 151AX	ad No 58, 1997
s 151AY	ad No 58, 1997
s 151AZ	ad No 58, 1997
s 151BA	ad No 58, 1997
s 151BB	ad No 58, 1997
s 151BC	ad No 58, 1997
s 151BD	ad No 58, 1997
s 151BE	ad No 58, 1997
s 151BF	ad No 58, 1997
s 151BG	ad No 58, 1997
s 151BH	ad No 58, 1997
s 151BI	ad No 58, 1997
Subdivision C	
s 151BJ	ad No 58, 1997

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Provision affected	How affected
Division 4	
s 151BK	ad No 58, 1997
s 151BL	ad No 58, 1997
s 151BM	ad No 58, 1997
s 151BN	ad No 58, 1997
s 151BO	ad No 58, 1997
s 151BP	ad No 58, 1997
s 151BQ	ad No 58, 1997
s 151BR	ad No 58, 1997
s 151BS	ad No 58, 1997
s 151BT	ad No 58, 1997
Division 5	
s 151BTA	ad No 58, 1997
Division 6	
Division 6 heading	rs No 52, 1999
s 151BU	ad No 58, 1997
	am No 52, 1999
s 151BUA	ad No 52, 1999
	am No 52, 1999
s 151BUB	ad No 52, 1999
	am No 52, 1999
s 151BUC	ad No 52, 1999
	am No 52, 1999
s 151BUD	ad No 52, 1999
s 151BUE	ad No 52, 1999
s 151BUF	ad No 52, 1999
s 151BV	ad No 58, 1997
Division 7	
Division 7 heading	rs No 52, 1999
s 151BW	ad No 58, 1997
	am No 52, 1999

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Provision affected	How affected
s 151BX	ad No 58, 1997
	am No 52, 1999
s 151BY	ad No 58, 1997
	am No 52, 1999
s 151BZ	ad No 58, 1997
	am No 52, 1999
s 151CA	ad No 58, 1997
	am No 52, 1999
s 151CB	ad No 58, 1997
	am No 52, 1999
s 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
s 151CJ	ad No 58, 1997
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

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Provision affected	How affected
Division 12A	
Division 12A	ad No 52, 1999
s 151CMA	ad No 52, 1999
s 151CMB	ad No 52, 1999
s 151CMC	ad No 52, 1999
Division 13	
s 151CN	ad No 58, 1997
Part XIC	
Part XIC	ad No 58, 1997
Division 1	
s 152AA	ad No 58, 1997
s 152AB	ad No 58, 1997
s 152AC	ad No 58, 1997
	am No 52, 1999
s 152AD	ad No 58, 1997
s 152AE	ad No 58, 1997
s 152AF	ad No 58, 1997
s 152AG	ad No 58, 1997
s 152AH	ad No 58, 1997
s 152AI	ad No 58, 1997
s 152AJ	ad No 58, 1997
s 152AK	ad No 58, 1997
Division 2	
s 152AL	ad No 58, 1997
	am No 200, 1997
s 152AM	ad No 58, 1997
	am No 200, 1997
s 152AN	ad No 58, 1997
	am No 200, 1997; No 52, 1999
s 152AO	ad No 58, 1997
s 152AP	ad No 58, 1997

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Endnote 4—Amendment history

Provision affected	How affected
s 152AQ	ad No 58, 1997
Division 3	
s 152AR	ad No 58, 1997
s 152AS	ad No 58, 1997
s 152AT	ad No 58, 1997
s 152AU	ad No 58, 1997
s 152AV	ad No 58, 1997
s 152AW	ad No 58, 1997
s 152AX	ad No 58, 1997
s 152AY	ad No 58, 1997
s 152AYA	ad No 52, 1999
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
s 152BBA	ad No 52, 1999
s 152BBB	ad No 52, 1999
s 152BBC	ad No 52, 1999
Division 4	
Subdivision A	
s 152BC	ad No 58, 1997
s 152BD	ad No 58, 1997
s 152BE	ad No 58, 1997
s 152BF	ad No 58, 1997
s 152BG	ad No 58, 1997
s 152BH	ad No 58, 1997
s 152BI	ad No 58, 1997
Subdivision B	
s 152BJ	ad No 58, 1997

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Provision affected	How affected
s 152BK	ad No 58, 1997
s 152BL	ad No 58, 1997
s 152BM	ad No 58, 1997
s 152BN	ad No 58, 1997
s 152BO	ad No 58, 1997
Subdivision C	
s 152BP	ad No 58, 1997
s 152BQ	ad No 58, 1997
Subdivision D	
s 152BR	ad No 58, 1997
Division 5	
s 152BS	ad No 58, 1997
s 152BT	ad No 58, 1997
s 152BU	ad No 58, 1997
s 152BV	ad No 58, 1997
s 152BW	ad No 58, 1997
s 152BX	ad No 58, 1997
s 152BY	ad No 58, 1997
s 152BZ	ad No 58, 1997
s 152CA	ad No 58, 1997
s 152CB	ad No 58, 1997
s 152CC	ad No 58, 1997
s 152CD	ad No 58, 1997
s 152CE	ad No 58, 1997
s 152CF	ad No 58, 1997
s 152CG	ad No 58, 1997
Division 6	
s 152CH	ad No 58, 1997
s 152CI	ad No 58, 1997
s 152CJ	ad No 58, 1997

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Endnote 4—Amendment history

Provision affected	How affected
Division 7	
s 152CK	ad No 58, 1997
Division 8	
Subdivision A	
s 152CL	ad No 58, 1997
	am No 52, 1999
Subdivision B	
s 152CM	ad No 58, 1997
s 152CN	ad No 58, 1997
	am No 52, 1999
Subdivision C	
s 152CO	ad No 58, 1997
s 152CP	ad No 58, 1997
s 152CPA	ad No 52, 1999
s 152CQ	ad No 58, 1997
s 152CR	ad No 58, 1997
	am No 52, 1999
s 152CS	ad No 58, 1997
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
s 152CW	ad No 58, 1997
s 152CX	ad No 58, 1997
s 152CY	ad No 58, 1997
s 152CZ	ad No 58, 1997
s 152DA	ad No 58, 1997
s 152DB	ad No 58, 1997
s 152DC	ad No 58, 1997

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Provision affected	How affected
s 152DD	ad No 58, 1997
s 152DE	ad No 58, 1997
s 152DF	ad No 58, 1997
s 152DG	ad No 58, 1997
s 152DH	ad No 58, 1997
s 152DI	ad No 58, 1997
s 152DJ	ad No 58, 1997
s 152DK	ad No 58, 1997
s 152DL	ad No 58, 1997
s 152DM	ad No 58, 1997
Subdivision E	
s 152DN	ad No 58, 1997
	rs No 52, 1999
s 152DNA	ad No 52, 1999
s 152DNB	ad No 52, 1999
Subdivision F	
s 152DO	ad No 58, 1997
	am No 52, 1999
s 152DP	ad No 58, 1997
s 152DQ	ad No 58, 1997
s 152DR	ad No 58, 1997
s 152DS	ad No 58, 1997
Subdivision G	
s 152DT	ad No 58, 1997
	am No 52, 1999
Subdivision H	
s 152DU	ad No 58, 1997
	am No 52, 1999
s 152DV	ad No 58, 1997
s 152DW	ad No 58, 1997
s 152DX	ad No 58, 1997

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Endnote 4—Amendment history

Provision affected	How affected
s 152DY	ad No 58, 1997
s 152DZ	ad No 58, 1997
Subdivision I	
s 152EA	ad No 58, 1997
s 152EB	ad No 58, 1997
Division 9	
s 152EC	ad No 58, 1997
s 152ED	ad No 58, 1997
s 152EE	ad No 58, 1997
Division 10	
s 152EF	ad No 58, 1997
s 152EG	ad No 58, 1997
s 152EH	ad No 58, 1997
s 152EI	ad No 58, 1997
s 152EJ	ad No 58, 1997
s 152EK	ad No 58, 1997
s 152EL	ad No 58, 1997
Division 11	
s 152EM	ad No 58, 1997
s 152EN	ad No 58, 1997
s 152EO	ad No 58, 1997
s 152EP	ad No 58, 1997
Part XII	
s 155	am No 81, 1977; No 17, 1986; No 70, 1990; No 88, 1995; No 58, 1997; No 52, 1999
s 155AA	ad No 88, 1995
s 155AB	ad No 58, 1997
	am No 52, 1999
s 155A	ad No 70, 1990
	am No 88, 1995
s 155B	ad No 70, 1990

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Provision affected	How affected
	am No 88, 1995
s 156	am No 70, 1990; No 88, 1995
s 157	am No 81, 1977; No 17, 1986; No 101, 1998
s 158	am No 81, 1977; No 88, 1995
s 159	am No 81, 1977; No 88, 1995
s 160	am No 81, 1977; No 17, 1986; No 88, 1995
s 161	am No 81, 1977; No 17, 1986; No 88, 1995
s 162	rs No 81, 1977
	am No 17, 1986; No 88, 1995; No 58, 1997
s 162A	ad No 17, 1986
s 163	am No 88, 1976; No 17, 1986; No 20, 1988; No 70, 1990; No 106, 1998
s 163A	ad No 88, 1976
	am No 81, 1977; No 39, 1983; No 88, 1995; No 58, 1997; No 61, 1999
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
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
s 171	am No 88, 1976; No 88, 1995
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
s 173	ad No 106, 1998
Schedule	
Schedule	ad No 88, 1995

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Endnote 4—Amendment history

Provision affected	How affected
Schedule heading	rs No 61, 1999
Part 1	
Part 1 heading	ad No 61, 1999
s 45	ad No 88, 1995
s 45A	ad No 88, 1995
s 45B	ad No 88, 1995
s 45C	ad No 88, 1995
s 45D	ad No 88, 1995
	rs No 60, 1996
s 45DA	ad No 60, 1996
s 45DC	ad No 60, 1996
s 45DD	ad No 60, 1996
s 45E	ad No 60, 1996
s 45EA	ad No 60, 1996
s 45EB	ad No 60, 1996
s 46	ad No 88, 1995
s 47	ad No 88, 1995
s 48	ad No 88, 1995
s 50	ad No 88, 1995
s 51	ad No 88, 1995
	am No 63, 2002
Part 2	
Part 2	ad No 61, 1999
s 75AT	ad No 61, 1999
	am No 176, 1999
s 75AU	ad No 61, 1999
	am No 176, 1999
s 75AV	ad No 61, 1999
s 75AW	ad No 61, 1999
s 75AX	ad No 61, 1999
s 75AY	ad No 61, 1999

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Provision affected	How affected
s 75AZ	ad No 61, 1999

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