



# **Trade Practices Legislation Amendment Act 2003**

**No. 134, 2003**

**An Act to amend the *Trade Practices Act 1974* and  
other legislation, and for related purposes**

Note: An electronic version of this Act is available in SCALEplus  
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)



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**An Act to amend the *Trade Practices Act 1974* and  
other legislation, and for related purposes**

[Assented to 17 December 2003]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Trade Practices Legislation  
Amendment Act 2003*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	17 December 2003
2. Schedules 1 and 2	A single day to be fixed by Proclamation, subject to subsection (3)	1 March 2004 (s 2(1); <i>Gazette</i> 2004, GN8)

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

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.
- (3) If a provision covered by item 2 of the table does not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Access regimes**

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

#### **1 Section 44B**

Insert:

***State or Territory access regime law*** means:

- (a) a law of a State or Territory that establishes or regulates an access regime; or
- (b) a law of a State or Territory that regulates an industry that is subject to an access regime.

#### **2 Section 44ZZM**

Repeal the section, substitute:

#### **44ZZM Commonwealth consent to conferral of functions etc. on the Commission or Tribunal by State or Territory laws**

- (1) A State or Territory access regime law may confer functions or powers, or impose duties, on the Commission or Tribunal.

Note: Section 44ZZMB sets out when such a law imposes a duty on the Commission or Tribunal.

- (2) Subsection (1) does not authorise the conferral of a function or power, or the imposition of a duty, by a law of a State or Territory to the extent to which:
  - (a) the conferral or imposition, or the authorisation, would contravene any constitutional doctrines restricting the duties that may be imposed on the Commission or Tribunal; or
  - (b) the authorisation would otherwise exceed the legislative power of the Commonwealth.
- (3) The Commission or Tribunal cannot perform a duty or function, or exercise a power, under a State or Territory access regime law unless the conferral of the function or power, or the imposition of the duty, is in accordance with an agreement between the Commonwealth and the State or Territory concerned.

## **44ZZMA How duty is imposed**

### *Application*

- (1) This section applies if a State or Territory access regime law purports to impose a duty on the Commission or Tribunal.

Note: Section 44ZZMB sets out when such a law imposes a duty on the Commission or Tribunal.

### *State or Territory legislative power sufficient to support duty*

- (2) The duty is taken not to be imposed by this Act (or any other law of the Commonwealth) to the extent to which:
- (a) imposing the duty is within the legislative powers of the State or Territory concerned; and
  - (b) imposing the duty by the law of the State or Territory is consistent with the constitutional doctrines restricting the duties that may be imposed on the Commission or Tribunal.

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

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

- (3) If, to ensure the validity of the purported imposition of the duty, it is necessary that the duty be imposed by a law of the Commonwealth (rather than by the law of the State or Territory), the duty is taken to be imposed by this Act to the extent necessary to ensure that validity.
- (4) If, because of subsection (3), this Act is taken to impose the duty, it is the intention of the Parliament to rely on all powers available to it under the Constitution to support the imposition of the duty by this Act.
- (5) The duty is taken to be imposed by this Act in accordance with subsection (3) only to the extent to which imposing the duty:
- (a) is within the legislative powers of the Commonwealth; and
  - (b) is consistent with the constitutional doctrines restricting the duties that may be imposed on the Commission or Tribunal.



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

**44ZZMB When a law of a State or Territory imposes a duty**

For the purposes of sections 44ZZM and 44ZZMA, a State or Territory access regime law ***imposes a duty*** on the Commission or Tribunal if:

- (a) the law confers a function or power on the Commission or Tribunal; and
- (b) the circumstances in which the function or power is conferred give rise to an obligation on the Commission or Tribunal to perform the function or to exercise the power.

**3 Section 44ZZOA**

Repeal the section.

## Schedule 2—Prices surveillance

### Part 1—Amendments

#### *Airports Act 1996*

##### **1 Subsection 147(2)**

Omit “Sections 33 and 43 of the *Prices Surveillance Act 1983*”,  
substitute “Sections 95ZN and 95ZP of the *Trade Practices Act 1974*”.

##### **2 Subsection 147(2)**

Omit “section 32”, substitute “section 95ZK”.

##### **3 Subsection 147(2) (note)**

Omit “Sections 33 and 43 of the *Prices Surveillance Act 1983*”,  
substitute “Sections 95ZN and 95ZP of the *Trade Practices Act 1974*”.

##### **4 Subsection 147(3)**

Omit “Section 43 of the *Prices Surveillance Act 1983*”, substitute  
“Section 95ZP of the *Trade Practices Act 1974*”.

##### **5 Division 7 of Part 7 (heading)**

Repeal the heading, substitute:

#### **Division 7—Part supplements the Trade Practices Act 1974**

##### **6 Section 148**

Omit “or the *Prices Surveillance Act 1983*”.

Note: The heading to section 148 is altered by omitting “**and the *Prices Surveillance Act 1983***”.

##### **7 Subsection 158(2)**

Omit “Sections 33 and 43 of the *Prices Surveillance Act 1983*”,  
substitute “Sections 95ZN and 95ZP of the *Trade Practices Act 1974*”.

##### **8 Subsection 158(2)**

Omit “section 32”, substitute “section 95ZK”.

**9 Subsection 158(2) (note)**

Omit “Sections 33 and 43 of the *Prices Surveillance Act 1983*”,  
substitute “Sections 95ZN and 95ZP of the *Trade Practices Act 1974*”.

**10 Subsection 158(3)**

Omit “Section 43 of the *Prices Surveillance Act 1983*”, substitute  
“Section 95ZP of the *Trade Practices Act 1974*”.

**11 Division 8 of Part 8 (heading)**

Repeal the heading, substitute:

**Division 8—Part supplements the Trade Practices Act 1974**

**12 Section 159**

Omit “or the *Prices Surveillance Act 1983*”.

Note: The heading to section 159 is altered by omitting “**and the *Prices Surveillance Act 1983***”.

***Air Services Act 1995***

**13 Subsection 55(1)**

Omit “the *Prices Surveillance Act 1983*”, substitute “Part VIIA of the  
*Trade Practices Act 1974*”.

Note: The heading to section 55 is altered by omitting “**Prices Surveillance Act**” and  
substituting “**Part VIIA of the Trade Practices Act**”.

**14 Paragraph 55(2)(a)**

Omit “paragraph 19(1)(b) of the *Prices Surveillance Act 1983*”,  
substitute “subsection 95L(3) of the *Trade Practices Act 1974*”.

**15 Paragraph 55(2)(b)**

Omit “section 28”, substitute “section 95ZJ”.

**16 Subsection 55(3)**

Omit “section 26 of the *Prices Surveillance Act 1983*”, substitute  
“section 95P of the *Trade Practices Act 1974*”.

**17 Subsection 55(4)**

Omit “paragraph 19(1)(b) of the *Prices Surveillance Act 1983*”, substitute “subsection 95L(3) of the *Trade Practices Act 1974*”.

**18 Subsection 55(5)**

Omit “section 26 of the *Prices Surveillance Act 1983*”, substitute “section 95P of the *Trade Practices Act 1974*”.

***Australian Crime Commission Act 2002***

**19 Schedule 1**

Omit “*Prices Surveillance Act 1983*, section 51”.

***Australian Maritime Safety Authority Act 1990***

**20 Subsection 47(2)**

Omit “the *Prices Surveillance Authority Act 1983*”, substitute “Part VIIA of the *Trade Practices Act 1974*”.

**21 Paragraph 47(4)(a)**

Omit “paragraph 19(1)(b) of the *Prices Surveillance Authority Act 1983*”, substitute “subsection 95L(3) of the *Trade Practices Act 1974*”.

**22 Paragraph 47(4)(b)**

Omit “section 28”, substitute “section 95ZJ”.

**23 Subsection 47(5)**

Omit “section 26 of the *Prices Surveillance Authority Act 1983*”, substitute “section 95P of the *Trade Practices Act 1974*”.

**24 Paragraph 47(7)(a)**

Omit “paragraph 19(1)(b) of the *Prices Surveillance Authority Act 1983*”, substitute “subsection 95L(3) of the *Trade Practices Act 1974*”.

**25 Subparagraph 47(7)(a)(i)**

Omit “section 28”, substitute “section 95ZJ”.

**26 Subparagraph 47(7)(a)(ii)**

Omit “section 26”, substitute “section 95P”.

**27 Subsection 47(10)**

Omit “section 26 of the *Prices Surveillance Authority Act 1983*”,  
substitute “section 95P of the *Trade Practices Act 1974*”.

***Australian Postal Corporation Act 1989***

**28 Subsection 32(5)**

Omit “the *Prices Surveillance Act 1983*”, substitute “Part VIIA of the  
*Trade Practices Act 1974*”.

**29 Paragraph 32B(1)(da)**

Omit “the *Prices Surveillance Act 1983*”, substitute “Part VIIA of the  
*Trade Practices Act 1974*”.

**30 Subsection 32B(2)**

Omit “or the *Prices Surveillance Act 1983*”.

***Prices Surveillance Act 1983***

**31 The whole of the Act**

Repeal the Act.

***Trade Practices Act 1974***

**32 Subsection 2A(1)**

Omit “section 44E”, substitute “sections 44E and 95D”.

**33 Subsection 6(2)**

After “Parts IIIA”, insert “, VIIA”.

**34 Subsection 6(3)**

After “Parts IIIA”, insert “, VIIA”.

**35 Subsection 6(4)**

After “Parts IIIA”, insert “, VIIA”.

**36 Subsection 25(1)**

After “this Act”, insert “(other than Part VIIA)”.

**37 At the end of subsection 25(1)**

Add:

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

**38 Paragraph 29(1A)(a)**

After “VII,”, insert “VIIA,”.

**39 Subsection 29J(2)**

Omit “of this Act or under the *Prices Surveillance Act 1983*”, substitute “or VIIA”.

**40 After Part VII**

Insert:

**Part VIIA—Prices surveillance**

**Division 1—Preliminary**

**95A Interpretation**

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

***applicable period***, in relation to a locality notice, has the meaning given by section 95ZB.

***body*** means any organisation or body, whether incorporated or unincorporated, and includes a group of 2 or more individuals.

***business notice*** means a notice under subsection 95L(3).

***Commonwealth authority*** means:

- (a) the Commonwealth; or
- (b) an authority, institution or other body (other than a society, association or incorporated company) established for a public purpose by or under a law of the Commonwealth; or
- (c) a society, association or incorporated company in which the Commonwealth, or an authority, institution or other body of the kind referred to in paragraph (b), has a controlling interest.

***declared person***, in relation to goods or services of a particular description, means a person in relation to whom a declaration under subsection 95X(2) in relation to goods or services of that description is in force.

***exempt supply***, in relation to goods or services of a particular description, means a supply of goods or services of that description in relation to which a declaration under section 95B is in force.

***external inquiry*** means an inquiry by a body other than the Commission.

***goods*** includes:

- (a) ships, aircraft and other vehicles; and
- (b) animals, including fish; and
- (c) minerals, trees and crops, whether on, under or attached to land or not; and
- (d) water; and
- (e) gas and electricity.

***inquiry*** means an inquiry held in accordance with this Part into a matter or matters relating to prices for the supply of goods or services.

***inquiry body*** means:

- (a) in relation to an inquiry to be held, or being held, by the Commission—the Commission; or
- (b) in relation to an inquiry to be held, or being held, by a body other than the Commission—the other body.

***inquiry Chair*** means:

- (a) in relation to an inquiry to be held, or being held, by the Commission—the member of the Commission presiding at the inquiry; or
- (b) in relation to an inquiry to be held, or being held, by a body other than the Commission—the person presiding at the inquiry.

***inquiry notice*** means a notice under section 95H.

***law of the Commonwealth*** does not include:

- (a) the *Northern Territory (Self-Government) Act 1978*; or

- (b) the *Norfolk Island Act 1979*; or
- (c) a law made under, or continued in force by, an Act referred to in paragraph (a) or (b).

**locality notice** means a notice under subsection 95Z(5).

**member of the staff of the Commission** means a person referred to in subsection 27(1) or a person engaged under section 27A.

**notified goods or services** means goods or services of a particular description in relation to which a declaration under subsection 95X(1) is in force.

**person** includes a Commonwealth authority and a State or Territory authority.

**price** includes:

- (a) a charge of any description; and
- (b) in relation to goods or services—any pecuniary benefit, whether direct or indirect, received or to be received by a person for or in connection with the supply by the person of the goods or services.

**response notice** means a notice under subparagraph 95Z(6)(c)(i).

**services** includes any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges or facilities that are, or are to be, provided, granted or conferred in trade or commerce, and includes, but is not limited to, the rights, benefits, privileges or facilities that are, or are to be, provided, granted or conferred under:

- (a) a contract for or in relation to:
  - (i) the performance of work (including work of a professional nature), whether with or without the supply of goods; or
  - (ii) the provision of, or the use or enjoyment of facilities for, amusement, entertainment, recreation or instruction; or
  - (iii) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction; or
- (b) a contract of insurance; or



- (c) a contract between a banker and a customer of the banker entered into in the course of the carrying on by the banker of the business of banking; or
- (d) any contract for or in relation to the lending of moneys; but does not include rights or benefits being the supply of goods or the performance of work under a contract of service.

***State or Territory authority*** means:

- (a) a State, the Australian Capital Territory or the Northern Territory; or
- (b) an authority, institution or other body (except a society, association or incorporated company) established for a public purpose by or under a law of a State, the Australian Capital Territory or the Northern Territory; or
- (c) a society, association or incorporated company in which a State, the Australian Capital Territory or the Northern Territory, or an authority, institution or other body of the kind referred to in paragraph (b), has a controlling interest.

***supply*** includes:

- (a) in relation to goods—supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and
  - (b) in relation to services—provide, grant or confer.
- (2) In this Part, unless the contrary intention appears:
- (a) a reference to the supply of goods or services includes a reference to agreeing to supply goods or services; and
  - (b) a reference to the supply of goods includes a reference to the supply of goods together with other property or services, or both; and
  - (c) a reference to the supply of services includes a reference to the supply of services together with property or other services, or both; and
  - (d) a reference to the supply of goods does not include a reference to:
    - (i) a supply for use outside Australia; or
    - (ii) a supply for which a price is not charged; or
    - (iii) any other supply prescribed by the regulations; and
  - (e) a reference to the supply of services does not include a reference to:

- (i) a supply outside Australia; or
  - (ii) a supply for which a price is not charged; or
  - (iii) any other supply prescribed by the regulations.
- (3) For the purposes of this Part, a supply by way of retail sale is taken not to be a supply on terms and conditions that are the same as, or substantially similar to, the terms and conditions of a supply by way of wholesale sale.

### **95B Exempt supplies**

- (1) The Minister, or the Commission with the approval of the Minister, may by notice published in the *Gazette* declare a supply of goods or services of a specified description, that is a supply in a specified manner, of a specified kind or in specified circumstances, to be an exempt supply for the purposes of this Part.
- (2) The Minister, or the Commission with the approval of the Minister, may by notice published in the *Gazette* vary or revoke a declaration under subsection (1).

### **95C Application of Part**

- (1) This Part applies in relation to the supply of goods or services:
  - (a) by a Commonwealth authority; or
  - (b) by a foreign corporation; or
  - (c) by a trading corporation in the course of, or for the purposes of, its trading operations; or
  - (d) by a financial corporation in the course of, or for the purposes of, its business operations; or
  - (e) by a body corporate incorporated in a Territory (other than the Northern Territory or Norfolk Island); or
  - (f) in an internal Territory (other than the Northern Territory), the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands; or
  - (g) in the course of, or in connection with, trade or commerce:
    - (i) among the States; or
    - (ii) between a State and an internal Territory; or
    - (iii) between a State and the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands; or

- (iv) between an internal Territory and the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands; or
  - (v) between the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands; or
  - (vi) between 2 internal Territories;
- and not otherwise.
- (2) However, this Part does not apply in relation to the supply of goods or services by:
- (a) an authority, institution or other body (except a society, association or incorporated company) established for a public purpose by or under a law of Norfolk Island; or
  - (b) a society, association or incorporated company in which a controlling interest is held by Norfolk Island, or an authority, institution or other body covered by paragraph (a).

#### **95D Crown to be bound**

- (1) This Part binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.
- (2) Nothing in this Part makes the Crown liable to be prosecuted for an offence.
- (3) The protection in subsection (2) does not apply to an incorporated Commonwealth authority or an incorporated State or Territory authority.

#### **95E Object of this Part**

The object of this Part is to have prices surveillance applied only in those markets where, in the view of the Minister, competitive pressures are not sufficient to achieve efficient prices and protect consumers.

#### **95F Simplified overview of this Part**

- (1) This Part deals with 3 main things.

*Price inquiries*

- (2) First, it provides for the Commission or another body to hold price inquiries in relation to the supply of goods or services.
- (3) These inquiries may relate to the supply of goods or services by a particular person. If so, the person's ability to increase the prices of those goods or services during a particular period is restricted. However, there is a way for the person to increase prices during that period.

*Price notifications*

- (4) Second, this Part allows the Minister or the Commission to declare goods or services to be notified goods or services and to declare a person to be a declared person in relation to such goods or services.
- (5) If this happens, the person's ability to increase the prices of such goods or services during a particular period is restricted. However, there is a way for the person to increase prices during that period.

*Price monitoring*

- (6) Third, this Part allows the Minister to direct the Commission to undertake price monitoring.
- (7) This may be in relation to supplies of goods or services in a particular industry or in relation to supplies of goods or services by particular persons.

## **Division 2—Commission's functions under this Part**

### **95G Commission's functions under this Part**

- (1) The Commission's functions under this Part are set out in this section.

*Price inquiries*

- (2) The Commission is to hold such inquiries as it is required to hold under section 95H.
- (3) The Commission may, with the Minister's approval under section 95H, hold such other inquiries as it thinks fit.

- (4) The Commission is to give the Minister a report on the results of each inquiry it holds.

*Price notifications*

- (5) The Commission is to consider locality notices and to take, in relation to such notices, such action in accordance with this Part as it considers appropriate.

*Price monitoring*

- (6) The Commission is to monitor prices, costs and profits in any industry or business that the Minister directs it to monitor and is to give the Minister a report on the results of such monitoring.

*General*

- (7) In exercising its powers and performing its functions under this Part, the Commission must, subject to any directions given under section 95ZH, have particular regard to the following:
- (a) the need to maintain investment and employment, including the influence of profitability on investment and employment;
  - (b) the need to discourage a person who is in a position to substantially influence a market for goods or services from taking advantage of that power in setting prices;
  - (c) the need to discourage cost increases arising from increases in wages and changes in conditions of employment inconsistent with principles established by relevant industrial tribunals.

## **Division 3—Price inquiries**

### **Subdivision A—Holding of inquiries**

#### **95H Price inquiries**

*Inquiries by Commission*

- (1) The Minister may, by notice in writing given to the Chairperson, require the Commission to hold an inquiry into a specified matter or specified matters.

- (2) The Minister may, by notice in writing given to the Chairperson, approve the Commission holding an inquiry into a specified matter or specified matters.

*Inquiries by other bodies*

- (3) The Minister may, by notice in writing, request a body other than the Commission to hold an inquiry into a specified matter or specified matters.
- (4) The other body must, if it agrees to hold the inquiry, appoint a person to preside at the inquiry. The appointment must be in writing.
- (5) However, if the other body is a group of 2 or more individuals, the Minister must, by writing, appoint one of those individuals to preside at the inquiry.
- (5A) The Minister must, as soon as practicable after confirmation that the other body will hold the inquiry, table a statement in each House of the Parliament:
- (a) specifying that the body will hold the inquiry; and
  - (b) giving the Minister's reasons for requesting the body, rather than the Commission, to hold the inquiry.

*No inquiry in relation to exempt supply*

- (6) A notice under this section must not authorise the holding of an inquiry into a supply of goods or services of a particular description that is an exempt supply in relation to goods or services of that description.

*No inquiry in relation to a State or Territory authority*

- (7) A notice under this section must not authorise the holding of an inquiry into the supply by a State or Territory authority of goods or services.

## **95J Content of inquiry notices**

*Description of goods or services*

- (1) An inquiry notice must specify the description of the goods or services in relation to which the inquiry is to be held.

*Supply of goods or services by particular persons*

- (2) An inquiry notice must also specify whether the inquiry is to be held in relation to the supply of goods or services of that description by a particular person or persons.
- (3) If such an inquiry is to be held, the notice may also specify that person or persons. If it does not, the inquiry body must, by writing, determine that person or persons.
- (4) The inquiry Chair must give the Minister notice in writing of the determination.

*No inquiry in relation to a State or Territory authority*

- (5) The inquiry body must not determine a State or Territory authority as a person in relation to whom an inquiry will be held.

*Ministerial directions*

- (6) The Minister may, in an inquiry notice, give such directions as he or she thinks fit as to the holding of the inquiry and the matters to be taken into consideration in the inquiry.
- (7) The inquiry body must comply with any such directions.

**95K Period for completing inquiry**

*Inquiry period*

- (1) An inquiry notice must specify the period within which the inquiry is to be completed and a report on the inquiry is to be given to the Minister.
- (2) The inquiry body must complete the inquiry and give the report to the Minister within that period.

*Extensions*

- (3) The Minister may, before the end of the completion period, extend or further extend that period by notice in writing given to the inquiry Chair.

Example: A notice under subsection (1) specifies that an inquiry is to be completed and a report given by 1 August.

On 30 July the Minister gives a notice under subsection (3) extending the deadline to 8 August.

On 6 August the Minister gives another notice under subsection (3) further extending the deadline to 12 August.

- (4) If the Minister does so, the inquiry body must complete the inquiry and give its report within the completion period as so extended or further extended.

- (5) In this section:

***completion period*** means the period within which the inquiry body is required by this section to complete an inquiry and to give its report on the inquiry.

## **95L Notice of holding of inquiry**

### *General notice*

- (1) An inquiry body must, as soon as practicable, give notice of an inquiry it is to hold.
- (2) The notice must be given in each State, the Australian Capital Territory and the Northern Territory by advertisement published in the *Gazette* and in a newspaper circulating in that State or Territory.

### *Notice to particular person or persons*

- (3) If the inquiry is to be held in relation to the supply of goods or services by a particular person or persons, the inquiry body must, as soon as practicable, give the person, or each of the persons, a notice in writing.

### *Content of notice*

- (4) A notice under this section must:
- (a) state that the inquiry body is to hold the inquiry; and
  - (b) specify the matter or matters in relation to which the inquiry is to be held; and
  - (c) specify the time and place at which the inquiry is to start; and
  - (d) in the case of a notice under subsection (3)—set out the effect of section 95N; and



- (e) specify any other matter prescribed by the regulations.

**95M Notice of extension of period for completing inquiry**

If:

- (a) an inquiry is being held in relation to the supply of goods or services of a particular description by a particular person or persons; and
- (b) the Minister extends, or further extends, the period within which the inquiry is required to be completed and a report on the inquiry given to the Minister;

the inquiry body must, as soon as possible, give the person, or each of the persons, a notice in writing giving details of the extension or further extension.

**95N Price restrictions**

- (1) This section applies if an inquiry body gives a person a business notice stating that it is to hold an inquiry in relation to the supply by the person of goods or services of a particular description.

*Offence: previous local supply*

- (2) The person is guilty of an offence if:
- (a) before the applicable day in relation to the business notice, the person supplies (the **current supply**) goods or services of that description in a locality on particular terms and conditions; and
  - (b) the person has supplied goods or services of that description in that locality on the same or substantially similar terms and conditions in the period of 12 months before the current supply; and
  - (c) the current supply is at a price that exceeds the highest price at which the person has supplied goods or services of that description in that locality on the same or substantially similar terms and conditions in that period; and
  - (d) in a case where a notice has been given to the person under subsection (5)—the current supply is not in accordance with the notice.

Penalty: 100 penalty units.

*Offence: no previous local supply*

- (3) The person is guilty of an offence if:
- (a) before the applicable day in relation to the business notice, the person supplies (the **current supply**) goods or services of that description in a locality on particular terms and conditions; and
  - (b) the person has not supplied goods or services of that description in that locality on the same or substantially similar terms and conditions in the period of 12 months before the current supply, but has supplied goods or services of that description elsewhere in Australia on the same or substantially similar terms and conditions in that period; and
  - (c) the current supply is at a price that exceeds the highest price at which the person has supplied goods or services of that description in Australia on the same or substantially similar terms and conditions in that period; and
  - (d) in a case where a notice has been given to the person under subsection (5)—the current supply is not in accordance with the notice.

Penalty: 100 penalty units.

*Offence: no previous supply in Australia*

- (4) The person is guilty of an offence if:
- (a) before the applicable day in relation to the business notice, the person supplies (the **current supply**) goods or services of that description in a locality on particular terms and conditions; and
  - (b) the person has not supplied goods or services of that description in Australia on the same or substantially similar terms and conditions in the period of 12 months before the current supply; and
  - (c) in a case where a notice has been given to the person under subsection (5)—the current supply is not in accordance with the notice.

Penalty: 100 penalty units.

*Approval to increase prices*

- (5) The Commission may give the person a notice in writing stating that the person is permitted, during the period:
  - (a) beginning on a specified day; and
  - (b) ending at the beginning of the applicable day in relation to the business notice;to supply goods or services of a specified description in a specified locality on specified terms and conditions at a price not exceeding a specified price.
- (6) The Commission may give a notice under subsection (5) on its own initiative or on the application of the person.

*Consultation*

- (7) In an external inquiry, the Commission must consult the body holding the inquiry before giving a notice under subsection (5).

*Definition*

- (8) In this section:

***applicable day***, in relation to a business notice, means the 14th day after whichever is the earlier of the following days:

- (a) the day on which the person given the notice receives a copy of the report by the inquiry body on the inquiry to which the notice relates;
- (b) the last day of the period within which the inquiry body is required to complete the inquiry to which the notice relates and to give the Minister a report on the inquiry.

## **Subdivision B—Reports on inquiries**

### **95P Copies of report to be made available**

*Inquiry into supply of goods or services by particular persons*

- (1) For an inquiry held in relation to the supply of goods or services by a particular person or persons, the inquiry body must send the person, or each of the persons, a copy of the report on the inquiry on the day on which it gives the Minister the report.

- (2) A copy of a report sent to a person must be accompanied by a notice in writing setting out the effect of section 95Q.

*All inquiries*

- (3) For any inquiry, the inquiry body must, unless the Minister directs otherwise, make copies of the report on the inquiry available for public inspection as soon as practicable after the period of 28 days beginning on the day on which it gives the Minister the report.

**95Q Notification of proposed prices after receipt of report**

- (1) This section applies if a person receives a copy of a report on an inquiry held in relation to the supply by the person of goods or services of a particular description.

*Price notification*

- (2) The person must, within 14 days after receiving the copy, give the Commission a notice in writing specifying the price or prices at which the person is supplying, or proposing to supply, goods or services of that description.

*Offence*

- (3) A person is guilty of an offence if the person contravenes subsection (2).

Penalty: 10 penalty units.

*Public notification*

- (4) The Commission must, within 14 days after it receives the notice under subsection (2), make publicly available details of the price or prices specified in the notice.

**Subdivision C—Procedure at inquiries**

**95R Public inquiries etc.**

*Public inquiries*

- (1) An inquiry body must hold an inquiry in public, unless the Minister directs otherwise.

*Taking of evidence*

- (2) The inquiry body may take evidence in private at an inquiry held in public if:
  - (a) a witness objects to giving, in public, evidence that the inquiry body is satisfied is of a confidential nature; and
  - (b) the inquiry body considers that it is desirable to do so.
- (3) The inquiry body may permit a person appearing as a witness at the inquiry to give evidence by giving, and verifying by oath or affirmation, a written statement.
- (4) If a statement is so given in an inquiry held in public, the inquiry body must make available to the public in such manner as it thinks fit the contents of the statement other than any matter:
  - (a) that the person who gave the evidence objects to being made public; and
  - (b) the evidence of which the body is satisfied would have been taken in private if that evidence had been given orally and the person had objected to giving it in public.

*Written submissions*

- (5) The inquiry body may require or permit a person desiring to make a submission to the body to make the submission in writing.
- (6) If a submission is so made in an inquiry held in public, the inquiry body must make available to the public in such manner as it thinks fit the contents of the submission.

*Procedure*

- (7) The procedure to be followed at an inquiry is within the discretion of the inquiry Chair. The inquiry body is not bound by the rules of evidence.
- (8) Subsection (7) operates:
  - (a) subject to this Part; and
  - (b) in any case—subject to any direction given to the inquiry body by the Minister; and
  - (c) in an inquiry held by the Commission and at which the inquiry Chair is not the Chairperson—subject to any direction given to the inquiry Chair by the Chairperson.

Note: See also section 95ZN (about confidentiality of information).

## **95S Taking of evidence on oath or affirmation**

### *Evidence on oath or affirmation*

- (1) An inquiry body may take evidence at an inquiry on oath or affirmation.
- (2) An oath or affirmation may be administered by:
  - (a) in an inquiry by the Commission—a member of the Commission; or
  - (b) in an external inquiry—the person presiding at the inquiry.

### *Summons*

- (3) The inquiry Chair may, by writing signed by him or her, summon a person to appear at an inquiry to give evidence and to produce such documents (if any) as are specified in the summons.
- (4) In an inquiry by the Commission, the power conferred on the inquiry Chair by subsection (3) may, at his or her discretion, be exercised on the application of another person.

## **95T Failure of witness to attend**

- (1) A person is guilty of an offence if:
  - (a) the person is given a summons to appear as a witness at an inquiry; and
  - (b) the person fails to attend as required by the summons or fails to appear and report himself or herself from day to day; and
  - (c) the person has not been excused, or released from further attendance, by:
    - (i) in an inquiry by the Commission—a member of the Commission; or
    - (ii) in an external inquiry—the person presiding at the inquiry.

Penalty: 10 penalty units.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

### **95U Refusal to be sworn or to answer question**

- (1) A person appearing as a witness at an inquiry must not:
- (a) refuse or fail to swear an oath or to make an affirmation if required to do so by:
    - (i) in an inquiry by the Commission—a member of the Commission; or
    - (ii) in an external inquiry—the person presiding at the inquiry; or
  - (b) refuse or fail to answer a question that he or she is required to answer by the inquiry Chair; or
  - (c) refuse or fail to produce a document that he or she was required to produce by a summons under this Part given to him or her.

Penalty: 10 penalty units.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) It is a reasonable excuse for the purposes of subsection (2) for a person to refuse or fail to answer a question on the ground that the answer might tend to incriminate the person or to expose the person to a penalty.
- (4) It is a reasonable excuse for the purposes of subsection (2) for a person to refuse or fail to produce a document on the ground that the production of the document might tend to incriminate the person or to expose the person to a penalty.
- (5) Subsections (3) and (4) do not limit what is a reasonable excuse for the purposes of subsection (2).

### **95V Protection of witnesses**

Subject to this Part, a person summoned to attend or appearing as a witness at an inquiry has the same protection, and is, in addition to the penalties provided by this Part, subject to the same liabilities, in

any civil or criminal proceedings as a witness in proceedings in the High Court.

### **95W Allowances to witnesses**

- (1) A witness summoned under this Part to appear at an inquiry is entitled to be paid such allowances for his or her travelling, and such other expenses, as are prescribed by the regulations.
- (2) The witness is entitled to be paid by:
  - (a) if the witness was summoned by the inquiry Chair—the Commonwealth; or
  - (b) if the witness was summoned on the application of a person—that person.
- (3) The regulations may provide for those allowances and expenses by reference to a scale of expenses for witnesses who attend before a court specified in the regulations.

## **Division 4—Price notifications**

### **95X Declarations by Minister or Commission**

#### *Notified goods or services*

- (1) The Minister, or the Commission with the approval of the Minister, may by notice published in the *Gazette* declare goods or services of a specified description to be notified goods or services for the purposes of this Part.

#### *Declared persons*

- (2) The Minister, or the Commission with the approval of the Minister, may by notice published in the *Gazette* declare a person to be, in relation to goods or services of a specified description, a declared person for the purposes of this Part.
- (3) The Commission must give the person notice in writing of a declaration under subsection (2). The notice must set out the effect of section 95Z.



- (4) A declaration under subsection (2) must specify the time when it is to cease to have effect. Such a declaration ceases to have effect at the time specified, unless it is revoked sooner.

*Variation or revocation*

- (5) The Minister, or the Commission with the approval of the Minister, may by notice published in the *Gazette* vary or revoke a declaration under this section.

**95Y Declarations in relation to State or Territory authorities**

- (1) The Minister must not make or approve a declaration of a State or Territory authority under section 95X unless:
- (a) the appropriate Minister of the State or Territory concerned has agreed to the declaration being made; or
  - (b) the Council has, on the request (the *current request*) of an Australian government, recommended the declaration and the Minister has consulted the appropriate Minister of the State or Territory concerned.

*Role of Council*

- (2) The Council must not recommend a declaration of a State or Territory authority in relation to goods or services unless it is satisfied that:
- (a) at least one Australian government has notified the State or Territory concerned that the government is not satisfied that there is effective supervision of the prices charged by the authority for the supply of those goods or services; and
  - (b) there is not such effective supervision; and
  - (c) the supply of those goods or services by the authority has a significant direct or indirect impact on qualifying trade or commerce.
- (3) The Council must also not recommend a declaration of a State or Territory authority in relation to goods or services if:
- (a) in the 5 year period before it received the current request, it was satisfied (when considering a previous request) that there was effective supervision of prices charged by the authority for the supply of those goods or services; and

- (b) it is satisfied that there has not been a substantial change in the mechanism for that supervision since it was satisfied as mentioned in paragraph (a).
- (4) In deciding whether there is effective supervision of prices charged by a State or Territory authority, if the State or Territory concerned is a party to the Competition Principles Agreement, the Council must apply the relevant principles set out in the agreement.

*Definitions*

- (5) In this section:

**Australian government** means the Commonwealth, a State, the Australian Capital Territory or the Northern Territory.

**qualifying trade or commerce** means trade or commerce described in paragraph 95C(1)(g) or trade and commerce between Australia and another place.

**95Z Price restrictions**

*Offence: previous local supply*

- (1) A person is guilty of an offence if:
  - (a) the person is a declared person in relation to notified goods or services; and
  - (b) the person supplies (the **current supply**) goods or services of that description in a locality on particular terms and conditions (the **actual terms**) at a particular price (the **actual price**); and
  - (c) the person has supplied goods or services of that description in that locality on the same or substantially similar terms and conditions in the period of 12 months before the current supply; and
  - (d) the actual price exceeds the highest price at which the person has supplied goods or services of that description in that locality on the same or substantially similar terms and conditions in that period; and
  - (e) the current supply is not an exempt supply.

Penalty: 100 penalty units.

Note: Subsection (4) contains a defence to this offence.

*Offence: no previous local supply*

- (2) A person is guilty of an offence if:
- (a) the person is a declared person in relation to notified goods or services; and
  - (b) the person supplies (the **current supply**) goods or services of that description in a locality on particular terms and conditions (the **actual terms**) at a particular price (the **actual price**); and
  - (c) the person has not supplied goods or services of that description in that locality on the same or substantially similar terms and conditions in the period of 12 months before the current supply, but has supplied goods or services of that description elsewhere in Australia on the same or substantially similar terms and conditions in that period; and
  - (d) the actual price exceeds the highest price at which the person has supplied goods or services of that description in Australia on the same or substantially similar terms and conditions in that period; and
  - (e) the current supply is not an exempt supply.

Penalty: 100 penalty units.

Note: Subsection (4) contains a defence to this offence.

*Offence: no previous supply in Australia*

- (3) A person is guilty of an offence if:
- (a) the person is a declared person in relation to notified goods or services; and
  - (b) the person supplies (the **current supply**) goods or services of that description in a locality on particular terms and conditions (the **actual terms**) at a particular price (the **actual price**); and
  - (c) the person has not supplied goods or services of that description in Australia on the same or substantially similar terms and conditions in the period of 12 months before the current supply; and
  - (d) the current supply is not an exempt supply.

Penalty: 100 penalty units.

Note: Subsection (4) contains a defence to this offence.

*Defence*

- (4) Subsection (1), (2) or (3) does not apply if the following 4 requirements are satisfied.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

*Locality notice*

- (5) The first requirement is that the person has given the Commission a notice (a **locality notice**) in writing stating that the person proposes to supply goods or services of that description in that locality on specified terms and conditions (the **proposed terms**) at a specified price (the **proposed price**).

Note: The person may give further notices modifying the locality notice: see section 95ZA.

*Response to locality notice*

- (6) The second requirement is that:
- (a) the applicable period in relation to the locality notice has ended; or
  - (b) the Commission has given the person a notice in writing stating that it has no objection to the person supplying goods or services of that description in that locality on the proposed terms at the proposed price; or
  - (c) both of the following apply:
    - (i) the Commission has given the person a notice (the **response notice**) in writing stating that it would have no objection to the person supplying goods or services of that description in that locality on the proposed terms at a specified price (the **approved price**) that is less than the proposed price;
    - (ii) the person has, not later than 7 days after being given the response notice, given the Commission a notice in writing stating that the person proposes to supply goods or services of that description in that locality on the proposed terms at a price not exceeding the approved price.

*Actual terms*

- (7) The third requirement is that the actual terms are the same as, or substantially similar to, the proposed terms.

*Actual price*

- (8) The fourth requirement is that the actual price does not exceed:
- (a) if paragraph (6)(a) or (b) applies—the proposed price; or
  - (b) if paragraph (6)(c) applies—the approved price.

**95ZA Later notices modifying a locality notice**

- (1) If a person gives the Commission a locality notice, the person may give the Commission one or more further notices in writing stating that the locality notice is to have effect as if there were substituted for the proposed price another specified price.
- (2) A price specified in a notice under subsection (1) must be:
- (a) less than the proposed price; and
  - (b) less than the price specified in any previous notice under that subsection in relation to the locality notice.
- (3) If a notice is given under subsection (1), the locality notice has effect accordingly.
- (4) In this section:

*proposed price* has the meaning given by subsection 95Z(5).

**95ZB Applicable period in relation to a locality notice**

- (1) The *applicable period* in relation to a locality notice is the period (the *price-freeze period*) of 21 days starting on the day on which the notice was given.
- (2) However, the Commission may, with the consent of the person who gave the locality notice, determine, before the end of the price-freeze period, that the applicable period in relation to the notice for the purposes of this section is a specified longer period.
- (3) If the Commission so determines, that longer period is taken to become the *applicable period* in relation to the locality notice.

- (4) Also, if the Commission has given a response notice, the period that is the ***applicable period*** (worked out under subsections (1) to (3)) in relation to the locality notice is taken to be increased by a period of 14 days.

Example: On 1 May the person gives the Commission a locality notice.

Under subsection (1), the applicable period ends on 21 May.

On 9 May the Commission, with the consent of the person, determines, under subsection (2), that the applicable period ends on 31 May.

If the Commission also gives the person a response notice, under subsection (4), the applicable period instead of ending on 31 May ends on 14 June.

## **95ZC Register of price notifications**

### *Keeping of register*

- (1) The Commission must keep, at such place as it thinks fit, a register for the purposes of this section.

### *Information on the register*

- (2) If a person has given the Commission a locality notice, the Commission must, as soon as practicable after the end of the applicable period in relation to the notice, include in the register:
- (a) a copy of the notice, on which has been endorsed, or to which has been attached, a statement indicating the outcome of the Commission's consideration of the notice (including any action taken by it in relation to the notice and the outcome of any such action); and
  - (b) a copy of each notice given under this Part to, or by, the Commission in relation to the locality notice; and
  - (c) a statement of the reasons for the outcome of the Commission's consideration of the locality notice.

### *Gazette notice*

- (3) The Commission must, within 3 months after the end of the applicable period in relation to the locality notice, cause to be published in the *Gazette* a notice:
- (a) stating that the Commission received the locality notice and specifying the date it received the notice; and

- (b) setting out such particulars (if any) relating to the outcome of the Commission's consideration of the locality notice as it considers appropriate.

*Exclusion of confidential information*

- (4) A person who gives the Commission a document in relation to a locality notice, or who makes an oral submission to the Commission in relation to such a notice, may ask it to exclude from a document to be placed in the register any information:
  - (a) that was in the document given by the person or in the submission made by the person; and
  - (b) that the person claims is confidential.
- (5) The Commission may exclude the information if it is satisfied that the claim is justified and is not of the opinion that disclosure of the information is necessary in the public interest.
- (6) An application may be made to the Administrative Appeals Tribunal for the review of a decision under subsection (5) to refuse to exclude the information.

*Inspection of register*

- (7) A person may, at any time during ordinary office hours in the place where the register is kept, inspect or make copies of, or take extracts from, the register.

*Validity of acts done*

- (8) The validity of an act done by the Commission in relation to a locality notice is not affected by a failure of the Commission to comply with this section.

**95ZD Delegation by Commission**

- (1) The Commission may, by writing, delegate to a member of the Commission:
  - (a) the Commission's price notification powers in relation to specified locality notices; and
  - (b) the Commission's power under section 95ZJ relating to a notice given by the member exercising (as a delegate) the Commission's price notification powers.

- (2) In this section:

*price notification powers* means the Commission's powers under paragraph 95Z(6)(b) or (c).

## **Division 5—Price monitoring**

### **95ZE Directions to monitor prices, costs and profits of an industry**

- (1) The Minister may give the Commission a written direction:
- (a) to monitor prices, costs and profits relating to the supply of goods or services by persons in a specified industry; and
  - (b) to give the Minister a report on the monitoring at a specified time or at specified intervals within a specified period.

*Commercial confidentiality*

- (2) The Commission must, in preparing such a report, have regard to the need for commercial confidentiality.

*Public inspection*

- (3) The Commission must make copies of the report available for public inspection as soon as practicable after it gives the Minister the report.

### **95ZF Directions to monitor prices, costs and profits of a business**

- (1) The Minister may give the Commission a written direction:
- (a) to monitor prices, costs and profits relating to the supply of goods or services by a specified person; and
  - (b) to give the Minister a report on the monitoring at a specified time or at specified intervals within a specified period.

*Commercial confidentiality*

- (2) The Commission must, in preparing such a report, have regard to the need for commercial confidentiality.

*Commission to send person a copy of the report*

- (3) The Commission must send the person a copy of the report on the day it gives the Minister the report.



*Public inspection*

- (4) The Commission must also make copies of the report available for public inspection as soon as practicable after the person has received a copy of the report.

**95ZG Exceptions to price monitoring**

*Exempt supplies*

- (1) The Minister must not direct the Commission under this Division to monitor prices, costs and profits relating to a supply of goods or services of a particular description that is an exempt supply in relation to goods or services of that description.

*State or Territory authorities*

- (2) The Minister must not direct the Commission under this Division to monitor prices, costs and profits of a State or Territory authority that supplies goods or services unless the State or Territory concerned has agreed to the direction being given.

**Division 6—Other provisions**

**95ZH Ministerial directions**

*Commission*

- (1) The Minister may, by notice in writing give to the Chairperson, direct the Commission to give special consideration to a specified matter or matters in exercising its powers and performing its functions under this Part.
- (2) The Commission must comply with any such directions.

*Other bodies*

- (3) The Minister may, by notice in writing given to the person presiding at an external inquiry, direct the body holding the inquiry to give special consideration to a specified matter or matters in holding the inquiry.
- (4) The body must comply with any such directions.

**95ZI Inquiries by an unincorporated body or a group of 2 or more individuals**

- (1) This section applies to inquiries by an unincorporated body or a group of 2 or more individuals.
- (2) The regulations may make provision for and in relation to the manner in which the unincorporated body or group of individuals is to:
  - (a) give a notice, report or other document to a person under this Part; or
  - (b) do any other thing under this Part.

**95ZJ Withdrawal of notices**

*Commission*

- (1) The Commission may give a person a notice (the ***withdrawal notice***) in writing withdrawing a notice it previously gave the person under this Part (other than this section).
- (2) If the Commission does so, this Part has effect, from the time at which the withdrawal notice is given to the person, as if the other notice had not been given to the person.

*Other bodies*

- (3) The body holding an external inquiry may give a person a notice (the ***withdrawal notice***) in writing withdrawing a notice it previously gave the person under this Part (other than this section).
- (4) If the body does so, this Part has effect, from the time at which the withdrawal notice is given to the person, as if the other notice had not been given to the person.

**95ZK Power to obtain information or documents**

*Notice by Commission*

- (1) If the Chairperson has reason to believe that a person is capable of giving information or producing documents relevant to:
  - (a) the Commission considering the matters contained in a locality notice that the person has given it; or

- (b) an inquiry that is being held in relation to the person; or
- (c) a supply of goods or services by the person that is of a kind in relation to which the Commission is carrying out an inquiry; or
- (d) a supply of goods or services by the person that is of a kind in relation to which the Commission is monitoring under section 95ZE or 95ZF;

the Chairperson may, by notice in writing signed by him or her and given to the person, require the person to do one or more of the following:

- (e) give the Commission, by writing signed by the person or his or her agent or, in the case of a Commonwealth authority or a body corporate, by a competent officer of the authority or body, within the specified period and in the specified manner, specified information relating to the affairs of the person;
- (f) produce to the Commission, within the specified period and in the specified manner, specified documents relating to the affairs of the person;
- (g) if the person is a body corporate and the notice relates to the matter in paragraph (d)—give the Commission, together with the information or documents concerned, a declaration in a form approved by the Chairperson and signed by:
  - (i) the Chief Executive Officer (however described) of the body corporate; or
  - (ii) a person nominated by the Chief Executive Officer; stating that the information or documents are true and correct.

*Notice by other bodies*

(2) If:

- (a) an external inquiry is being held in relation to a person; and
- (b) the inquiry Chair has reason to believe that the person is capable of giving information or producing documents relevant to the inquiry;

the inquiry Chair may, by notice in writing signed by him or her and given to the person, require the person:

- (c) to give the body, by writing signed by the person or his or her agent or, in the case of a Commonwealth authority or a body

- corporate, by a competent officer of the authority or body, within the specified period and in the specified manner, specified information relating to the affairs of the person; or
- (d) to produce to the body, within the specified period and in the specified manner, specified documents relating to the affairs of the person.

*Period specified in notice*

- (3) A period specified in a notice under subsection (1) or (2) must end at least 14 days after the notice was given.

*Offence: refusal or failure to comply with notice*

- (4) A person is guilty of an offence if the person refuses or fails to comply with a notice given to the person under this section.

Penalty: 20 penalty units.

- (5) Subsection (4) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

- (6) It is a reasonable excuse for the purposes of subsection (4) for an individual to refuse or fail to give information or produce a document on the ground that the information or production of the document might tend to incriminate the individual or to expose the individual to a penalty.
- (7) Subsection (6) does not limit what is a reasonable excuse for the purposes of subsection (5).

*Offence: false or misleading declarations*

- (8) A person must not, in a declaration made for the purposes of paragraph (1)(g), make a statement if the person knows, or is reckless as to whether, the statement is false or misleading.

Penalty: 20 penalty units.

*Making information or documents publicly available*

- (9) If:

- (a) a notice is given to a person under this section relating to an inquiry that is being held in public in relation to the person; and
- (b) the person gives the information concerned or produces the documents concerned to the inquiry body in connection with the inquiry;

the inquiry body must make the information or documents available to the public in such manner as it thinks fit.

Note: See also section 95ZN (about confidentiality of information).

### **95ZL Inspection of documents etc.**

#### *Members or staff members*

- (1) A member of the Commission, or a member of the staff of the Commission, may inspect documents:
  - (a) given to the Commission for the purposes of the exercise of its powers or the performance of its functions under this Part; or
  - (b) produced at an inquiry.
- (2) A member of the Commission, or a member of the staff of the Commission, may also make copies of, or take extracts from, those documents.

#### *Associate members*

- (3) An associate member of the Commission may inspect documents:
  - (a) given to the Commission for the purposes of the exercise of its powers or the performance of its functions under this Part in relation to an inquiry for the purposes of which the Chairperson has directed that the associate member be taken to be a member of the Commission; or
  - (b) produced at that inquiry.
- (4) An associate member of the Commission may also make copies of, or take extracts from, those documents.

*External inquiries*

- (5) In an external inquiry, the person presiding at the inquiry, or a person providing assistance in the inquiry to the body holding the inquiry, may:
  - (a) inspect documents given to the body for the purposes of the inquiry; and
  - (b) make copies of, or take extracts from, those documents.

**95ZM Retention of documents**

- (1) The Commission, or a body other than the Commission, may retain a document given or produced to it as mentioned in section 95ZL. It may retain the document for such reasonable period as it thinks fit.
- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Commission or other body, as the case may be, to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, the Commission or other body, as the case may be, must, at such times and places as it thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

**95ZN Confidential information**

- (1) This section applies if a person claims that disclosure of the following information would damage the competitive position of the person:
  - (a) information made available, or to be made available, by or on behalf of the person (whether in oral evidence or in a written statement, submission or other document) at the hearing of an inquiry by the Commission or another body;
  - (b) information given, or contained in a document produced, by the person under section 95ZK to the Commission or another body.

*Commission or other body to take confidentiality steps*

- (2) If the Commission or other body, as the case may be:
- (a) is satisfied that the claim is justified; and
  - (b) is not of the opinion that disclosure of the information is necessary in the public interest;
- it must take all reasonable steps to ensure that the information is not disclosed, without the consent of the person, in the proceedings or by it, to a person other than:
- (c) in relation to the Commission:
    - (i) a member of the Commission or an associate member of the Commission; or
    - (ii) a member of the staff of the Commission who receives the information in the course of his or her duties; or
  - (d) in relation to the other body:
    - (i) the person presiding at the inquiry concerned; or
    - (ii) a person providing assistance in the inquiry to the other body.

*Interpretation*

- (3) This section has effect despite anything in sections 95R and 95ZK.

**95ZO Immunity**

*Members or associate members of the Commission*

- (1) A member of the Commission, or an associate member of the Commission, has, in the performance of his or her functions or the exercise of his or her powers under this Part as a member or associate member, the same protection and immunity as a Justice of the High Court.

*Person presiding at an external inquiry*

- (2) In an external inquiry, the person presiding at the inquiry has, in the performance of his or her functions or the exercise of his or her powers under this Part in that capacity, the same protection and immunity as a Justice of the High Court.

**95ZP Secrecy: members or staff members of the Commission etc.**

*Offence*

- (1) An entrusted person is guilty of an offence if:
- (a) the person:
    - (i) makes a copy or other record of any protected information or of all or part of any protected document; or
    - (ii) discloses any protected information to another person or to a court; or
    - (iii) produces all or part of a protected document to another person or to a court; and
  - (b) in doing so, the person is not acting in the course of performing or exercising functions, powers or duties under or in relation to this Act.

Penalty: Imprisonment for 2 years.

*Courts*

- (2) An entrusted person cannot be required to:
- (a) disclose any protected information to a court; or
  - (b) produce all or part of a protected document to a court;
- unless that disclosure or production is necessary for the purpose of carrying into effect the provisions of this Act.

*Definitions*

- (3) In this section:

***court*** includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

***entrusted person*** means a person who is or was:

- (a) a member of the Commission or an associate member of the Commission; or
- (b) a member of the staff of the Commission; or
- (c) appointed or engaged under the *Public Service Act 1999*.

***produce*** includes permit access to.



***protected document*** means a document that:

- (a) is given to or otherwise acquired by the Commission for the purposes of this Part; and
- (b) has not been made available to the public by the Commission under this Part.

***protected information*** means information that:

- (a) is disclosed to, or obtained by, an entrusted person for the purposes of this Part or as permitted by the repealed Part; and
- (b) has not been made available to the public under this Part by the Commission and is not contained in oral evidence given in public at the hearing of an inquiry.

***repealed Part*** means Part V of the *Prices Surveillance Act 1983*, as continued in operation by Schedule 2 to the *Trade Practices Legislation Amendment Act 2003*.

## **95ZQ Secrecy: persons involved in inquiries by bodies other than the Commission**

### *Offence*

- (1) An external person is guilty of an offence if:
  - (a) the person:
    - (i) makes a copy or other record of any protected information or of all or part of any protected document; or
    - (ii) discloses any protected information to another person or to a court; or
    - (iii) produces all or part of a protected document to another person or to a court; and
  - (b) in doing so, the person is not acting in the course of performing or exercising functions, powers or duties under or in relation to this Act.

Penalty: Imprisonment for 2 years.

### *Courts*

- (2) An external person cannot be required to:
  - (a) disclose any protected information to a court; or

(b) produce all or part of a protected document to a court;  
unless that disclosure or production is necessary for the purpose of carrying into effect the provisions of this Act.

*Definitions*

(3) In this section:

**court** includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

**external person** means a person who is or was:

- (a) the person presiding at an external inquiry; or
- (b) a person providing assistance in such an inquiry to the body holding the inquiry.

**produce** includes permit access to.

**protected document** means a document that:

- (a) is given to or otherwise acquired by the body holding the external inquiry concerned for the purposes of that inquiry; and
- (b) has not been made available to the public by that body under this Part.

**protected information** means information that:

- (a) is disclosed to, or obtained by, an external person for the purposes of the inquiry concerned; and
- (b) has not been made available to the public under this Part by the body holding that inquiry and is not contained in oral evidence given in public at the hearing of that inquiry.

**41 Paragraph 155(2A)(a)**

Omit “subsection 32(1) of the *Prices Surveillance Act 1983*”, substitute “subsection 95ZK(1) or (2)”.

**42 Paragraph 155(2A)(b)**

Omit “the member presiding at an inquiry under that Act”, substitute “the person presiding at an inquiry under Part VIIA”.

**43 Paragraph 155(2A)(c)**

Omit “subsection 34(2) of that Act”, substitute “subsection 95S(3)”.

## Part 2—Transitional provisions

### 44 Definitions

In this Part:

*ACCC* means the Australian Competition and Consumer Commission.

*commencement time* means the time when this Part commences.

*PSA* means the *Prices Surveillance Act 1983*, as in force before the commencement time.

*TPA* means the *Trade Practices Act 1974*.

### 45 General

- (1) This item applies to a thing mentioned in column 2 of the following table that:
  - (a) occurred before the commencement time under the provision of the PSA mentioned in that column; and
  - (b) is in force immediately before that time.
- (2) For the purposes of Part VIIA of the TPA, the thing has effect after that time as if it were a thing mentioned in column 3 of the table that occurred:
  - (a) under the provision of that Part mentioned in that column; and
  - (b) at the time it occurred under the PSA.

Operation of Part VIIA of the TPA		
Column 1 Item	Column 2 Occurrence under the PSA	Column 3 Occurrence under Part VIIA of the TPA
1	A direction given under section 20	A direction given under subsection 95ZH(1)
2	A declaration made under paragraph 21(1)(a)	A declaration made under subsection 95X(1)
3	A declaration made under paragraph 21(1)(b)	A declaration made under subsection 95X(2)
4	A declaration made under paragraph 21(1)(c)	A declaration made under section 95B

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<b>Operation of Part VIIA of the TPA</b>		
<b>Column 1 Item</b>	<b>Column 2 Occurrence under the PSA</b>	<b>Column 3 Occurrence under Part VIIA of the TPA</b>
5	A notice given under subsection 25(1)	A notice given under subsection 95N(5)
6	A summons given under subsection 34(2)	A summons given under subsection 95S(3)

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## **46 Price inquiries**

- (1) This item applies if:
- (a) before the commencement time, the Minister had made an instrument under subsection 18(1) of the PSA; and
  - (b) the ACCC had not submitted a report on the inquiry concerned before that time.
- (2) Part VIIA of the TPA has effect after that time as if the instrument were a notice given:
- (a) under subsection 95H(1) or (2) of the TPA (as the case requires); and
  - (b) at the time the instrument was made under the PSA.
- Note: One of the effects of this subitem is that the ACCC is able to begin an inquiry, complete an inquiry or give a report on an inquiry under Part VIIA of the TPA.
- (3) Subitem (4) applies to a thing mentioned in column 2 of the following table that occurred before the commencement time (in relation to the inquiry) under the provision of the PSA mentioned in that column.
- (4) For the purposes of Part VIIA of the TPA, the thing has effect after that time as if it were a thing mentioned in column 3 of the table that occurred:
- (a) under the provision of that Part mentioned in that column; and
  - (b) at the time it occurred under the PSA.

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**Operation of Part VIIA of the TPA**

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<b>Column 1 Item</b>	<b>Column 2 Occurrence under the PSA</b>	<b>Column 3 Occurrence under Part VIIA of the TPA</b>
1	An instrument made under subsection 18(6)	A notice given under subsection 95K(3)
2	A notice served under paragraph 19(1)(a)	A notice given under subsection 95L(1)
3	A notice served under paragraph 19(1)(b)	A notice given under subsection 95L(3)
4	A notice served under subsection 19(2)	A notice given under section 95M

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**47 Price inquiry obligations**

- (1) This item applies if:
- (a) before the commencement time, a person received a copy of a report on an inquiry held under the PSA in relation to the supply by the person of goods or services; and
  - (b) the period applicable under subsection 24(2) or paragraph 27(1)(a) of the PSA had not ended before that time.
- (2) Subsection 95N(8) or 95Q(2) of the TPA, as the case requires, has effect after that time as if the person had received the copy of the report:
- (a) under the TPA; and
  - (b) at the time the person received the copy under the PSA.

**48 Price notifications**

- (1) This item applies if:
- (a) before the commencement time, a person had given the ACCC a notice (the *locality notice*) under paragraph 22(2)(a) of the PSA; and
  - (b) the prescribed period in relation to the notice (worked out under section 22 of the PSA) had not ended before that time.
- (2) Part VIIA of the TPA has effect after that time as if the notice were a notice given:
- (a) under subsection 95Z(5) of the TPA; and
  - (b) at the time it was given under the PSA.
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- (3) Subitem (4) applies to a thing mentioned in column 2 of the following table that occurred before the commencement time (as a result of the locality notice being given) under the provision of the PSA mentioned in that column.
- (4) For the purposes of Part VIIA of the TPA, the thing has effect after that time as if it were a thing mentioned in column 3 of the table that occurred:
- (a) under the provision of that Part mentioned in that column;  
and
  - (b) at the time it occurred under the PSA.

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<b>Operation of Part VIIA of the TPA</b>		
<b>Column 1 Item</b>	<b>Column 2 Occurrence under the PSA</b>	<b>Column 3 Occurrence under Part VIIA of the TPA</b>
1	A notice served under subparagraph 22(2)(b)(ii)	A notice given under paragraph 95Z(6)(b)
2	A notice served under subparagraph 22(2)(b)(iii)	A notice given under subparagraph 95Z(6)(c)(i)
3	A notice given under subparagraph 22(2)(b)(iii)	A notice given under subparagraph 95Z(6)(c)(ii)
4	A notice given under paragraph 22(4)(a)	A notice given under subsection 95ZA(1)
5	A determination made under subsection 22(6)	A determination made under subsection 95ZB(2)

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## **49 Register of price notifications**

The register in place under subsection 23(1) of the PSA immediately before the commencement time is taken, immediately after that time, to be the register in place under subsection 95ZC(1) of the TPA.

## **50 Delegations in relation to price notifications**

### *Giving of notices*

- (1) A delegation in force under paragraph 29(b) of the PSA immediately before the commencement time has effect after that time as if it were a delegation (made under paragraph 95ZD(1)(a) of the TPA) of the ACCC's price notification powers in relation to the notices concerned.

*Withdrawal of notices*

- (2) A delegation in force under paragraph 29(c) of the PSA immediately before the commencement time has effect after that time as if it were a delegation (made under paragraph 95ZD(1)(b) of the TPA) of the power under section 95ZJ of the TPA relating to a notice given in the exercise of the ACCC's price notification powers.

*Definition*

- (3) In this item:  
**price notification powers** means the ACCC's powers under paragraph 95Z(6)(b) or (c) of the TPA.

**51 Price monitoring**

- (1) This item applies if:
- (a) before the commencement time, the Minister had given a direction under section 27A of the PSA; and
  - (b) the direction required the ACCC to report to the Minister on the monitoring concerned at a specified time, or at specified intervals, occurring after the commencement time.
- (2) Part VIIA of the TPA has effect after the commencement time as if the direction were a direction given:
- (a) under section 95ZE or 95ZF of the TPA (as the case requires); and
  - (b) at the time it was given under the PSA.

**52 Information gathering under Part VIIA of the TPA**

- (1) This item applies if:
- (a) before the commencement time, a notice was served on a person under subsection 32(1) of the PSA; and
  - (b) the period for complying with the notice had not ended before that time.
- (2) The notice has effect after that time as if it were a notice given:
- (a) under subsection 95ZK(1) of the TPA; and
  - (b) at the time it was served under the PSA.
- (3) If the notice was in relation to the matter mentioned in the provision of the PSA referred to in column 2 of the following table, it has effect after

that time as if it were a notice in relation to the matter mentioned in the provision of the TPA referred to in column 3 of the table.

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<b>Information gathering under Part VIIA of the TPA</b>		
<b>Column 1 Item</b>	<b>Column 2 Provision of the PSA</b>	<b>Column 3 Provision of the TPA</b>
1	Paragraph 32(1)(c)	Paragraph 95ZK(1)(a)
2	Paragraph 32(1)(d)	Paragraph 95ZK(1)(b)
3	Paragraph 32(1)(e)	Paragraph 95ZK(1)(c) or (d) (as the case requires)

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### **53 Inspection of documents etc.**

- (1) This item applies to documents furnished or produced before the commencement time in circumstances mentioned in section 38 of the PSA.
- (2) Section 95ZL of the TPA has effect after that time as if the documents were given or produced after that time in circumstances mentioned in that section.

### **54 Witness allowances**

Despite the repeal of the PSA made by this Schedule, section 39 of the PSA continues to apply after the commencement time in relation to a person who appeared at an inquiry under the PSA before that time as if the repeal had not been made.

### **55 Secrecy**

Despite the repeal of the PSA made by this Schedule:

- (a) section 43 of the PSA continues to apply after the commencement time to a person who, immediately before that time, was a prescribed person for the purposes of that section as if the repeal had not been made; and
- (b) Part V of the PSA continues to apply after the commencement time to a matter to which that Part applied to immediately before that time as if the repeal had not been made.

### **56 Information gathering under Part XII of the TPA**

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*Refusal or failure to comply with notices*

- (1) Paragraph 155(2A)(a) of the TPA has effect after the commencement time as if a reference to a notice under subsection 95ZK(1) or (2) of the TPA included a reference to a notice under subsection 32(1) of the PSA.

*Refusal or failure to answer questions*

- (2) Paragraph 155(2A)(b) of the TPA has effect after the commencement time as if a reference to an inquiry under Part VIIA of the TPA included a reference to an inquiry under the PSA.

*Refusal or failure to produce documents*

- (3) Paragraph 155(2A)(c) of the TPA has effect after the commencement time as if a reference to a summons under subsection 95S(3) of the TPA included a reference to a summons under subsection 34(2) of the PSA.

**57 Section 8 of the *Acts Interpretation Act 1901***

This Part does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

**58 Transitional regulations**

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) arising from the amendments or repeals made by this Schedule.

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*[Minister's second reading speech made in—  
House of Representatives on 27 March 2003  
Senate on 24 November 2003]*

(31/03)

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