



Competition and Consumer Amendment (Competition Policy Review) Act 2017

No. 114, 2017

An Act to amend the *Competition and Consumer Act 2010*, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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Competition and Consumer Amendment (Competition Policy Review) Act 2017

No. 114, 2017

An Act to amend the *Competition and Consumer Act 2010*, and for related purposes

[Assented to 27 October 2017]

The Parliament of Australia enacts:

1 Short title

This Act is the *Competition and Consumer Amendment (Competition Policy Review) Act 2017*.

No. 114, 2017 *Competition and Consumer Amendment (Competition Policy Review)*
Act 2017

1

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	27 October 2017
2. Schedule 1	The provisions do not commence at all unless the <i>Competition and Consumer Amendment (Misuse of Market Power) Act 2017</i> receives the Royal Assent. If that Act receives the Royal Assent, the provisions commence on: (a) a single day to be fixed by Proclamation; or (b) if no earlier day is fixed under paragraph (a), the day after the end of the period of 6 months beginning on the later of: (i) the day this Act receives the Royal Assent; and (ii) the day the <i>Competition and Consumer Amendment (Misuse of Market Power) Act 2017</i> receives the Royal Assent.	6 November 2017 (F2017N00085) (paragraph (a) applies)
3. Schedule 2, Part 1	At the same time as the provisions covered by table item 2.	6 November 2017
4. Schedule 2, Part 2	Immediately after the commencement of the provisions covered by table item 3.	6 November 2017
5. Schedules 3 to 8	At the same time as the provisions covered by table item 2.	6 November 2017

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
6. Schedule 9, items 1 to 103	At the same time as the provisions covered by table item 2.	6 November 2017
7. Schedule 9, item 104	Immediately after the commencement of the provisions covered by table item 5.	6 November 2017
8. Schedule 9, items 105 to 132	At the same time as the provisions covered by table item 2.	6 November 2017
9. Schedule 9, item 133	Immediately after the commencement of the provisions covered by table item 11.	6 November 2017
10. Schedule 9, items 134 to 167	At the same time as the provisions covered by table item 2.	6 November 2017
11. Schedules 10 and 11	At the same time as the provisions covered by table item 2.	6 November 2017
12. Schedule 12, Parts 1 to 3	At the same time as the provisions covered by table item 2.	6 November 2017
13. Schedule 12, Part 4, Division 1	Immediately after the commencement of the provisions covered by table item 2. However, the provisions do not commence at all if Schedule 2 to the <i>Public Governance and Resources Legislation Amendment Act (No. 1) 2017</i> does not commence before that time.	6 November 2017
14. Schedule 12, Part 4, Division 2	Immediately after the commencement of the provisions covered by table item 2. However, the provisions do not commence at all if Schedule 2 to the <i>Public Governance and Resources Legislation Amendment Act (No. 1) 2017</i> commences before that time.	Never commenced
15. Schedule 13	At the same time as the provisions covered by table item 2.	6 November 2017
16. Schedule 14	The day after this Act receives the Royal Assent.	28 October 2017
Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.		

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation 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—Definition of “competition”

Competition and Consumer Act 2010

1 Subsection 4(1) (definition of *competition*)

Repeal the definition, substitute:

competition includes:

- (a) competition from goods that are, or are capable of being, imported into Australia; and
- (b) competition from services that are rendered, or are capable of being rendered, in Australia by persons not resident or not carrying on business in Australia.

Schedule 2—Cartels

Part 1—Amendments

Competition and Consumer Act 2010

1 Paragraph 6(2C)(h)

Omit “44ZZRD(3)(a)(iii),”, substitute “44ZZRD(3)(a)(iii) and (iv) and”.

2 At the end of paragraph 44ZZRD(3)(a)

Add:

- (iv) the acquisition, or likely acquisition, of goods or services from persons or classes of persons by any or all of the parties to the contract, arrangement or understanding; or

3 Paragraphs 44ZZRD(4)(c) to (e)

After “services” (last occurring), insert “in trade or commerce”.

4 Paragraph 44ZZRD(4)(f)

After “goods” (last occurring), insert “in trade or commerce”.

5 Paragraphs 44ZZRD(4)(g) and (h)

After “services” (last occurring), insert “in trade or commerce”.

6 After paragraph 44ZZRD(4)(h)

Insert:

- (ha) if subparagraph (3)(a)(iv) applies in relation to preventing, restricting or limiting the acquisition, or likely acquisition, of goods or services—the acquisition of those goods or services in trade or commerce; or

7 Paragraphs 44ZZRD(4)(i) and (j)

After “services” (last occurring), insert “in trade or commerce”.

8 Subsection 44ZZRD(4) (note)

Repeal the note, substitute:

Note 1: *Party* has an extended meaning—see section 44ZZRC.

Note 2: *Trade or commerce* is defined in section 4 to mean trade or commerce within Australia or between Australia and places outside Australia.

9 Subsection 44ZZRD(5)

Omit “subparagraph (3)(a)(iii),”, substitute “subparagraph (3)(a)(iii) or (iv) or”.

10 Paragraph 44ZZRD(7)(a)

Omit “subparagraph (3)(a)(iii)”, substitute “subparagraphs (3)(a)(iii) and (iv)”.

11 Subsection 44ZZRO(1)

Omit “(1)”.

12 Subsection 44ZZRO(1)

Omit “contract containing a cartel provision if”, substitute “contract, arrangement or understanding containing a cartel provision if the defendant proves that”.

13 Paragraphs 44ZZRO(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) the cartel provision is:
 - (i) for the purposes of a joint venture; and
 - (ii) reasonably necessary for undertaking the joint venture; and
- (b) the joint venture is for any one or more of the following:
 - (i) production of goods;
 - (ii) supply of goods or services;
 - (iii) acquisition of goods or services; and
- (ba) the joint venture is not carried on for the purpose of substantially lessening competition; and

14 Paragraphs 44ZZRO(1)(c) and (d)

After “the contract”, insert “, arrangement or understanding”.

15 Subsection 44ZZRO(1) (note 1)

Repeal the note, substitute:

Note 1: A defendant bears a legal burden in relation to the matter in this section (see section 13.4 of the *Criminal Code*).

16 Subsections 44ZZRO(1A) to (4)

Repeal the subsections.

17 Subsection 44ZZRP(1)

Omit “contract containing a cartel provision if”, substitute “contract, arrangement or understanding containing a cartel provision if the defendant proves that”.

18 Paragraphs 44ZZRP(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) the cartel provision is:
 - (i) for the purposes of a joint venture; and
 - (ii) reasonably necessary for undertaking the joint venture; and
- (b) the joint venture is for any one or more of the following:
 - (i) production of goods;
 - (ii) supply of goods or services;
 - (iii) acquisition of goods or services; and
- (ba) the joint venture is not carried on for the purpose of substantially lessening competition; and

19 Paragraphs 44ZZRP(1)(c) and (d)

After “the contract”, insert “, arrangement or understanding”.

20 Subsections 44ZZRP(1A) to (2)

Repeal the subsections, substitute:

- (2) A defendant who wishes to rely on subsection (1) must prove that matter on the balance of probabilities.

21 At the end of paragraph 44ZZRD(3)(a) of Schedule 1

Add:

- (iv) the acquisition, or likely acquisition, of goods or services from persons or classes of persons by any or all of the parties to the contract, arrangement or understanding; or

22 Paragraphs 44ZZRD(4)(c) to (e) of Schedule 1

After “services” (last occurring), insert “in trade or commerce”.

23 Paragraph 44ZZRD(4)(f) of Schedule 1

After “goods” (last occurring), insert “in trade or commerce”.

24 Paragraphs 44ZZRD(4)(g) and (h) of Schedule 1

After “services” (last occurring), insert “in trade or commerce”.

25 After paragraph 44ZZRD(4)(h) of Schedule 1

Insert:

- (ha) if subparagraph (3)(a)(iv) applies in relation to preventing, restricting or limiting the acquisition, or likely acquisition, of goods or services—the acquisition of those goods or services in trade or commerce; or

26 Paragraphs 44ZZRD(4)(i) and (j) of Schedule 1

After “services” (last occurring), insert “in trade or commerce”.

27 Subsection 44ZZRD(4) of Schedule 1 (note)

Repeal the note, substitute:

- Note 1: *Party* has an extended meaning—see section 44ZZRC.
- Note 2: *Trade or commerce* is defined in section 4 to mean trade or commerce within Australia or between Australia and places outside Australia.

28 Subsection 44ZZRD(5) of Schedule 1

Omit “subparagraph (3)(a)(iii),”, substitute “subparagraph (3)(a)(iii) or (iv) or”.

29 Paragraph 44ZZRD(7)(a) of Schedule 1

Omit “subparagraph (3)(a)(iii)”, substitute “subparagraphs (3)(a)(iii) and (iv)”.

30 Subsection 44ZZRO(1) of Schedule 1

Omit “contract containing a cartel provision if”, substitute “contract, arrangement or understanding containing a cartel provision if the defendant proves that”.

31 Paragraphs 44ZZRO(1)(a) and (b) of Schedule 1

Repeal the paragraphs, substitute:

- (a) the cartel provision is:
 - (i) for the purposes of a joint venture; and
 - (ii) reasonably necessary for undertaking the joint venture; and
- (b) the joint venture is for any one or more of the following:
 - (i) production of goods;
 - (ii) supply of goods or services;
 - (iii) acquisition of goods or services; and
- (ba) the joint venture is not carried on for the purpose of substantially lessening competition; and

32 Paragraphs 44ZZRO(1)(c) and (d) of Schedule 1

After “the contract”, insert “, arrangement or understanding”.

33 Subsections 44ZZRO(1A) to (5) of Schedule 1

Repeal the subsections, substitute:

- (2) A defendant who wishes to rely on subsection (1) must prove that matter on the balance of probabilities.

34 Subsection 44ZZRP(1) of Schedule 1

Omit “contract containing a cartel provision if”, substitute “contract, arrangement or understanding containing a cartel provision if the defendant proves that”.

35 Paragraphs 44ZZRP(1)(a) and (b) of Schedule 1

Repeal the paragraphs, substitute:

- (a) the cartel provision is:
 - (i) for the purposes of a joint venture; and

- (ii) reasonably necessary for undertaking the joint venture;
and
- (b) the joint venture is for any one or more of the following:
 - (i) production of goods;
 - (ii) supply of goods or services;
 - (iii) acquisition of goods or services; and
- (ba) the joint venture is not carried on for the purpose of substantially lessening competition; and

36 Paragraphs 44ZZRP(1)(c) and (d) of Schedule 1

After “the contract”, insert “, arrangement or understanding”.

37 Subsections 44ZZRP(1A) to (2) of Schedule 1

Repeal the subsections, substitute:

- (2) A defendant who wishes to rely on subsection (1) must prove that matter on the balance of probabilities.

Part 2—Renumbering Division 1 of Part IV and Schedule 1

Competition and Consumer Act 2010

38 Renumbering Division 1 of Part IV of the *Competition and Consumer Act 2010*

- (1) In this item:
Division 1 means Division 1 of Part IV of the *Competition and Consumer Act 2010*.
- (2) The sections of Division 1 are renumbered in a single series so that each section referred to in column 1 of an item in the following table has the number stated in column 2 of that item:

Renumbering Division 1 of Part IV		
Item	Column 1 Current section number	Column 2 New section number
1	44ZZRA	45AA
2	44ZZRB	45AB
3	44ZZRC	45AC
4	44ZZRD	45AD
5	44ZZRE	45AE
6	44ZZRF	45AF
7	44ZZRG	45AG
8	44ZZRH	45AH
9	44ZZRI	45AI
10	44ZZRJ	45AJ
11	44ZZRK	45AK
12	44ZZRL	45AL
13	44ZZRM	45AM
14	44ZZRN	45AN
15	44ZZRO	45AO
16	44ZZRP	45AP

Renumbering Division 1 of Part IV		
Item	Column 1 Current section number	Column 2 New section number
17	44ZZRR	45AQ
18	44ZZRS	45AR
19	44ZZRT	45AS
20	44ZZRU	45AT
21	44ZZRV	45AU

- (3) The subsections of each section of Division 1 that has more than one subsection are renumbered so that they bear consecutive Arabic numerals enclosed in parentheses starting with “(1)”.
- (4) The paragraphs of each section or subsection, or of each definition, of Division 1 are relettered so that they bear lower-case letters in alphabetical order enclosed in parentheses starting with “(a)”.
- (5) The subparagraphs of each paragraph of each section or subsection, or of each paragraph of each definition, of Division 1 are renumbered so that they bear consecutive lower-case Roman numerals enclosed in parentheses starting with “(i)”.
- (6) Subject to subitem (7), each provision of the *Competition and Consumer Act 2010* that refers to a provision that has been renumbered or relettered under this item is amended by omitting the reference and substituting a reference to the last-mentioned provision as renumbered or relettered.
- (7) Subitem (6) does not apply to a reference that is expressed as a reference to a provision as in force at a time that is before the commencement of this item.

39 Renumbering Division 1 of Part 1 of Schedule 1 to the *Competition and Consumer Act 2010*

- (1) In this item:
Division 1 means Division 1 of Part 1 of Schedule 1 to the *Competition and Consumer Act 2010*.

Schedule 2 Cartels**Part 2** Renumbering Division 1 of Part IV and Schedule 1

- (2) The sections of Division 1 are renumbered in a single series so that each section referred to in column 1 of an item in the following table has the number stated in column 2 of that item:

Renumbering Division 1 of Part 1 of Schedule 1		
Item	Column 1 Current section number	Column 2 New section number
1	44ZZRA	45AA
2	44ZZRB	45AB
3	44ZZRC	45AC
4	44ZZRD	45AD
5	44ZZRE	45AE
6	44ZZRF	45AF
7	44ZZRG	45AG
8	44ZZRH	45AH
9	44ZZRI	45AI
10	44ZZRJ	45AJ
11	44ZZRK	45AK
12	44ZZRL	45AL
13	44ZZRM	45AM
14	44ZZRN	45AN
15	44ZZRO	45AO
16	44ZZRP	45AP
17	44ZZRR	45AQ
18	44ZZRS	45AR
19	44ZZRT	45AS
20	44ZZRU	45AT
21	44ZZRV	45AU

- (3) The subsections of each section in Division 1 that has more than one subsection are renumbered so that they bear consecutive Arabic numerals enclosed in parentheses starting with “(1)”.

- (4) The paragraphs of each section or subsection, or of each definition, in Division 1 are relettered so that they bear lower-case letters in alphabetical order enclosed in parentheses starting with “(a)”.
- (5) The subparagraphs of each paragraph of each section or subsection, or of each paragraph of each definition, in Division 1 are renumbered so that they bear consecutive lower-case Roman numerals enclosed in parentheses starting with “(i)”.
- (6) Subject to subitem (7), each provision of the *Competition and Consumer Act 2010* that refers to a provision that has been renumbered or relettered under this item is amended by omitting the reference and substituting a reference to the last-mentioned provision as renumbered or relettered.
- (7) Subitem (6) does not apply to a reference that is expressed as a reference to a provision as in force at a time that is before the commencement of this item.

40 References in other Acts, instruments or documents to renumbered provisions

- (1) Subject to subitem (2), after the commencement of this item, a reference in an Act (other than the *Competition and Consumer Act 2010*) enacted before that commencement (whether or not the provision containing that reference has come into operation), or in an instrument or document, to a provision of the *Competition and Consumer Act 2010* that has been renumbered or relettered under item 38 or 39 is to be construed as a reference to that provision as so renumbered or relettered.
- (2) Subitem (1) does not apply to a reference that is expressed as a reference to a provision as in force at a time that is before the commencement of this item.

Schedule 3—Price signalling and concerted practices

Part 1—Main amendments

Competition and Consumer Act 2010

1 Division 1A of Part IV

Repeal the Division.

2 Subsections 45(1) to (3)

Repeal the subsections, substitute:

- (1) A corporation must not:
 - (a) make a contract or arrangement, or arrive at an understanding, if 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, if that provision has the purpose, or has or is likely to have the effect, of substantially lessening competition; or
 - (c) engage with one or more persons in a concerted practice that has the purpose, or has or is likely to have the effect, of substantially lessening competition.
- (2) Paragraph (1)(b) applies in relation to contracts or arrangements made, or understandings arrived at, before or after the commencement of this section.
- (3) For the purposes of this section, *competition* means:
 - (a) in relation to a provision of a contract, arrangement or understanding or of a proposed contract, arrangement or understanding—competition in any market in which:
 - (i) a corporation that is a party to the contract, arrangement or understanding, or would be a party to the proposed contract, arrangement or understanding; or

- (ii) any body corporate related to such a corporation; supplies or acquires, or is likely to supply or acquire, goods or services or would, but for the provision, supply or acquire, or be likely to supply or acquire, goods or services; or
- (b) in relation to a concerted practice—competition in any market in which:
 - (i) a corporation that is a party to the practice; or
 - (ii) any body corporate related to such a corporation; supplies or acquires, or is likely to supply or acquire, goods or services or would, but for the practice, supply or acquire, or be likely to supply or acquire, goods or services.

3 After subsection 45(5)

Insert:

- (5A) The making of a contract, arrangement or understanding does not constitute a contravention of this section because the contract, arrangement or understanding contains a provision the giving effect to which would, or would apart from subsection 47(10) or section 88 or 93, constitute a contravention of section 47.

4 Subsection 45(6)

Omit all the words from and including “(6) The” to and including “by way of:”, substitute:

- (6) This section does not apply to or in relation to the giving effect to a provision of a contract, arrangement or understanding, or to or in relation to engaging in a concerted practice, by way of:

5 Subsections 45(7) and (8)

Repeal the subsections, substitute:

- (7) This section does not apply to or in relation to:
 - (a) a contract, arrangement or understanding to the extent that the contract, arrangement or understanding directly or indirectly provides for; or
 - (b) a proposed contract, arrangement or understanding to the extent that the proposed contract, arrangement or understanding would directly or indirectly provide for; or

- (c) a concerted practice to the extent that the practice directly involves;
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) a contract, arrangement or understanding, or
 - (b) a proposed contract, arrangement or understanding; or
 - (c) a concerted practice;the only parties to which are or would be bodies corporate that are related to each other.
- (8AA) This section does not apply to or in relation to a concerted practice if the only persons engaging in it are or would be:
 - (a) the Crown in right of the Commonwealth and one or more authorities of the Commonwealth; or
 - (b) the Crown in right of a State or Territory and one or more authorities of that State or Territory.

6 Division 1A of Part 1 of Schedule 1

Repeal the Division.

7 Subsections 45(1) to (3) of Schedule 1

Repeal the subsections, substitute:

- (1) A person must not:
 - (a) make a contract or arrangement, or arrive at an understanding, if 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, if that provision has the purpose, or has or is likely to have the effect, of substantially lessening competition; or
 - (c) engage with one or more other persons in a concerted practice that has the purpose, or has or is likely to have the effect, of substantially lessening competition.

- (2) Paragraph (1)(b) applies in relation to contracts or arrangements made, or understandings arrived at, before or after the commencement of this section.
- (3) For the purposes of this section, **competition** means:
- (a) in relation to a provision of a contract, arrangement or understanding or of a proposed contract, arrangement or understanding—competition in any market in which:
 - (i) 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
 - (ii) 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; or
 - (b) in relation to a concerted practice—competition in any market in which:
 - (i) a person who is a party to the practice; or
 - (ii) 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 practice, supply or acquire, or be likely to supply or acquire, goods or services.

8 After subsection 45(5) of Schedule 1

Insert:

- (5A) The making of a contract, arrangement or understanding does not constitute a contravention of this section because the contract, arrangement or understanding contains a provision the giving effect to which would, or would apart from subsection 47(10) or section 88 or 93, constitute a contravention of section 47.

9 Subsection 45(6) of Schedule 1

Omit all the words from and including “(6) The” to and including “by way of:”, substitute:

- (6) This section does not apply to or in relation to the giving effect to a provision of a contract, arrangement or understanding, or to or in relation to engaging in a concerted practice, by way of:

10 Subsections 45(7) and (8) of Schedule 1

Repeal the subsections, substitute:

- (7) This section does not apply to or in relation to:
- (a) a contract, arrangement or understanding to the extent that the contract, arrangement or understanding directly or indirectly provides for; or
 - (b) a proposed contract, arrangement or understanding to the extent that the proposed contract, arrangement or understanding would directly or indirectly provide for; or
 - (c) a concerted practice to the extent that the practice directly or indirectly involves;
- 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) a contract, arrangement or understanding, or
 - (b) a proposed contract, arrangement or understanding; or
 - (c) a concerted practice;
- the only parties to which are or would be bodies corporate that are related to each other.
- (8AA) This section does not apply to or in relation to a concerted practice if the only persons engaging in it are or would be:
- (a) the Crown in right of the Commonwealth and one or more authorities of the Commonwealth; or
 - (b) the Crown in right of a State or Territory and one or more authorities of that State or Territory.

Part 2—Other amendments

Competition and Consumer Act 2010

11 Paragraphs 4(2)(a) and (b)

Omit “the requiring of the giving of, or the giving of, a covenant”,
substitute “the engaging in of a concerted practice”.

12 Subparagraph 6(2)(b)(i)

Omit “and 44ZZRK, Division 1A of Part IV, and sections”, substitute “,
44ZZRK,”.

13 Paragraph 6(2)(d)

Omit “subsection 45(1) and subparagraph 87(3)(a)(i)”, substitute
“paragraph 87(3)(a)”.

14 Subsection 45(8A)

Omit “Subsection (2)”, substitute “Subsection (1)”.

15 Subsection 45(9)

Omit “subsection (2)” (wherever occurring), substitute “subsection (1)”.

16 Paragraph 51(2)(a)

Repeal the paragraph, substitute:

- (a) to any act done, or concerted practice, to the extent that it
relates to the remuneration, conditions of employment, hours
of work or working conditions of employees; or
- (aa) to:
 - (i) the making of a contract or arrangement, or the entering
into of an understanding; or
 - (ii) any provision of a contract, arrangement or
understanding;to the extent that the contract, arrangement, understanding or
provision relates to the remuneration, conditions of
employment, hours of work or working conditions of
employees; or

17 At the end of paragraph 51(2)(b)

Add “or”.

18 Paragraphs 51(2)(c) and (d)

Repeal the paragraphs, substitute:

(c) to:

(i) any provision of a contract, arrangement or understanding; or

(ii) any concerted practice;

to the extent that the provision or concerted practice obliges a person to comply with or apply standards of dimension, design, quality or performance prepared or approved by Standards Australia or a prescribed association or body; or

(d) to:

(i) any provision of a contract, arrangement or understanding; or

(ii) any concerted practice;

between partners none of whom is a body corporate, to the extent that the provision or concerted practice relates to:

(iii) the terms of the partnership; or

(iv) the conduct of the partnership business; or

(v) competition between the partnership and a party to the contract, arrangement, understanding or concerted practice, while the party is, or after the party ceases to be, a partner; or

19 Paragraph 51(2)(g)

Repeal the paragraph, substitute:

(g) to:

(i) any provision of a contract, arrangement or understanding; or

(ii) any concerted practice;

to the extent that the provision or concerted practice relates exclusively to:

(iii) the export of goods from Australia; or

(iv) the supply of services outside Australia;

if full and accurate particulars of the provision or concerted practice were given to the Commission no more than 14 days after the day the contract or arrangement was made or the understanding or concerted practice was entered into, or before 8 September 1976, whichever was the later.

20 After subsection 51(2)

Insert:

(2AA) For the purposes of paragraph (2)(g), the particulars to be given to the Commission:

- (a) need not include particulars of prices for the goods or services; but
- (b) must include particulars of any method of fixing, controlling or maintaining such prices.

21 Subsection 51(4)

Repeal the subsection.

22 Paragraph 84(1)(b)

Omit “or 44ZZRK, Division 1A of Part IV, section 46 or 46A”, substitute “, 44ZZRK, 46 or 46A,”.

23 Paragraph 84(3)(b)

Omit “Division 1A of Part IV,”.

24 Paragraph 93AB(1)(a)

Omit “paragraph 45(2)(a)”, substitute “paragraph 45(1)(a)”.

25 Paragraph 93AB(1)(b)

Omit “paragraph 45(2)(b)”, substitute “paragraph 45(1)(b)”.

26 Subsection 93AC(2)

Omit “subparagraph 45(2)(a)(ii) or (b)(ii)”, substitute “paragraph 45(1)(a) or (b)”.

27 Subsection 166(1)

Omit “particulars of, or of a provision of, a contract, arrangement or understanding”, substitute “particulars of a provision of a contract, arrangement or understanding, or particulars of a concerted practice”.

28 Subsection 166(1)

Omit “contract or to the arrangement or understanding”, substitute “contract, arrangement, understanding or concerted practice”.

29 Subsection 166(3)

Omit “of, or of a provision of, a contract, arrangement or understanding”.

30 Subsection 45(8A) of Schedule 1

Omit “Subsection (2)”, substitute “Subsection (1)”.

31 Subsection 45(9) of Schedule 1

Omit “subsection (2)” (wherever occurring), substitute “subsection (1)”.

32 Paragraph 51(2)(a) of Schedule 1

Repeal the paragraph, substitute:

(a) to any act done, or concerted practice, to the extent that it relates to the remuneration, conditions of employment, hours of work or working conditions of employees; or

(aa) to:

(i) the making of a contract or arrangement, or the entering into of an understanding; or

(ii) any provision of a contract, arrangement or understanding;

to the extent that the contract, arrangement, understanding or provision relates to the remuneration, conditions of employment, hours of work or working conditions of employees; or

33 At the end of paragraph 51(2)(b) of Schedule 1

Add “or”.

34 Paragraphs 51(2)(c) and (d) of Schedule 1

Repeal the paragraphs, substitute:

(c) to:

- (i) any provision of a contract, arrangement or understanding; or
- (ii) any concerted practice;

to the extent that the provision or concerted practice obliges a person to comply with or apply standards of dimension, design, quality or performance prepared or approved by Standards Australia or a prescribed association or body; or

(d) to:

- (i) any provision of a contract, arrangement or understanding; or
- (ii) any concerted practice;

between partners none of whom is a body corporate, to the extent that the provision or concerted practice relates to:

- (iii) the terms of the partnership; or
- (iv) the conduct of the partnership business; or
- (v) competition between the partnership and a party to the contract, arrangement, understanding or concerted practice, while the party is, or after the party ceases to be, a partner; or

35 Paragraph 51(2)(g) of Schedule 1

Repeal the paragraph, substitute:

(g) to:

- (i) any provision of a contract, arrangement or understanding; or
- (ii) any concerted practice;

to the extent that the provision or concerted practice relates exclusively to:

- (iii) the export of goods from Australia; or
- (iv) the supply of services outside Australia;

if full and accurate particulars of the provision or concerted practice were given to the Commission no more than 14 days after the day the contract or arrangement was made or the

understanding or concerted practice was entered into, or before 8 September 1976, whichever was the later.

36 After subsection 51(2) of Schedule 1

Insert:

(2AA) For the purposes of paragraph (2)(g), the particulars to be given to the Commission:

- (a) need not include particulars of prices for the goods or services; but
- (b) must include particulars of any method of fixing, controlling or maintaining such prices.

37 Subsection 51(4) of Schedule 1

Repeal the subsection.

Schedule 4—Exclusionary provisions

Competition and Consumer Act 2010

1 Section 4D

Repeal the section.

2 Section 76C

Repeal the section.

3 Subsection 93AC(1)

Repeal the subsection, substitute:

Commission’s objection notice—cartel provisions

(1) If:

- (a) a corporation gives the Commission a collective bargaining notice under subsection 93AB(1A) in relation to a contract, or proposed contract, containing a cartel provision of the kind referred to in that subsection; and
- (b) the Commission is satisfied that any benefit to the public that has resulted or is likely to result or would result or be likely to result from the provision does not or would not outweigh the detriment to the public that has resulted or is likely to result or would result or be likely to result from the provision;

the Commission may give the corporation a written notice (the *objection notice*) stating that it is so satisfied.

4 Paragraph 10.08(1)(a)

Repeal the paragraph.

5 Subsection 10.08(1)

Omit “, (a)”.

Schedule 5—Covenants affecting competition

Competition and Consumer Act 2010

1 Subsection 4(1)

Insert:

contract includes a covenant.

party, to a contract that is a covenant, includes a person bound by, or entitled to the benefit of, the covenant.

2 Subsection 4(3)

Omit “, or to render a covenant,”.

3 Subsection 4(3)

Omit “or the covenant” (wherever occurring).

4 Paragraph 4F(1)(a)

Omit “, or a covenant or a proposed covenant,”.

5 Subparagraph 4F(1)(a)(i)

Omit “, or the covenant was required to be given or the proposed covenant is to be required to be given, as the case may be,”.

6 Subparagraph 6(2)(b)(i)

Omit “45B,”.

7 Paragraph 6(2)(e)

Repeal the paragraph.

8 Section 44ZZRQ

Repeal the section.

9 Subsection 45(5)

Repeal the subsection, substitute:

-
- (5) This section does not apply to or in relation to a provision of a contract, arrangement or understanding or of a proposed contract, arrangement or understanding, or to or in relation to a concerted practice, in so far as the provision or practice relates to:
- (a) conduct that contravenes section 48; or
 - (b) conduct that would contravene section 48 if subsection 48(2) did not apply; or
 - (c) conduct that would contravene section 48 if it were not authorised under section 88; or
 - (d) 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.

10 Sections 45B and 45C

Repeal the sections.

11 Subsection 46A(6)

Omit “45B,”.

12 Paragraph 87(3)(a)

Repeal the paragraph, substitute:

- (a) a provision of a contract made, whether before or after the commencement of the *Trade Practices Amendment Act 1977*, is unenforceable because of section 45 in so far as it confers rights or benefits or imposes duties or obligations on a corporation; or

13 Subsection 87(3)

Omit “or of a person who would, but for subsection 45B(1), be bound by, or entitled to the benefit of, the covenant, as the case may be”.

14 Paragraph 87(3)(c)

Omit “or covenant” (wherever occurring).

15 Paragraph 87(3)(d)

Omit “, or another person who would, but for subsection 45B(1), be bound by, or entitled to the benefit of, the covenant,”.

16 Paragraph 87(3)(d)

Omit “or person”.

17 Subsection 87(5)

Omit “or covenant” (wherever occurring).

18 Section 44ZZRQ of Schedule 1

Repeal the section.

19 Subsection 45(5) of Schedule 1

Repeal the subsection, substitute:

- (5) This section does not apply to or in relation to a provision of a contract, arrangement or understanding or of a proposed contract, arrangement or understanding, or to or in relation to a concerted practice, in so far as the provision or practice relates to:
- (a) conduct that contravenes section 48; or
 - (b) conduct that would contravene section 48 if subsection 48(2) did not apply; or
 - (c) conduct that would contravene section 48 if it were not authorised under section 88; or
 - (d) 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.

20 Sections 45B and 45C of Schedule 1

Repeal the sections.

Schedule 7—Third line forcing

Competition and Consumer Act 2010

1 Subsection 47(10)

Omit “constituted by a corporation engaging in conduct of a kind referred to in subsection (2), (3), (4) or (5) or paragraph (8)(a) or (b) or (9)(a), (b) or (c)”, substitute “by a corporation”.

2 Paragraph 47(10)(a)

Omit “that conduct”, substitute “the conduct that constitutes the practice of exclusive dealing”.

3 Paragraph 47(10)(b)

Omit “that conduct”, substitute “the conduct that constitutes the practice of exclusive dealing”.

4 Subsection 47(10A)

Repeal the subsection.

5 Subsection 47(10) of Schedule 1

Omit “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)”, substitute “by a person”.

6 Paragraph 47(10)(a) of Schedule 1

Omit “that conduct”, substitute “the conduct that constitutes the practice of exclusive dealing”.

7 Paragraph 47(10)(b) of Schedule 1

Omit “that conduct”, substitute “the conduct that constitutes the practice of exclusive dealing”.

8 Subsection 47(10A) of Schedule 1

Repeal the subsection.

Schedule 8—Resale price maintenance

Competition and Consumer Act 2010

1 Section 48

Before “A corporation”, insert “(1)”.

2 At the end of section 48

Add:

- (2) Subsection (1) does not apply to a corporation or other person engaging in conduct that constitutes the practice of resale price maintenance if:
 - (a) the corporation or other person has given the Commission a notice under subsection 93(1) describing the conduct; and
 - (b) the notice is in force under section 93.

3 Subdivision A of Division 2 of Part VII (heading)

Repeal the heading, substitute:

Subdivision A—Exclusive dealing and resale price maintenance

4 Section 93 (heading)

Repeal the heading, substitute:

93 Notification of exclusive dealing or resale price maintenance

5 Subsection 93(1)

Repeal the subsection, substitute:

- (1) Subject to subsection (2):
 - (a) a corporation that engages, or proposes to engage, in conduct of a kind referred to in subsection 47(2), (3), (4), (5), (6), (7), (8) or (9); or
 - (b) a corporation or other person who engages, or proposes to engage, in conduct of a kind referred to in section 48;

may give to the Commission a notice setting out particulars of the conduct or proposed conduct.

6 Subsection 93(2)

Omit “may not give a notice”, substitute “or other person may not give a notice under subsection (1)”.

7 Paragraph 93(2)(a)

After “corporation”, insert “or other person”.

8 Paragraph 93(3A)(a)

After “corporation”, insert “or other person”.

9 Paragraph 93(3A)(a)

Omit “section 44ZZW, subsection 47(6) or (7) or paragraph 47(8)(c) or (9)(d)”, substitute “section 48”.

10 Subsection 93(3A)

After “the corporation”, insert “or other person”.

11 Subsections 93(5) and (6)

After “corporation” (wherever occurring), insert “or other person”.

12 Subsection 93(7)

After “subsection (1)”, insert “describing conduct or proposed conduct referred to in subsection 47(2), (3), (4), (5), (6), (7), (8) or (9)”.

13 Subsection 93(7A)

Repeal the subsection, substitute:

- (7A) A notice under subsection (1) describing conduct or proposed conduct referred to in section 48 comes into force:
- (a) at the end of the period of 60 days, or such other period as is prescribed by the regulations, starting on the day when the corporation or other person gave the Commission the notice; or
 - (b) if the Commission gives notice to the corporation or other person under subsection 93A(2) during that period—when

the Commission decides not to give the corporation or other person a notice under subsection (3A) of this section.

14 Subsection 93(7B)

Omit “section 44ZZW, subsection 47(6) or (7) or paragraph 47(8)(c) or (9)(d)”, substitute “section 48”.

15 Subparagraphs 93(7B)(b)(i) and (ii)

After “corporation”, insert “or other person”.

16 Subsection 93(7C)

Omit “section 44ZZW, subsection 47(6) or (7) or paragraph 47(8)(c) or (9)(d)”, substitute “section 48”.

17 Paragraph 93(7C)(b)

After “corporation”, insert “or other person”.

18 Paragraphs 93(8)(a) and (b)

After “corporation”, insert “or other person”.

19 Subsection 93(10)

After “corporation” (wherever occurring), insert “or other person”.

20 Subsection 93A(2)

Omit “to the conduct or proposed conduct of which”, substitute “or other person to whose conduct or proposed conduct”.

21 At the end of section 96

Add:

- (8) Subsection (1) does not apply with respect to any act referred to in a paragraph of subsection (3) if the supplier and the second person referred to in that paragraph are bodies corporate that are related to each other.

22 Section 48 of Schedule 1

Before “A person”, insert “(1)”.

23 At the end of section 48 of Schedule 1

Add:

- (2) Subsection (1) does not apply to a person engaging in conduct that constitutes the practice of resale price maintenance if:
 - (a) the person has given the Commission a notice under subsection 93(1) describing the conduct; and
 - (b) the notice is in force under section 93.

Schedule 9—Authorisations, notifications and class exemptions

Part 1—Main amendments

Competition and Consumer Act 2010

1 Section 88

Repeal the section, substitute:

88 Commission may grant authorisations

Granting an authorisation

- (1) Subject to this Part, the Commission may, on an application by a person, grant an authorisation to a person to engage in conduct, specified in the authorisation, to which one or more provisions of Part IV specified in the authorisation would or might apply.

Note: For an extended meaning of engaging in conduct, see subsection 4(2).

Effect of an authorisation

- (2) While the authorisation remains in force, the provisions of Part IV specified in the authorisation do not apply in relation to the conduct to the extent that it is engaged in by:
 - (a) the applicant; and
 - (b) any other person named or referred to in the application as a person who is engaged in, or who is proposed to be engaged in, the conduct; and
 - (c) any particular persons or classes of persons, as specified in the authorisation, who become engaged in the conduct.

Conditions

- (3) The Commission may specify conditions in the authorisation. Subsection (2) does not apply if any of the conditions are not complied with.

- (4) Without limiting subsection (3), the Commission may grant a merger authorisation on the condition that a person must give, and comply with, an undertaking to the Commission under section 87B.

Single authorisation may deal with several types of conduct

- (5) The Commission may grant a single authorisation for all the conduct specified in an application for authorisation, or may grant separate authorisations for any of the conduct.

Past conduct

- (6) The Commission does not have power to grant an authorisation for conduct engaged in before the Commission decides the application for the authorisation.

Withdrawing an application

- (7) An applicant for an authorisation may at any time, by writing to the Commission, withdraw the application.

2 Subsection 90(2)

Repeal the subsection.

3 Subsections 90(5A) to (9)

Repeal the subsections, substitute:

- (6) Before making a determination in respect of an application for an authorisation, the Commission may do any one or more of the following:
- (a) give any persons who appear to the Commission to be interested a written notice inviting submissions in respect of the application within a specified period;
 - (b) give the applicant a written notice requesting the applicant to give the Commission, within a specified period, additional information relevant to making its determination in respect of the application;
 - (c) give a person a written notice requesting the person to give the Commission, within a specified period, particular

information relevant to making its determination in respect of the application;

- (d) consult with such persons as it considers reasonable and appropriate for the purposes of making its determination in respect of the application.

(6A) In making a determination in respect of an application for an authorisation, the Commission must take into account:

- (a) any submissions or information received under paragraph (6)(a), (b) or (c) within the period specified in the notice mentioned in that paragraph; and
- (b) any information obtained from consultations under paragraph (6)(d)).

The Commission may, but need not, take into account any submissions or information received after the end of those periods.

Note: Unless the application is for a merger authorisation, the Commission may instead rely on consultations undertaken by the AEMC: see section 90B.

(7) The Commission must not make a determination granting an authorisation under section 88 in relation to conduct unless the Commission is satisfied in all the circumstances:

- (a) that the conduct would not have the effect, or would not be likely to have the effect, of substantially lessening competition; or
- (b) that:
 - (i) the conduct would result, or be likely to result, in a benefit to the public; and
 - (ii) the benefit would outweigh the detriment to the public that would result, or be likely to result, from the conduct.

(8) Paragraph (7)(a) does not apply to the extent that any of the following provisions would (apart from an authorisation under section 88) apply to the conduct:

- (a) one or more provisions of Division 1 of Part IV (cartel conduct);
- (b) one or more of sections 45D to 45DB (secondary boycotts);
- (c) section 48 (resale price maintenance).

4 Subsection 90(9A)

Omit “In determining what amounts to a benefit to the public for the purposes of subsections (8A), (8B) and (9)”, substitute “In relation to the Commission’s consideration of an application for an authorisation to engage in conduct to which section 49 would or might apply or for a merger authorisation, in determining what amounts to a benefit to the public for the purposes of paragraph (7)(b)”.

5 Subsection 93(3)

Repeal the subsection, substitute:

- (3) If the Commission is satisfied that the engaging by a corporation in conduct or proposed conduct of a kind described in subsection 47(2), (3), (4), (5), (6), (7), (8) or (9) and referred to in a notice given by the corporation under subsection (1):
- (a) has or would have the purpose or has or is likely to have, or would have or be likely to have, the effect of substantially lessening competition within the meaning of section 47; and
 - (b) in all the circumstances:
 - (i) has not resulted or is not likely to result, or would not result or be likely to result, in a benefit to the public; or
 - (ii) has resulted or is likely to result, or would result or be likely to result, in a benefit to the public that has not or would not outweigh the detriment to the public that has resulted or is likely to result from the conduct or would result or be likely to result from the proposed conduct;
- the Commission may at any time give notice in writing to the corporation stating that the Commission is so satisfied and accompanied by a statement setting out its reasons for being so satisfied.

6 Subsection 93(3B)

Repeal the subsection, substitute:

- (3B) If:
- (a) a corporation or other person has notified the Commission under subsection (1) of conduct or proposed conduct; and

- (b) the Commission has given the corporation or other person a notice under subsection 93AAA(1) imposing conditions relating to the conduct or proposed conduct; and
 - (c) the Commission is satisfied that the corporation or other person has failed to comply with those conditions;
- the Commission may at any time give notice in writing to the corporation or other person stating that the Commission is so satisfied and accompanied by a statement setting out its reasons for being so satisfied.

7 At the end of Subdivision A of Division 2 of Part VII

Add:

93AAA Imposing conditions relating to notifications

- (1) If:
 - (a) a corporation or other person gives the Commission a notice under subsection 93(1) relating to particular conduct, or proposed conduct, of a kind referred to in section 48; and
 - (b) the Commission reasonably believes that:
 - (i) apart from this section, the Commission would have grounds to give the corporation or other person a notice under subsection 93(3A) relating to that notice; and
 - (ii) those grounds would not exist if particular conditions relating to the conduct or proposed conduct were complied with;

the Commission may give the corporation or other person a written notice imposing those conditions.
- (2) The Commission must, at the time it gives the corporation or other person the notice under subsection (1), give the corporation or other person a written statement of its reasons for giving the notice.

8 Subsection 93AB(2)

Omit “another person (the *target*)”, substitute “one or more other persons (the *target* or *targets*)”.

9 Subsection 93AB(3) (heading)

Repeal the heading, substitute:

Second—making of contracts

10 Subsection 93AB(3)

After “the target” (first occurring), insert “, or with one or more of those targets,”.

11 Subsection 93AB(3)

Omit “the target” (last occurring), substitute “that target or those targets”.

12 Subsection 93AB(4) (heading)

Repeal the heading, substitute:

Third—price of contracts

13 Paragraphs 93AB(4)(a) and (b)

After “the target”, insert “or targets”.

14 After subsection 93AB(7)

Insert:

- (7A) A collective bargaining notice for a group of contracting parties may be expressed to be given on behalf of persons who become members of the group after the notice is given, but only if those persons could have given the notice on their own behalf at the time they became members of the group. If the notice is so expressed, then it is also taken to have been given by those persons.

15 After subsection 93AC(2)

Insert:

Commission’s objection notice—non-compliance with conditions

- (2A) If:
- (a) a corporation gives the Commission a collective bargaining notice that relates (wholly or partly) to collective boycott conduct or proposed collective boycott conduct; and

- (b) the Commission has given the corporation a notice under subsection 93ACA(1) imposing conditions relating to the conduct or proposed conduct; and
 - (c) the Commission is satisfied that the corporation has failed to comply with those conditions;
- the Commission may give the corporation a written notice (the *objection notice*) stating that the Commission is so satisfied.

16 After section 93AC

Insert:

93ACA Imposing conditions relating to collective boycott conduct

- (1) If:
 - (a) a corporation gives the Commission a collective bargaining notice that relates (wholly or partly) to collective boycott conduct or proposed collective boycott conduct; and
 - (b) the Commission reasonably believes that:
 - (i) apart from this section, the Commission would have grounds to give the corporation an objection notice relating to the collective bargaining notice; and
 - (ii) those grounds would not exist if particular conditions relating to the conduct or proposed conduct were complied with;

the Commission may give the corporation a written notice imposing those conditions.
- (2) The Commission must, in or with the notice under subsection (1), give the corporation a written statement of its reasons for giving the notice.

17 Paragraph 93AD(1)(a)

Repeal the paragraph, substitute:

- (a) at the end of the period which is:
 - (i) if the notice relates (wholly or partly) to collective boycott conduct or proposed collective boycott conduct—60 days or such other period as is prescribed by the regulations; or

- (ii) otherwise—14 days or such other period as is prescribed by the regulations;
starting on the day the corporation gave the Commission the notice; or

18 Paragraph 93AD(3)(c)

Repeal the paragraph, substitute:

- (c) at the end of:
 - (i) if subparagraph (ii) does not apply—the period of 3 years beginning on the day the corporation gave the collective bargaining notice; or
 - (ii) the period determined under subsection (5).

19 Subsection 93AD(3) (note)

Repeal the note, substitute:

- Note 1: A collective bargaining notice is not in force, to the extent that it relates to collective boycott conduct, while a stop notice is in force in relation to the collective bargaining notice: see section 93AG.
- Note 2: Section 93AE deals with the withdrawal of a collective bargaining notice.

20 At the end of section 93AD

Add:

Commission may determine expiry of collective bargaining notice

- (5) If the Commission is satisfied that:
 - (a) the period provided for in subparagraph (3)(c)(i) is not appropriate in all the circumstances; and
 - (b) another period, ending no later than the end of the period of 10 years beginning on the day the corporation gave the collective bargaining notice, is appropriate in all the circumstances;the Commission may give to the corporation a written notice determining that other period for the purposes of subparagraph (3)(c)(ii).

- (6) The Commission must, in or with the notice under subsection (5), give the corporation a written statement of its reasons for giving the notice.

21 At the end of Subdivision B of Division 2 of Part VII

Add:

93AG Stop notice for collective boycott conduct

- (1) The Commission may give a corporation a written notice (a ***stop notice***) if:
- (a) the corporation has given the Commission a collective bargaining notice that relates (wholly or partly) to collective boycott conduct; and
 - (b) the collective bargaining notice is in force under section 93AD; and
 - (c) there has been a material change of circumstances since:
 - (i) if the Commission has previously given the corporation notice under this subsection in relation to the collective boycott conduct—that notice was given; or
 - (ii) in any other case—the collective bargaining notice came into force; and
 - (d) the Commission reasonably believes that:
 - (i) the collective boycott conduct has resulted in serious detriment to the public; or
 - (ii) serious detriment to the public is imminent as a result of the collective boycott conduct.
- (2) The Commission must, in or with the stop notice, give the corporation a written statement of its reasons for giving the stop notice.
- (3) While the stop notice is in force, the collective bargaining notice is taken, for the purposes of this Act, not to be in force under section 93AD to the extent that the collective bargaining notice relates to collective boycott conduct.
- (4) The stop notice comes into force at the time the Commission gives the corporation the stop notice.

- (5) The stop notice ceases to be in force at the earliest of the following times:
- (a) at the end of the period provided under subsection (6);
 - (b) if, before the end of that period, the Commission gives the corporation an objection notice under subsection 93AC(1) or (2) that relates to the collective bargaining notice—when that objection notice is given;
 - (c) if, before the end of that period, the Commission gives the corporation a notice under subsection 93ACA(1) imposing conditions relating to conduct or proposed conduct that relates to the collective bargaining notice—when that notice under subsection 93ACA(1) is given;
 - (d) if the Commission withdraws the stop notice—when it is withdrawn.
- (6) For the purposes of paragraph (5)(a), the period is:
- (a) the period of 90 days beginning on the day the Commission gives the corporation the stop notice; or
 - (b) if the Commission extends it under subsection (7)—that period as so extended.
- (7) Before the end of the period referred to in paragraph (6)(a), the Commission may extend the period by up to a further 90 days:
- (a) if satisfied that in all the circumstances it is reasonable to do so; and
 - (b) by giving written notice of the extended period to the corporation.
- (8) The Commission must, in or with the notice under subsection (7), give the corporation a written statement of its reasons for giving the notice.

22 Division 3 of Part VII

Repeal the Division, substitute:

Division 3—Class exemptions

95AA Commission may determine class exemptions

- (1) The Commission may, by legislative instrument, determine that one or more specified provisions of Part IV do not apply to a kind of conduct specified in the determination, if the Commission is satisfied in all the circumstances:
 - (a) that conduct of that kind would not have the effect, or would not be likely to have the effect, of substantially lessening competition; or
 - (b) that conduct of that kind would result, or would be likely to result, in a benefit to the public that would outweigh the detriment to the public that would result, or would be likely to result, from conduct of that kind.
- Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.
- (2) The Commission may specify in the determination any one or more of the following limitations:
 - (a) a limitation to persons of a specified kind;
 - (b) a limitation to circumstances of a specified kind;
 - (c) a limitation to conduct that complies with specified conditions.
 - (3) The determination must specify the period, ending no later than the end of the period of 10 years beginning on the day it is made, for which it is to be in force.
 - (4) The determination:
 - (a) enters into force on the day it is made or on such later day (if any) as is specified in the determination; and
 - (b) ceases to be in force at the earlier of the following times:
 - (i) if the determination is revoked—at the time the revocation takes effect;
 - (ii) at the end of the period specified under subsection (3) of this section.
 - (5) While the determination remains in force, but subject to section 95AB and any limitations specified under subsection (2),

the provisions of Part IV specified in the determination do not apply in relation to conduct of the kind specified in the determination.

95AB Commission may withdraw the benefit of class exemption in particular case

- (1) The Commission may give a person a written notice if:
 - (a) a determination in force under section 95AA specifies a kind of conduct; and
 - (b) the Commission is satisfied that particular conduct of that kind engaged in by the person:
 - (i) would have the effect, or would be likely to have the effect, of substantially lessening competition; and
 - (ii) would not result or be likely to result in a benefit to the public that would outweigh the detriment to the public that would result, or would be likely to result, from the conduct.
- Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.
- (2) The Commission must, in or with the notice under subsection (1), give the person a written statement of its reasons for giving the notice.
- (3) While a notice under subsection (1) is in force, the determination does not apply to the conduct specified in the notice engaged in by the person.
- (4) The notice under subsection (1):
 - (a) comes into force at the time the Commission gives the person the notice; and
 - (b) ceases to be in force at the earliest of the following times:
 - (i) if the Tribunal sets it aside under subsection 102(5G)—at the end of the day on which the Tribunal sets it aside;
 - (ii) if the Commission revokes the notice—when it is revoked;
 - (iii) the time the determination under section 95AA ceases to be in force.

23 After section 101A

Insert:

101B Application for review of notice under section 95AB

- (1) A person dissatisfied with the giving of a notice under section 95AB may, as prescribed and within the time allowed by or under the regulations, apply to the Tribunal for a review of the giving of the notice.
- (2) If the person is the person to whom the notice was given or the Tribunal is satisfied that the person has a sufficient interest, the Tribunal must review the giving of the notice.

24 After subsection 102(5)

Insert:

- (5AAA) Upon a review of the giving of a notice by the Commission under subsection 93(3B):
- (a) if the person who applied for the review satisfies the Tribunal that the corporation or other person on whom the conditions relating to the conduct or proposed conduct have been imposed has not failed to comply with those conditions—the Tribunal must make a determination setting aside the notice; or
 - (b) if the person who applied for the review does not so satisfy the Tribunal—the Tribunal must make a determination affirming the notice.
- (5AAB) Upon a review of the giving of a notice by the Commission under subsection 93AAA(1):
- (a) if the person who applied for the review satisfies the Tribunal that:
 - (i) apart from section 93AAA, the Commission would not have had grounds referred to in subparagraph 93AAA(1)(b)(i); or
 - (ii) compliance with the conditions imposed by the notice would not ensure those grounds would not exist;the Tribunal must make a determination setting aside the notice; or

- (b) if the person who applied for the review does not so satisfy the Tribunal—the Tribunal must make a determination affirming the notice.

25 After subsection 102(5AB)

Insert:

- (5ABA) Upon a review of the giving of a notice by the Commission under subsection 93AC(2A):
 - (a) if the person who applied for the review satisfies the Tribunal that the corporation on whom the conditions relating to the conduct or proposed conduct have been imposed has not failed to comply with those conditions—the Tribunal must make a determination setting aside the notice; or
 - (b) if the person who applied for the review does not so satisfy the Tribunal—the Tribunal must make a determination affirming the notice.

26 After subsection 102(5C)

Insert:

- (5D) Upon a review of the giving of a notice by the Commission under subsection 93ACA(1):
 - (a) if the person who applied for the review satisfies the Tribunal that:
 - (i) apart from section 93ACA, the Commission would not have had grounds referred to in subparagraph 93ACA(1)(b)(i); or
 - (ii) compliance with the conditions imposed by the notice would not ensure those grounds would not exist; the Tribunal must make a determination setting aside the notice; or
 - (b) if the person who applied for the review does not so satisfy the Tribunal—the Tribunal must make a determination affirming the notice.
- (5E) Upon a review of the giving of a notice by the Commission under subsection 93AD(5):
 - (a) if the person who applied for the review satisfies the Tribunal that:

- (i) the period provided for in subparagraph 93AD(3)(c)(i) in relation to the relevant collective bargaining notice is appropriate in all the circumstances; or
 - (ii) the other period determined by the Commission under subsection 93AD(5) is not appropriate in all the circumstances;the Tribunal must make a determination setting aside the notice under subsection 93AD(5); or
 - (b) if the person who applied for the review does not so satisfy the Tribunal—the Tribunal must make a determination affirming the notice.
- (5F) Upon a review of the giving of a notice by the Commission under subsection 93AG(7) extending a period for a further period:
- (a) if the person who applied for the review satisfies the Tribunal that in all the circumstances it is not reasonable to extend the period for the further period, the Tribunal must make a determination setting aside the notice; or
 - (b) if the person who applied for the review does not so satisfy the Tribunal—the Tribunal must make a determination affirming the notice.
- (5G) Upon a review of the giving of a notice under section 95AB:
- (a) if the person who applied for the review satisfies the Tribunal that conduct of the kind specified in the notice:
 - (i) would not have the effect, or would not be likely to have the effect, of substantially lessening competition; or
 - (ii) would result, or would be likely to result, in a benefit to the public that would outweigh the detriment to the public that would result, or would be likely to result, from conduct of that kind;the Tribunal must make a determination setting aside the notice under section 95AB; or
 - (b) if the person who applied for the review does not so satisfy the Tribunal—the Tribunal must make a determination affirming the notice.

Part 2—Other amendments

Competition and Consumer Act 2010

27 Subsection 4(1) (definition of *authorisation*)

Repeal the definition, substitute:

authorisation means an authorisation under Division 1 of Part VII granted by the Commission or by the Tribunal on a review of a determination of the Commission.

28 Subsection 4(1) (definition of *clearance*)

Repeal the definition.

29 Subsection 4(1)

Insert:

collective boycott conduct means conduct that has a purpose referred to in subsection 44ZZRD(3) in relation to a contract, arrangement or understanding.

merger authorisation means an authorisation that:

- (a) is an authorisation for a person to engage in conduct to which section 50 or 50A would or might apply; but
- (b) is not an authorisation for a person to engage in conduct to which any provision of Part IV other than section 50 or 50A would or might apply.

overseas merger authorisation means a merger authorisation that is not an authorisation for a person to engage in conduct to which section 50 would or might apply.

30 Subsection 8A(6)

Omit “or a clearance”.

31 Subsection 8A(6)

Omit “subsection 93(3) or (3A) or 93AC(1) or (2)”, substitute “subsection 93(3), (3A) or (3B) or 93AC(1), (2) or (2A)”.

32 Subsection 25(1)

Omit “or a clearance”.

33 Section 29P

Repeal the section.

34 Paragraph 44ZZRR(1)(b)

Omit “subsection 88(8A)”, substitute “section 88”.

35 Subsection 44ZZRS(1)

Omit “or 88(8) or section 93”, substitute “or section 88 or 93”.

36 Paragraph 44ZZRS(2)(a)

Omit “or 88(8) or section 93”, substitute “or section 88 or 93”.

37 Subparagraph 44ZZRS(2)(b)(i)

Omit “subsection 88(8)”, substitute “section 88”.

38 Paragraphs 44ZZRT(1)(b) and (2)(b)

Omit “subsection 88(8B)”, substitute “section 88”.

39 Paragraph 45(6)(a)

Omit “or 88(8) or section 93”, substitute “or section 88 or 93”.

40 Subparagraph 45(6)(b)(i)

Omit “subsection 88(8)”, substitute “section 88”.

41 Subsection 45(6A)

Omit “subsection 88(8B)”, substitute “section 88”.

42 Subsection 45(9)

Omit “subsection 88(1) applies”, substitute “the corporation intends to apply for an authorisation under section 88”.

43 Subsection 45D(1) (note 1)

Omit “subsection 88(7)”, substitute “section 88”.

44 Subsection 45DA(1) (note 1)

Omit “subsection 88(7)”, substitute “section 88”.

45 Subsection 45DB(1) (note 1)

Omit “subsection 88(7)”, substitute “section 88”.

46 Subsection 45E(8) (note)

Omit “subsection 88(7A)”, substitute “section 88”.

47 Section 45EA (note)

Omit “subsection 88(7A)”, substitute “section 88”.

48 Subsection 46A(6)

Omit “or clearance”.

49 Subsection 49(1) (note)

Omit “subsection 88(8B)”, substitute “section 88”.

50 Subsections 50(1) and (2) (note)

Omit “a clearance or an authorisation for the acquisition under Division 3 of Part VII: see subsections 95AC(2) and 95AT(2)”, substitute “an authorisation for the acquisition under section 88”.

51 Paragraphs 50(4)(b) and (c)

Omit “a clearance or”.

52 Paragraph 50(4)(d)

Omit “clearance or”.

53 Subsection 50(5)

Repeal the subsection.

54 Subsection 75B(1)

Omit “95AZN”, substitute “92”.

55 Subparagraph 76(1)(a)(iii)

Omit “95AZN”, substitute “92”.

56 Paragraphs 76(1A)(c) and (1B)(a)

Omit “95AZN”, substitute “92”.

57 Section 76A (heading)

Repeal the heading, substitute:

**76A Defence to proceedings under section 76 relating to a
contravention of section 92**

58 Subsection 76A(2)

Omit “95AZN”, substitute “92”.

59 Section 76B (heading)

Repeal the heading, substitute:

**76B What happens if substantially the same conduct is a
contravention of Part IV or section 92 and an offence?**

60 Subsections 76B(2) to (4)

Omit “95AZN”, substitute “92”.

61 Paragraph 76B(5)(a)

Omit “95AZN”, substitute “92”.

62 Section 80AC (heading)

Repeal the heading, substitute:

**80AC Injunctions to prevent mergers if authorisation granted on the
basis of false or misleading information**

63 Subsection 80AC(1)

Omit “(1)”.

64 Paragraph 80AC(1)(b)

Omit “, under Division 3 of Part VII (mergers), a clearance or an
authorisation”, substitute “a merger authorisation”.

65 Paragraphs 80AC(1)(d) and (e)

Omit “clearance or”.

66 Subsection 80AC(2)

Repeal the subsection (including the example).

67 Section 81A (heading)

Repeal the heading, substitute:

81A Divestiture where merger done under authorisation granted on false etc. information

68 Paragraph 81A(1)(b)

Omit “, under Division 3 of Part VII (mergers), a clearance or an authorisation”, substitute “a merger authorisation”.

69 Paragraph 81A(1)(d)

Omit “95AZN”, substitute “92”.

70 Paragraphs 81A(1)(e) and (f)

Omit “clearance or”.

71 Subsections 81A(3) and (6)

Repeal the subsections.

72 Subsection 86C(4) (paragraph (a) of the definition of *contravening conduct*)

Omit “95AZN”, substitute “92”.

73 Subsection 87B(1A)

Omit “a clearance or an authorisation under Division 3 of Part VII”, substitute “a merger authorisation”.

74 Part VII (heading)

Repeal the heading, substitute:

Part VII—Authorisations and notifications

75 Division 1 of Part VII (heading)

Repeal the heading, substitute:

Division 1—Authorisations

76 Subsection 87ZP(1) (definition of *authorisation*)

Repeal the definition.

77 Paragraph 89(1)(a)

Omit “prescribed by the regulations”, substitute “approved by the Commission in writing”.

78 After subsection 89(1)

Insert:

- (1AA) Without limiting paragraph (1)(a), the form may require an application for a merger authorisation to contain an undertaking under section 87B that the applicant will not make the acquisition to which the authorisation relates while the Commission is considering the application.

79 At the end of section 89

Add:

- (7) The Commission may disclose information excluded under this section from the register kept under subsection (3) to such persons and on such terms as it considers reasonable and appropriate for the purposes of making its determination on the application concerned.

80 Subsection 90(5)

Omit “authorization”, substitute “authorisation other than a merger authorisation”.

81 Subsection 90(10)

Omit “an authorisation under subsection 88(9)”, substitute “a merger authorisation”.

82 After subsection 90(10A)

Insert:

(10B) Subject to subsections (12) and (13), if:

- (a) the Commission does not determine an application for a merger authorisation within the 90-day period beginning on the day the Commission received the application; and
- (b) the application is not an application for an overseas merger authorisation;

the Commission is taken to have refused, at the end of that period, to grant the authorisation applied for.

83 Subsection 90(11)

Omit “an authorisation under subsection 88(9)”, substitute “an overseas merger authorisation”.

84 Subsection 90(12)

Omit “subsection (11) (in this subsection and in subsection (13) referred to as the *base period*)”, substitute “subsection (10B) or (11) (the *base period*)”.

85 Subsection 90(12)

Omit “subsection (11)” (last occurring), substitute “that subsection”.

86 Subsection 90(13)

Omit “subsection (11)” (wherever occurring), substitute “subsection (10B) or (11)”.

87 Subsection 90(15)

Omit “an authorisation under subsection 88(9)”, substitute “a merger authorisation”.

88 Subsection 90A(1)

Omit “an authorisation under subsection 88(9)”, substitute “a merger authorisation”.

89 Paragraph 90B(2)(c)

Omit “subsection 90(2)”, substitute “subsection 90(6A)”.

90 Paragraph 90B(2)(c)

After “State”, insert “or Territory”.

91 Subsection 91(2A)

Omit “(9)”, substitute “(7)”.

92 Subsections 91A(3) to (5)

Repeal the subsections, substitute:

- (2A) Subsection 90(6) (other than paragraph 90(6)(a)) applies in relation to an application for a minor variation of an authorisation in a corresponding way to the way in which it applies in relation to an application for an authorisation.
- (3) The Commission may make a determination in writing varying the authorisation or dismissing the application after taking into account the following:
- (a) the application;
 - (b) any submissions that are received within the period specified under paragraph (2)(b);
 - (c) any information received under paragraph 90(6)(b) or (c) (as that paragraph applies because of subsection (2A) of this section) within the period specified in the notice mentioned in that paragraph;
 - (d) any information obtained from consultations under paragraph 90(6)(d) (as that paragraph applies because of subsection (2A) of this section).

The Commission may, but need not, take into account any submissions or information received after the end of those periods.

- (4) The Commission must not make a determination varying an authorisation in relation to conduct unless the Commission is satisfied in all the circumstances that:
- (a) if, in making the determination to grant the authorisation in relation to conduct, the Commission was satisfied that the conduct would not have the effect, or would not be likely to have the effect, of substantially lessening competition—the variation would not have the effect, or would not be likely to have the effect, of increasing the extent to which the conduct lessens competition; or
 - (b) if paragraph (a) does not apply—the variation would not result, or would not be likely to result, in a reduction in the extent to which the benefit to the public of the authorisation outweighs any detriment to the public caused by the authorisation.
- (4A) For the purposes of subsection (4), the Commission need not have regard to conduct that is unaffected by the variation.
- (5) Subsections 90(10B), (12) and (13) apply in relation to an application for a minor variation of a merger authorisation that is not an overseas merger authorisation in a corresponding way to the way those subsections apply in relation to an application for a merger authorisation that is not an overseas merger authorisation.
- Note: Those subsections deem the Commissioner to have refused to grant the application if the Commission does not determine the application within 90 days (or an extended period in some cases).

93 Subsections 91B(4) and (5)

Repeal the subsections, substitute:

- (3A) Subsection 90(6) (other than paragraph 90(6)(a)) applies in relation to an application for a revocation of an authorisation in a corresponding way to the way in which it applies in relation to an application for an authorisation.
- (3B) Subsection 90(6) (other than paragraphs 90(6)(a) and (b)) applies in relation to a proposal for a revocation of an authorisation in a corresponding way to the way in which it applies in relation to an application for an authorisation.

- (4) The Commission may make a determination in writing revoking the authorisation, or deciding not to revoke the authorisation, after taking into account the following:
- (a) if subsection (2) applies—the application;
 - (b) any submissions that are received within the period specified under paragraph (2)(c) or (3)(f);
 - (c) any information received under paragraph 90(6)(b) (as it applies because of subsection (3A) of this section) within the period specified in the notice mentioned in that paragraph;
 - (d) any information received under paragraph 90(6)(c) (as it applies because of subsection (3A) or (3B) of this section) within the period specified in the notice mentioned in that paragraph;
 - (e) any information obtained from consultations under paragraph 90(6)(d) (as it applies because of subsection (3A) or (3B) of this section).

The Commission may, but need not, take into account any submissions or information received after the end of those periods.

- (5) If an objection to revoking the authorisation is included in any submission or information:
- (a) referred to in subsection (4); and
 - (b) received by the Commission within the period (if any) referred to in that subsection;

the Commission must not make a determination revoking the authorisation unless the Commission is satisfied that it would, if the authorisation had not already been granted, be prevented under subsection 90(7) from granting the authorisation.

- (5A) Subsections 90(10B), (12) and (13) apply in relation to an application for a revocation of a merger authorisation that is not an overseas merger authorisation in a corresponding way to the way those subsections apply in relation to an application for a merger authorisation that is not an overseas merger authorisation.

Note: Those subsections deem the Commissioner to have refused to grant the application if the Commission does not determine the application within 90 days (or an extended period in some cases).

94 Subsection 91C(4)

Repeal the subsection, substitute:

- (3A) Subsection 90(6) (other than paragraph 90(6)(a)) applies in relation to an application for a revocation and substitution of an authorisation in a corresponding way to the way in which it applies in relation to an application for an authorisation.
- (3B) Subsection 90(6) (other than paragraphs 90(6)(a) and (b)) applies in relation to a proposal for a revocation and substitution of an authorisation in a corresponding way to the way in which it applies in relation to an application for an authorisation.
- (4) The Commission may make a determination in writing revoking the authorisation and granting a substitute authorisation that it considers appropriate, or deciding not to revoke the authorisation, after taking into account the following:
 - (a) if subsection (2) applies—the application;
 - (b) any submissions that are received within the period specified under paragraph (2)(c) or (3)(f);
 - (c) any information received under paragraph 90(6)(b) (as it applies because of subsection (3A) of this section) within the period specified in the notice mentioned in that paragraph;
 - (d) any information received under paragraph 90(6)(c) (as it applies because of subsection (3A) or (3B) of this section) within the period specified in the notice mentioned in that paragraph;
 - (e) any information obtained from consultations under paragraph 90(6)(d) (as it applies because of subsection (3A) or (3B) of this section).

The Commission may, but need not, take into account any submissions or information received after the end of those periods.

95 Subsection 91C(5)

Omit “an authorization”, substitute “an authorisation other than a merger authorisation”.

96 Paragraph 91C(6)(a)

Omit “an authorization under subsection 88(9)”, substitute “a merger authorisation”.

97 Paragraph 91C(6)(a)

Omit “an authorization granted on an application granted under subsection 88(9)”, substitute “a merger authorisation”.

98 Subsection 91C(7)

Omit “subsection 90(5A), (5B), (5C), (5D), (6), (7), (8), (8A), (8B) or (9)”, substitute “subsection 90(7)”.

99 After subsection 91C(7)

Insert:

- (7A) Subsections 90(10B), (12) and (13) apply in relation to an application for a revocation and substitution of a merger authorisation that is not an overseas merger authorisation in a corresponding way to the way those subsections apply in relation to an application for a merger authorisation that is not an overseas merger authorisation.

Note: Those subsections deem the Commissioner to have refused to grant the application if the Commission does not determine the application within 90 days (or an extended period in some cases).

100 At the end of Division 1 of Part VII

Add:

92 Providing false or misleading information

- (1) A person must not give information to the Commission or Tribunal under this Division or Part IX in connection with any of the following if the person is negligent as to whether the information is false or misleading in a material particular:
- (a) an application for a merger authorisation;
 - (b) an application for a minor variation of a merger authorisation;
 - (c) an application for, or the Commission’s proposal for, the revocation of a merger authorisation;

- (d) an application for, or the Commission's proposal for, the revocation of a merger authorisation and the substitution of another merger authorisation;
- (e) a review of a determination in relation to an application or proposal referred to in paragraph (a), (b), (c) or (d).

Note: Under section 76, the Court may order a person who contravenes this section to pay a pecuniary penalty. See also sections 80AC, 81A and 86C for other related remedies.

- (2) For the purposes of subsection (1), proof that the person knew, or was reckless as to whether, the information was false or misleading in a material particular is taken to be proof that the person was negligent as to whether the information was false or misleading in a material particular.

101 Paragraph 93(1A)(a)

Omit "prescribed by the regulations", substitute "approved by the Commission in writing".

102 Subsection 93(3A)

After "so satisfied", insert "and accompanied by a statement setting out its reasons for being so satisfied".

103 Subsections 93(4) to (6)

Omit "subsection (3) or (3A)", substitute "subsection (3), (3A) or (3B)".

104 Paragraph 93(7A)(b)

After "subsection (3A)", insert "or (3B)".

105 Subparagraph 93(7B)(b)(ii)

Omit "subsection (3A)", substitute "subsection (3A) or (3B)".

106 At the end of subsection 93(7C)

Add:

- ; or (c) if the Commission gives the corporation or other person a notice under subsection (3B)—on the 31st day after the Commission gave the notice under subsection (3B) or on a later day specified in writing by the Commission.

107 Subsection 93(9)

Omit “subsection (3) or (3A), a reference in subsection (7) or paragraph (7C)(b)”, substitute “subsection (3), (3A) or (3B), a reference in subsection (7) or paragraph (7C)(b) or (7C)(c)”.

108 Paragraph 93(10)(a)

Omit “subsection (3) or (3A)”, substitute “subsection (3), (3A) or (3B)”.

109 Section 93AA (definition of *objection notice*)

Omit “subsection 93AC(1) or (2)”, substitute “subsection 93AC(1), (2) or (2A)”.

110 Subsection 93AB(1) (heading)

Repeal the heading, substitute:

Notice to Commission—competition provisions

111 Paragraph 93AB(6)(a)

Omit “prescribed by the regulations”, substitute “approved by the Commission in writing”.

112 Subsections 93A(1), (3), (4) and (10A)

Omit “subsection 93(3) or (3A) or 93AC(1) or (2)”, substitute “subsection 93(3), (3A) or (3B) or 93AC(1), (2) or (2A)”.

113 Paragraph 95(1)(ga)

After “93(7C)(b)”, insert “or (c)”.

114 Division 1 of Part IX (heading)

Repeal the heading, substitute:

Division 1—Applications for review

115 Subsection 101(1A)

Omit “subsection 90(5A), (5B), (5C), (5D), (6), (7), (8), (8A), (8B) or (9)”, substitute “subsection 90(7)”.

116 Paragraph 101(1B)(a)

Omit “an authorization under subsection 88(9)”, substitute “an overseas merger authorisation”.

117 After subsection 101(1B)

Insert:

- (1C) The regulations may make it a requirement that a person applying under subsection (1) for review of a determination relating to a merger authorisation give an undertaking under section 87B that the person will not make the acquisition to which the authorisation relates while the Tribunal is considering the application.

118 Subsection 101(2)

Repeal the subsection, substitute:

- (2) A review by the Tribunal is a re-hearing of the matter, unless it is a review of a determination by the Commission:
- (a) in relation to an application for a merger authorisation or a minor variation of a merger authorisation; or
 - (b) in relation to the revocation of a merger authorisation, or the revocation of a merger authorisation and the substitution of another merger authorisation.
- (3) Subsections 90(7), 91A(4) and (4A), 91B(5) and 91C(7) apply in relation to the Tribunal in like manner as they apply in relation to the Commission.

119 Section 101A (heading)

Repeal the heading, substitute:

101A Application for review of notices under Division 2 of Part VII

120 Section 101A

Omit “subsection 93(3) or (3A) or 93AC(1) or (2)”, substitute “subsection 93(3), (3A) or (3B), 93AAA(1), 93AC(1), (2) or (2A), 93ACA(1), 93AD(5) or 93AG(7)”.

121 At the end of subsection 102(1)

Add:

Note: Subsections (9) and (10) contain limitations in relation to determinations relating to merger authorisations.

122 After subsection 102(1)

Insert:

- (1AA) If a person applies to the Tribunal for review of a determination of the Commission relating to:
- (a) the grant of a merger authorisation (a ***domestic merger authorisation***) that is not an overseas merger authorisation; or
 - (b) the minor variation, or the revocation, of a domestic merger authorisation; or
 - (c) the revocation of a domestic merger authorisation and the substitution of another domestic merger authorisation;
- the Tribunal must make its determination on the review within the period applying under subsection (1AC) (the ***relevant period***).
- (1AB) If the Tribunal has not made its determination on the review of a determination of the Commission mentioned in subsection (1AA) within the relevant period, the Tribunal is taken to have made a determination affirming the Commission's determination.
- (1AC) The period applying under this subsection is as follows:
- (a) unless paragraph (b) or (c) applies—90 days;
 - (b) if the Tribunal allows new information, documents or evidence under subsection (9), and paragraph (c) does not apply—120 days;
 - (c) if an extended period is determined under subsection (1AD)—that extended period;
- beginning on the day the Tribunal receives the application for review.
- (1AD) Before the end of the period (the ***initial period***) otherwise applying under paragraph (1AC)(a) or (b) for the review, the Tribunal may determine in writing that:

- (a) the matter cannot be dealt with properly within the initial period, either because of its complexity or because of other special circumstances; and
- (b) an extended period applies for the review, which consists of the initial period and a further specified period of not more than 90 days.

The Tribunal must, before the end of the initial period, notify the applicant and the Commission of any determination under this subsection.

123 Paragraph 102(1A)(a)

Omit “an authorisation under subsection 88(9)”, substitute “an overseas merger authorisation”.

124 Paragraph 102(1A)(b)

Omit “authorization granted under that subsection”, substitute “overseas merger authorisation”.

125 Paragraph 102(1A)(c)

Repeal the paragraph, substitute:

- (c) the revocation of an overseas merger authorisation and the substitution of another overseas merger authorisation;

126 Sub-subparagraph 102(4)(a)(ii)(B)

Omit “constituted by any lessening of competition”.

127 Subsection 102(5AC)

Omit “subsection 93AC(1) or (2)”, substitute “subsection 93AC(1), (2) or (2A)”.

128 At the end of section 102

Add:

- (8) Subsections (9) and (10) apply to a review of a determination of the Commission in relation to:
 - (a) an application for a merger authorisation; or
 - (b) an application for a minor variation of a merger authorisation; or

- (c) an application for, or the Commission's proposal for, the revocation of a merger authorisation; or
 - (d) an application for, or the Commission's proposal for, the revocation of a merger authorisation and the substitution of another merger authorisation.
- (9) For the purposes of the review, the Tribunal may allow a person to provide new information, documents or evidence that the Tribunal is satisfied was not in existence at the time the Commission made the determination.
- (10) Despite subsection (1), the Tribunal must not, for the purposes of the review, have regard to any information, documents or evidence other than:
 - (a) information that was referred to in the Commission's reasons for making the determination; and
 - (b) any information or report given to the Tribunal under subsection (6); and
 - (c) the information, documents or evidence referred to in subsection (7); and
 - (d) information given to the Tribunal as a result of the Tribunal seeking such relevant information, and consulting with such persons, as it considers reasonable and appropriate for the sole purpose of clarifying the information, documents or evidence referred to in subsection (7); and
 - (e) any information, documents or evidence referred to in subsection (9).

129 Section 102A

Repeal the section.

130 Subsection 109(1A)

Omit "subsection 93(3) or (3A) or 93AC(1) or (2)", substitute "subsection 93(3), (3A) or (3B) or 93AC(1), (2) or (2A)".

131 Division 3 of Part IX

Repeal the Division.

132 Section 150J

Omit “, clearance”.

133 Subparagraph 155(2)(b)(iv)

Omit “93(3) or (3A) or 93AC(1) or (2)”, substitute “93(3), (3A) or (3B) or 93AC(1), (2) or (2A)”.

134 Paragraph 157(1)(a)

Omit “or Subdivision B of Division 3 of Part VII”.

135 Paragraph 157(1)(ba)

Repeal the paragraph.

136 Section 157AA

Repeal the section.

137 Subsection 163(5)

Omit “118,”.

138 Paragraph 165(1)(a)

Omit “or section 95AH”.

139 Subsection 165(3A)

Repeal the subsection.

140 Paragraph 170(3)(a)

Omit “or a clearance under Division 3 of Part VII”.

141 Subparagraph 170(3)(b)(ii)

Repeal the subparagraph.

142 Subsection 172(2B)

Omit “an authorisation under subsection 88(9)”, substitute “a merger authorisation”.

143 Subsection 172(3)

After “prescribed”, insert “or approved”.

144 Section 174

Before “In”, insert “(1)”.

145 At the end of section 174

Add:

- (2) A reference in this Division to subsection 88(1A) or paragraph 88(1A)(b) is a reference to that subsection or paragraph as in force before the commencement of Schedule 9 to the *Competition and Consumer Amendment (Competition Policy Review) Act 2017*.

146 Paragraph 44ZZRR(1)(b) of Schedule 1

Omit “subsection 88(8A)”, substitute “section 88”.

147 Subsection 44ZZRS(1) of Schedule 1

Omit “or 88(8) or section 93”, substitute “or section 88 or 93”.

148 Paragraph 44ZZRS(2)(a) of Schedule 1

Omit “or 88(8) or section 93”, substitute “or section 88 or 93”.

149 Subparagraph 44ZZRS(2)(b)(i) of Schedule 1

Omit “subsection 88(8)”, substitute “section 88”.

150 Paragraphs 44ZZRT(1)(b) and (2)(b) of Schedule 1

Omit “subsection 88(8B)”, substitute “section 88”.

151 Paragraph 45(6)(a) of Schedule 1

Omit “or 88(8) or section 93”, substitute “or section 88 or 93”.

152 Subparagraph 45(6)(b)(i) of Schedule 1

Omit “subsection 88(8)”, substitute “section 88”.

153 Subsection 45(6A) of Schedule 1

Omit “subsection 88(8B)”, substitute “section 88”.

154 Subsection 45(9) of Schedule 1

Omit “subsection 88(1) applies”, substitute “the person intends to apply for an authorisation under section 88”.

155 Subsection 45D(1) of Schedule 1 (note 1)

Omit “subsection 88(7)”, substitute “section 88”.

156 Subsection 45DA(1) of Schedule 1 (note 1)

Omit “subsection 88(7)”, substitute “section 88”.

157 Subsection 45E(8) of Schedule 1 (note)

Omit “subsection 88(7A)”, substitute “section 88”.

158 Section 45EA of Schedule 1 (note)

Omit “subsection 88(7A)”, substitute “section 88”.

159 Subsection 49(1) of Schedule 1 (note)

Omit “subsection 88(8B)”, substitute “section 88”.

160 Subsection 50(1) of Schedule 1 (note)

Omit “a clearance or an authorisation for the acquisition under Division 3 of Part VII: see subsections 95AC(2) and 95AT(2)”, substitute “an authorisation for the acquisition under section 88”.

161 Paragraphs 50(4)(b) and (c) of Schedule 1

Omit “a clearance or”.

162 Paragraph 50(4)(d) of Schedule 1

Omit “clearance or”.

163 Subsection 50(5) of Schedule 1

Repeal the subsection.

Radiocommunications Act 1992

164 Section 68A

Repeal the section, substitute:

68A Authorisation under spectrum licence taken to be an acquisition of an asset and conduct

- (1) For the purposes of the provisions of the *Competition and Consumer Act 2010* mentioned in subsection (2), the authorisation under subsection 68(1) of this Act of a person to operate radiocommunications devices under a spectrum licence is taken to be:
 - (a) an acquisition by the person of an asset of another person; and
 - (b) conduct engaged in by the person.
- (2) The provisions of the *Competition and Consumer Act 2010* are:
 - (a) section 50 and subsections 81(1) and (1A); and
 - (b) Parts VII and IX, to the extent that those provisions relate to section 50 of that Act.

165 Section 71A

Repeal the section, substitute:

71A Issue of spectrum licence taken to be an acquisition of an asset and conduct

- (1) For the purposes of the provisions of the *Competition and Consumer Act 2010* mentioned in subsection (2), the issue of a spectrum licence to a person is taken to be:
 - (a) an acquisition by the person of an asset of another person; and
 - (b) conduct engaged in by the person.
- (2) The provisions of the *Competition and Consumer Act 2010* are:
 - (a) section 50 and subsection 81(1); and
 - (b) Parts VII and IX, to the extent that those provisions relate to section 50 of that Act.
- (3) Subsection (1) does not apply to the re-issue of a spectrum licence under section 82.

166 Section 106A

Repeal the section, substitute:

106A Issue of apparatus licence taken to be an acquisition of an asset and conduct

- (1) For the purposes of the provisions of the *Competition and Consumer Act 2010* mentioned in subsection (2), the issue of an apparatus licence to a person is taken to be:
 - (a) an acquisition by the person of an asset of another person;
and
 - (b) conduct engaged in by the person.
- (2) The provisions of the *Competition and Consumer Act 2010* are:
 - (a) section 50 and subsection 81(1); and
 - (b) Parts VII and IX, to the extent that those provisions relate to section 50 of that Act.
- (3) Subsection (1) does not apply to a transmitter licence issued under section 102 or to an NBS transmitter licence.
- (4) Subsection (1) does not apply to the issue of an apparatus licence if the licence is issued under Division 7 by way of renewal of an existing apparatus licence.

167 Section 114A

Repeal the section, substitute:

114A Authorisation under apparatus licence taken to be an acquisition of an asset and conduct

- (1) For the purposes of the provisions of the *Competition and Consumer Act 2010* mentioned in subsection (2), the authorisation under subsection 114(1) of this Act of a person to operate radiocommunications devices under an apparatus licence is taken to be:
 - (a) an acquisition by the person of an asset of another person;
and
 - (b) conduct engaged in by the person.
- (2) The provisions of the *Competition and Consumer Act 2010* are:
 - (a) section 50 and subsections 81(1) and (1A); and

- (b) Parts VII and IX, to the extent that those provisions relate to section 50 of that Act.

Schedule 10—Admissions of fact

Competition and Consumer Act 2010

1 Section 83

Repeal the section, substitute:

83 Findings and admissions of fact in proceedings to be evidence

- (1) In a proceeding against a person under section 82 or in an application under subsection 51ADB(1) or 87(1A) for an order against a person, a finding of any fact made by a court, or an admission of any fact made by the person, is prima facie evidence of that fact if the finding or admission is made in proceedings:
 - (a) that are proceedings:
 - (i) under section 77, 80, 81, 86C, 86D or 86E; or
 - (ii) for an offence against section 44ZZRF or 44ZZRG; and
 - (b) in which that person has been found to have contravened, or to have been involved in a contravention of, a provision of Part IV or IVB, or of section 55B, 60C or 60K.
- (2) The finding or admission may be proved by production of:
 - (a) in any case—a document under the seal of the court from which the finding or admission appears; or
 - (b) in the case of an admission—a document from which the admission appears that is filed in the court.

2 Application provision

The amendment made by this Schedule applies in relation to findings of fact, and admissions of fact, made on or after the commencement of this item.

Schedule 11—Power to obtain information, documents and evidence

Competition and Consumer Act 2010

1 Subsection 155(1)

Omit all the words from and including “that constitutes” to and including “subsection 95AZM(6)”, substitute “referred to in subsection (2)”.

2 After subsection 155(1)

Insert:

- (2) For the purposes of subsection (1), the matter must be a matter that:
- (a) constitutes, or may constitute, a contravention of:
 - (i) this Act; or
 - (ii) Division 4A or 4B of Part 3.3 of the *Radiocommunications Act 1992*; or
 - (iii) any of the terms of an undertaking under section 87B of this Act or under section 218 of the Australian Consumer Law; or
 - (b) is relevant to:
 - (i) a designated communications matter (as defined by subsection (9) of this section); or
 - (ii) a designated water matter (as defined by subsection (9A) of this section); or
 - (iii) the making of a decision by the Commission under subsection 90(1) in relation to an application for a merger authorisation; or
 - (iv) the making of a decision by the Commission under subsection 91B(4), 91C(4), 93(3) or (3A) or 93AC(1) or (2).

3 After subsection 155(5A)

Insert:

(5B) Paragraph (5)(a) does not apply to the extent that:

- (a) the notice relates to producing documents; and
- (b) the person proves that, after a reasonable search, the person is not aware of the documents; and
- (c) the person provides a written response to the notice, including a description of the scope and limitations of the search.

Note: A defendant bears a legal burden in relation to the matter in paragraph (5B)(b) (see section 13.4 of the *Criminal Code*).

(6) For the purposes of (but without limiting) paragraph (5B)(b), a determination of whether a search is reasonable may take into account the following:

- (a) the nature and complexity of the matter to which the notice relates;
- (b) the number of documents involved;
- (c) the ease and cost of retrieving a document relative to the resources of the person who was given the notice;
- (d) any other relevant matter.

4 Subsection 155(6A)

Omit “a fine not exceeding 20 penalty units or imprisonment for 12 months”, substitute “imprisonment for 2 years or a fine not exceeding 100 penalty units”.

5 Existing section 155 notices

(1) If a notice issued under subsection 155(1) of the *Competition and Consumer Act 2010* was in force immediately before the commencement of this item, after that commencement:

- (a) the notice continues in force; and
- (b) section 155 of the *Competition and Consumer Act 2010* as amended by this Act applies in relation to the notice;

as if the notice had been issued under that section as so amended.

(2) However, the amendment of subsection 155(6A) of the *Competition and Consumer Act 2010* made by this Schedule does not apply in relation to a notice served before the commencement of this item.

Schedule 12—Access to services

Part 1—Declared services

Competition and Consumer Act 2010

1 Section 44B

Insert:

declaration criteria, for a service, has the meaning given by section 44CA.

2 After section 44C

Insert:

44CA Meaning of *declaration criteria*

(1) The *declaration criteria* for a service are:

- (a) that access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote a material increase in competition in at least one market (whether or not in Australia), other than the market for the service; and

Note: *Market* is defined in section 4E.

- (b) that the facility that is used (or will be used) to provide the service could meet the total foreseeable demand in the market:
 - (i) over the period for which the service would be declared; and
 - (ii) at the least cost compared to any 2 or more facilities (which could include the first-mentioned facility); and
- (c) that the facility is of national significance, having regard to:
 - (i) the size of the facility; or
 - (ii) the importance of the facility to constitutional trade or commerce; or
 - (iii) the importance of the facility to the national economy; and

- (d) that access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote the public interest.
- (2) For the purposes of paragraph (1)(b):
 - (a) if the facility is currently at capacity, and it is reasonably possible to expand that capacity, have regard to the facility as if it had that expanded capacity; and
 - (b) without limiting paragraph (1)(b), the cost referred to in that paragraph includes all costs associated with having multiple users of the facility (including such costs that would be incurred if the service is declared).
- (3) Without limiting the matters to which the Council may have regard for the purposes of section 44G, or the designated Minister may have regard for the purposes of section 44H, in considering whether paragraph (1)(d) of this section applies the Council or designated Minister must have regard to:
 - (a) the effect that declaring the service would have on investment in:
 - (i) infrastructure services; and
 - (ii) markets that depend on access to the service; and
 - (b) the administrative and compliance costs that would be incurred by the provider of the service if the service is declared.

3 Paragraph 44D(2)(a)

Repeal the paragraph, substitute:

- (a) the provider is a State or Territory body that has some control over the conditions for accessing the facility that is used (or is to be used) to provide the service; and

4 Paragraph 44D(4)(a)

Repeal the paragraph, substitute:

- (a) a person who is, or expects to be, the provider of the service is a State or Territory body that has some control over the conditions for accessing the facility that is used (or is to be used) to provide the service; and

5 Subsection 44F(1)

Repeal the subsection, substitute:

- (1) The designated Minister, or any other person, may apply in writing to the Council asking the Council to recommend that a particular service be declared unless:
- (a) the service is the subject of a regime for which a decision under section 44N that the regime is an effective access regime is in force (including as a result of an extension under section 44NB); or
 - (b) the service is the subject of an access undertaking in operation under Division 6; or
 - (c) if a decision is in force under subsection 44PA(3) approving a tender process, for the construction and operation of a facility, as a competitive tender process—the service was specified, in the application for that decision, as a service proposed to be provided by means of the facility; or
 - (d) if the service is provided by means of a pipeline (within the meaning of a National Gas Law)—there is:
 - (i) a 15-year no-coverage determination in force under the National Gas Law in respect of the pipeline; or
 - (ii) a price regulation exemption in force under the National Gas Law in respect of the pipeline; or
 - (e) there is a decision of the designated Minister in force under section 44LG that the service is ineligible to be a declared service.

Note: This means an application can only be made or dealt with under this Subdivision if none of paragraphs (a) to (e) apply.

- (1A) If the Council decides that one or more of paragraphs (1)(a) to (e) apply for a service mentioned in a person's purported application under that subsection, the Council must give the person written notice explaining:
- (a) why those paragraphs apply; and
 - (b) that such an application cannot be made for the service.

6 Subsection 44F(2)

Omit "After receiving the application", substitute "After receiving an application under subsection (1)".

7 Subsection 44F(4)

Repeal the subsection.

8 Subsection 44F(8)

Repeal the subsection.

9 At the end of section 44FA

Add:

- (4) Subsections 44GB(4) to (6) apply to information given in response to a notice under this section (whether given in compliance with the notice or not) in a corresponding way to the way those subsections apply to a submission made in response to a notice under subsection 44GB(1).

Note: This allows the Council to make the information publicly available, subject to any confidentiality concerns.

10 Section 44G

Repeal the section, substitute:

44G Criteria for the Council recommending declaration of a service

The Council cannot recommend that a service be declared unless it is satisfied of all of the declaration criteria for the service.

11 Subsections 44H(2) to (6C)

Repeal the subsections, substitute:

- (4) The designated Minister cannot declare a service unless he or she is satisfied of all of the declaration criteria for the service.

12 Subsection 44H(9)

Omit all the words after “at the end of that”, substitute:

60-day period:

- (a) to have made a decision under this section in accordance with the declaration recommendation; and
(b) to have published that decision under section 44HA.

13 Subsection 44J(2)

Repeal the subsection, substitute:

- (2) The Council cannot recommend revocation of a declaration unless it is satisfied that, at the time of the recommendation:
 - (a) subsection 44F(1) would prevent the making of an application for a recommendation that the service concerned be declared; or
 - (b) subsection 44H(4) would prevent the service concerned from being declared.

14 Paragraph 44LB(3)(b)

Omit “matters referred to in subsection 44G(2) in relation to the service”, substitute “declaration criteria for the service”.

15 Paragraph 44LG(5)(b)

Omit “matters referred to in subsection 44H(4) in relation to the service”, substitute “declaration criteria for the service”.

16 Subsection 44LG(7)

Repeal the subsection.

17 Paragraph 44LI(2)(a)

Omit “matters mentioned in subsection 44G(2) in relation to the service”, substitute “declaration criteria for the service”.

18 Subsection 44LI(10)

Repeal the subsection.

19 Application and transitional provisions

- (1) The amendments of sections 44F to 44H of the *Competition and Consumer Act 2010* made by this Part apply in relation to applications made under subsection 44F(1) of that Act (as amended by this Part) on or after the commencement of this item.
- (2) If, on or after the commencement of this item, a court or Tribunal decision is made interpreting any of the matters mentioned in subsection 44H(4) of the *Competition and Consumer Act 2010* (as in

force before that commencement), details of the decision must be included in the report under section 29O of that Act (as amended by Part 4 of this Schedule) for the appropriate financial year.

- (3) The amendment of section 44J of the *Competition and Consumer Act 2010* made by this Part applies in relation to declarations made before, on or after the commencement of this item.

Part 2—Effective access regimes

Competition and Consumer Act 2010

20 After Subdivision C of Division 2A of Part IIIA

Insert:

Subdivision CA—Revocation of Commonwealth Minister’s decision

44NBA Recommendation by Council

- (1) If a decision of the Commonwealth Minister is in force under section 44N (including as a result of an extension under section 44NB) that a regime established by a State or Territory for access to a service is an effective access regime, the Council:
 - (a) may, on its own initiative; and
 - (b) must, on an application made under subsection (3);consider whether to recommend that the Commonwealth Minister revoke the decision.
- (2) Before considering on its own initiative whether to recommend that the Commonwealth Minister revoke the decision, the Council must:
 - (a) publish, by electronic or other means, a notice to that effect; and
 - (b) give a copy of the notice to:
 - (i) the responsible Minister for the State or Territory; and
 - (ii) the provider of the service.
- (3) Any of the following may make a written application to the Council asking it to recommend that the Commonwealth Minister revoke the decision:
 - (a) a person who is seeking access to the service;
 - (b) the responsible Minister for the State or Territory;
 - (c) the provider of the service.

The Council must give a copy of the application to each entity mentioned in paragraph (b) or (c), unless that entity is the applicant.

- (4) Subject to subsection (5), the Council's consideration of whether to make the recommendation must be in accordance with subsection 44M(4).
- (5) In considering whether to make the recommendation, the Council must consider whether it is satisfied that the regime no longer meets the relevant principles, set out in the Competition Principles Agreement, relating to whether access regimes are effective access regimes, because of either or both of the following:
 - (a) substantial changes to the regime;
 - (b) substantial amendments of those principles.
- (6) If the Council is so satisfied, the Council must, in writing, recommend to the Commonwealth Minister that he or she revoke the decision.
- (7) If the Council is not so satisfied, the Council must, in writing, recommend to the Commonwealth Minister that he or she not revoke the decision.

Note 1: There are time limits that apply to the Council's recommendation: see section 44NC.

Note 2: The Council may request information and invite public submissions: see sections 44NBB and 44NE.

Note 3: The Council must publish its recommendation: see section 44NF.

44NBB Council may request information

- (1) The Council may give a person a written notice requesting the person give to the Council, within a specified period, information of the kind specified in the notice that the Council considers may be relevant to deciding what recommendation to make under section 44NBA.
- (2) The Council must:
 - (a) give a copy of the notice to:
 - (i) if an application was made under subsection 44NBA(3) and the person is not the applicant—the applicant; and

- (ii) if the person is not the provider of the service—the provider; and
 - (iii) in every case—the responsible Minister for the State or Territory; and
- (b) publish, by electronic or other means, the notice.
- (3) In deciding what recommendation to make, the Council:
 - (a) must have regard to any information given in compliance with a notice under subsection (1) within the specified period; and
 - (b) may disregard any information of the kind specified in the notice that is given after the specified period has ended.

44NBC Decision by the Commonwealth Minister

- (1) On receiving a recommendation under section 44NBA, the Commonwealth Minister must assess whether he or she should revoke the decision. Subject to subsection (2) of this section, he or she must do this in accordance with subsection 44N(2).

Note: The Commonwealth Minister must publish his or her decision: see section 44NG.
- (2) In making his or her assessment, the Commonwealth Minister must consider whether he or she is satisfied as to the matter set out in subsection 44NBA(5).
- (3) If the Commonwealth Minister is so satisfied, he or she must, by notice in writing, decide to revoke the decision. The notice must specify the day on which the revoked decision is to cease to be in force.
- (4) If the Commonwealth Minister is not so satisfied, he or she must, by notice in writing, decide not to revoke the decision.
- (5) If the Commonwealth Minister does not publish under section 44NG his or her decision on the recommendation within the period starting at the start of the day the recommendation is received and ending at the end of 60 days after that day, he or she is taken, immediately after the end of that 60-day period:

- (a) to have made a decision under this section in accordance with the recommendation made by the Council under section 44NBA; and
- (b) to have published that decision under section 44NG.

21 Subsection 44NC(1)

Omit “or 44NA”, substitute “, 44NA or 44NBA, or on a consideration by the Council on its own initiative under section 44NBA,”.

22 Subsection 44NC(2)

After “the application is received”, insert “, or the consideration is notified under paragraph 44NBA(2)(a)”.

23 Subsection 44NC(3)

Omit “or 44NA”, substitute “, 44NA or 44NBA, or on a consideration by the Council on its own initiative under section 44NBA”.

24 Subsection 44NC(3) (at the end of the table)

Add:

4	A notice is given under subsection 44NBB(1) requesting information in relation to the application or consideration	The day on which the notice is given	The last day of the period specified in the notice for the giving of the information
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25 Subsection 44NC(5)

After “the applicant” (first occurring), insert “(if the Commission is not acting on its own initiative under paragraph 44NBA(1)(a))”.

26 Paragraph 44NC(8)(a)

Omit “on the application”.

27 Paragraph 44NC(9)(a)

Repeal the paragraph, substitute:

- (a) if the Commission is not acting on its own initiative under paragraph 44NBA(1)(a)—the applicant; and

28 Subsection 44NE(1)

Omit “or 44NA”, substitute “, 44NA or 44NBA, or on a consideration by the Council on its own initiative under section 44NBA,”.

29 Subsection 44NE(3)

Omit “on the application”.

30 Subparagraph 44NE(6)(c)(iii)

Omit “on the application”.

31 Subsection 44NF(1)

Omit “or 44NA”, substitute “, 44NA or 44NBA”.

32 Paragraphs 44NF(2)(a) and (4)(a)

After “or 44NA”, insert “, or under section 44NBA (unless the recommendation relates to a consideration by the Council under that section on its own initiative)”.

33 Subsection 44NG(1)

Omit “or 44NA”, substitute “, 44NA or 44NBA”.

34 Paragraphs 44NG(2)(a) and (3)(a)

After “or 44NA”, insert “, or under section 44NBA (unless the recommendation relates to a consideration by the Council under that section on its own initiative)”.

35 After subsection 44O(1)

Insert:

- (1A) If, on receiving a recommendation under section 44NBA relating to a decision under section 44N, the Commonwealth Minister has made a decision under section 44NBC:
- (a) the person who applied under subsection 44NBA(3) for the Council to make a recommendation relating to that decision under section 44N; or
 - (b) any other person who could have applied under subsection 44NBA(3) for the Council to make such a recommendation;

may apply to the Tribunal for review of the Commonwealth Minister's decision under section 44NBC.

36 Paragraph 44ZZOAAA(3)(a)

Omit "or 44NB(3A)", substitute ", 44NB(3A) or 44NBC(5)".

37 Application of amendments

The amendments made by this Part apply in relation to decisions under section 44N of the *Competition and Consumer Act 2010* made on or after 1 January 2017.

Part 3—Access to declared services

Competition and Consumer Act 2010

38 After subsection 44V(2)

Insert:

(2A) Without limiting paragraph (2)(d), a requirement referred to in that paragraph may do either or both of the following:

- (a) require the provider to expand the capacity of the facility;
- (b) require the provider to expand the geographical reach of the facility.

39 Paragraph 44W(1)(d)

After “extensions of the facility”, insert “(including expansions of the capacity of the facility and expansions of the geographical reach of the facility)”.

40 Paragraph 44W(1)(e)

Repeal the paragraph, substitute:

- (e) requiring the provider to bear some or all of the costs of extending the facility (including expanding the capacity of the facility and expanding the geographical reach of the facility);
- (ea) requiring the provider to bear some or all of the costs of maintaining extensions of the facility (including expansions of the capacity of the facility and expansions of the geographical reach of the facility);

41 Paragraph 44X(1)(e)

After “extensions”, insert “(including expansions of capacity and expansions of geographical reach)”.

Part 4—Contingent amendments

Division 1—Public Governance amendments have already commenced

Competition and Consumer Act 2010

42 Paragraph 29O(a)

Omit “or 44NA”, substitute “, 44NA or 44NBA”.

43 Subparagraph 29O(b)(ii)

Repeal the subparagraph, substitute:

- (ii) section 44CA (about declaration criteria for services under Part IIIA);

Note: This Division only commences if Schedule 2 to the *Public Governance and Resources Legislation Amendment Act (No. 1) 2017* has already commenced.

Division 2—Public Governance amendments have not commenced

Competition and Consumer Act 2010

44 Paragraph 29O(2)(a)

Omit “or 44NA”, substitute “, 44NA or 44NBA”.

45 Subparagraph 29O(2)(b)(ii)

Repeal the subparagraph, substitute:

- (ii) section 44CA (about declaration criteria for services under Part IIIA);

Note: This Division only commences if Schedule 2 to the *Public Governance and Resources Legislation Amendment Act (No. 1) 2017* has not already commenced etc.

Schedule 13—Application and transitional provisions

Competition and Consumer Act 2010

1 In the appropriate position in Part XIII

Insert:

Division 3—Application of amendments made by the Competition and Consumer Amendment (Competition Policy Review) Act 2017

180 Definitions

In this Division:

amended Act means this Act as amended by the amending Act.

amending Act means the *Competition and Consumer Amendment (Competition Policy Review) Act 2017*.

commencement time means the commencement of Schedule 1 to the amending Act.

181 Amendment of the definition of *competition*

The repeal and substitution of the definition of ***competition*** in subsection 4(1) made by Schedule 1 to the amending Act applies in relation to conduct engaged in at or after the commencement time.

182 Orders under section 87

If:

- (a) before the commencement time, an order was made under section 87 relating to a contravention of section 45B; and
- (b) the order was still in force immediately before the commencement time;

the amendments made to section 87 by Schedule 5 to the amending Act do not apply in relation to, and do not affect the validity of, the order.

183 Authorisations under section 88

- (1) An authorisation granted under section 88 (other than former subsection 88(5) or (6A)) that was in force immediately before the commencement time continues in force (and may be dealt with) at and after the commencement time as if:
 - (a) it were granted under that section as amended by Schedule 9 to the amending Act; and
 - (b) it specified the following provision or provisions of Part IV:
 - (i) if the authorisation was granted under former subsection 88(1A)—sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK;
 - (ii) if the authorisation was granted under former subsection 88(1)—section 45;
 - (iii) if the authorisation was granted under former subsection 88(7)—sections 45D, 45DA and 45DB;
 - (iv) if the authorisation was granted under former subsection 88(7A)—sections 45E and 45EA;
 - (v) if the authorisation was granted under former subsection 88(8)—section 47;
 - (vi) if the authorisation was granted under former subsection 88(8A)—section 48;
 - (vii) if the authorisation was granted under former subsection 88(8B)—section 49;
 - (viii) if the authorisation was granted under former subsection 88(9)—section 50A.
- (2) If:
 - (a) a valid application for an authorisation under section 88 (other than former subsection 88(5) or (6A)) is made before the commencement time; and
 - (b) before the commencement time, the Commission has not made a determination in respect of the application under subsection 90(1);

at and after the commencement time, the application is taken to be (and may be dealt with as) an application made under section 88 of the amended Act.

- (3) An authorisation granted before the commencement time under section 88 (other than former subsection 88(5) or (6A)) which had not come into force before the commencement time is, after the authorisation comes into force, taken to be (and may be dealt with as) an authorisation:
- (a) granted under that section as amended by Schedule 9 to the amending Act; and
 - (b) that specifies the following provision or provisions of Part IV:
 - (i) if the authorisation was granted under former subsection 88(1A)—sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK;
 - (ii) if the authorisation was granted under former subsection 88(1)—section 45;
 - (iii) if the authorisation was granted under former subsection 88(7)—sections 45D, 45DA and 45DB;
 - (iv) if the authorisation was granted under former subsection 88(7A)—sections 45E and 45EA;
 - (v) if the authorisation was granted under former subsection 88(8)—section 47;
 - (vi) if the authorisation was granted under former subsection 88(8A)—section 48;
 - (vii) if the authorisation was granted under former subsection 88(8B)—section 49;
 - (viii) if the authorisation was granted under former subsection 88(9)—section 50A.

184 Notices under section 93

A notice that was in force under a provision of section 93 immediately before the commencement time continues in force (and may be dealt with) at and after the commencement time as if it had been given under that provision as amended by the amending Act.

185 Merger clearances and authorisations

Existing old law merger clearances and authorisations to be treated as new law merger authorisations

- (1) A clearance or authorisation granted under former Division 3 of Part VII that was in force immediately before the commencement time continues in force (and may be dealt with) at and after the commencement time as if:
- (a) it were an authorisation granted under section 88 of the amended Act; and
 - (b) it specified section 50.

Old law continues to apply to applications for merger clearances and authorisations pending at commencement

- (2) Despite the repeal of Subdivisions A and B of Division 3 of Part VII by Schedule 9 to the amending Act, those Subdivisions (other than sections 95AH, 95AI, 95AR and 95AS) continue to apply at and after the commencement time, as if the repeal had not happened, in relation to an application for a clearance made under section 95AD before the commencement time, unless:
- (a) a determination was made before the commencement time under section 95AM refusing to grant the clearance; or
 - (b) the clearance came into force before the commencement time.

Note: If a clearance is granted in relation to the application, it is taken to be an authorisation under section 88 that specifies section 50: see subsections (6) and (7).

- (3) Despite the repeal of Subdivisions A and C of Division 3 of Part VII by Schedule 9 to the amending Act, those Subdivisions (other than sections 95AZ, 95AZA, 95AZL and 95AZM) continue to apply at and after the commencement time, as if the repeal had not happened, in relation to an application:
- (a) made under section 95AU before the commencement time; and
 - (b) in relation to which a determination under section 95AZG had not been made before the commencement time.

Note: If an authorisation is granted in relation to the application, it is taken to be an authorisation under section 88 that specifies section 50: see subsection (6).

New law generally applies for review of merger clearance determinations

- (4) At and after the commencement time, Part IX as amended by Schedule 9 to the amending Act applies in relation to a determination (a **clearance determination**) made by the Commission before, at or after the commencement time under former section 95AM in relation to a clearance, as if the clearance determination related to a merger authorisation that is not an overseas merger authorisation.

Note: Former section 95AM is repealed by Schedule 9 to the amending Act, but has a continued limited application: see subsection (2).

Old law continues to apply to review of merger clearance determinations if proceedings are pending at commencement

- (5) However, if:
- (a) an application for a review of a clearance determination is made under former Division 3 of Part IX before the commencement time; and
 - (b) the Tribunal has not made its decision on the review before the commencement time;
- then:
- (c) subsection (4) does not apply in relation to the clearance determination; and
 - (d) despite the repeal of that Division by Schedule 9 to the amending Act, that Division continues to apply in relation to the clearance determination at and after the commencement time, as if the repeal had not happened.

Old law merger clearances and authorisations granted or coming into force after commencement to be treated as new law merger authorisations

- (6) A clearance or authorisation granted at or after the commencement time in relation to an application made under former section 95AD

or 95AU before the commencement time is, after it is granted, taken to be (and may be dealt with as) an authorisation:

- (a) granted under section 88 of the amended Act; and
- (b) that specifies section 50.

Note: This subsection covers applications processed after the commencement time under the old law as it continues to apply under subsection (2), (3) or (5).

- (7) A clearance granted before the commencement time in relation to an application made under former section 95AD which had not come into force before the commencement time is, after the clearance comes into force, taken to be (and may be dealt with as) an authorisation:

- (a) granted under section 88 of the amended Act; and
- (b) that specifies section 50.

Prohibition against providing false or misleading information applies to information given as a result of this section

- (8) Section 92 applies to information given to the Commission or Tribunal, at or after the commencement time, under Division 3 of Part VII, or Division 3 of Part IX, as it continues to apply under subsection (2), (3) or (5), in connection with a clearance or authorisation as if the information were information given:

- (a) to the Commission or Tribunal under Division 1 of Part VII, or Part IX, of the amended Act; and
- (b) in connection with a merger authorisation.

Note: Remedies can be obtained after the commencement time in relation to false or misleading information given to the Commission or Tribunal before the commencement time: see former section 95AZN, and subsection 7(2) of the *Acts Interpretation Act 1901*.

Normal application of provisions unaffected

- (9) Nothing in this section limits the application of Part IX, or section 92, of the amended Act.

Schedule 14—Other amendments

Part 1—Removal of requirements for Ministerial consents

Competition and Consumer Act 2010

1 Subsections 5(3), (4) and (5)

Repeal the subsections.

2 Application of amendments

- (1) The repeal of subsection 5(3) of the *Competition and Consumer Act 2010* made by this Part applies in relation to hearings commencing on or after the commencement of this item.
- (2) The repeal of subsection 5(4) of the *Competition and Consumer Act 2010* made by this Part applies in relation to applications made on or after the commencement of this item.

Part 2—Jurisdiction of State and Territory Courts

Competition and Consumer Act 2010

3 Subsection 138B(2)

Repeal the subsection.

4 Subsection 138C(1)

Omit “subsections (2) and (3)”, substitute “subsection (2)”.

5 Subsection 138C(3)

Repeal the subsection.

6 Paragraph 138D(1)(b)

Repeal the paragraph, substitute:

- (b) a matter for determination in the proceeding arises under this Part or the Australian Consumer Law, other than under Chapter 4 of the Australian Consumer Law.

7 Paragraph 138E(1)(b)

Repeal the paragraph, substitute:

- (b) a matter for determination in the proceeding arises under this Part or the Australian Consumer Law;

8 Application of amendments

The amendments made by this Part apply in relation to matters arising on or after the commencement of this item.

Part 3—Register of notifications

Competition and Consumer Act 2010

9 Paragraph 95(1)(gb)

Omit “93AD(3)(b); and”, substitute “93AD(3)(b).”.

10 Paragraphs 95(1)(h) and (j)

Repeal the paragraphs.

Part 4—Confidentiality of notices

Competition and Consumer Act 2010

11 At the end of section 132A of Schedule 2

Add:

- (3) This section also does not apply if the disclosure is made by a member of the staff of the regulator, or an associate regulator, in the performance of his or her duties as such a member of staff, and is made because it is reasonably necessary to protect public safety, to:
 - (a) any other agency within the meaning of the *Freedom of Information Act 1982*; or
 - (b) the Director of Public Prosecutions; or
 - (c) a State/Territory government body (within the meaning of section 155AAA of the *Competition and Consumer Act*); or
 - (d) a foreign government body (within the meaning of the *Competition and Consumer Act*).

Part 5—Cartel offences

Competition and Consumer Act 2010

12 Subsection 79(5)

Omit “and 11.4(1)”, substitute “11.4(1) and 11.5(1)”.

13 Application of amendments

The amendment made by this Part applies in relation to contraventions that occur on or after the commencement of this item.

Part 6—Unsolicited consumer agreements

Competition and Consumer Act 2010

14 Paragraphs 82(3)(a), (b), (c) and (d) of Schedule 2

Repeal the paragraphs, substitute:

- (a) if the agreement was not negotiated by telephone—the period starting on the day on which the agreement was made and ending at the end of the tenth business day after the day on which the agreement was made;
- (b) if the agreement was negotiated by telephone—the period starting on the day on which the agreement was made and ending at the end of the tenth business day after the day on which the consumer was given the agreement document relating to the agreement;
- (c) if one or more of sections 73 (permitted hours for negotiating an unsolicited consumer agreement), 74 (disclosing purpose and identity) and 75 (ceasing to negotiate on request) were contravened in relation to the agreement:
 - (i) if the agreement was not negotiated by telephone—the period starting on the day on which the agreement was made and ending at the end of the period of 3 months starting on the day after the day on which the agreement was made; or
 - (ii) if the agreement was negotiated by telephone—the period starting on the day on which the agreement was made and ending at the end of the period of 3 months starting on the day after the day on which the consumer was given the agreement document relating to the agreement;
- (d) if one or more of section 76 (informing consumer of termination period), a provision of Subdivision C (requirements for unsolicited consumer agreements) and section 86 (prohibition on supplies etc.) were contravened in relation to the agreement:
 - (i) if the agreement was not negotiated by telephone—the period starting on the day on which the agreement was

made and ending at the end of the period of 6 months starting on the day after the day on which the agreement was made; or

- (ii) if the agreement was negotiated by telephone—the period starting on the day on which the agreement was made and ending at the end of the period of 6 months starting on the day after the day on which the consumer was given the agreement document relating to the agreement;

15 Paragraph 85(3)(a) of Schedule 2

Repeal the paragraph, substitute:

- (a) the agreement is terminated in accordance with section 82 after the end of:
 - (i) if the agreement was not negotiated by telephone—the period starting on the day on which the agreement was made and ending at the end of the tenth business day after the day on which the agreement was made; or
 - (ii) if the agreement was negotiated by telephone—the period starting on the day on which the agreement was made and ending at the end of the tenth business day after the day on which the consumer was given the agreement document relating to the agreement; and

16 Paragraph 85(6)(a) of Schedule 2

Repeal the paragraph, substitute:

- (a) an unsolicited consumer agreement is terminated in accordance with section 82 after the end of:
 - (i) if the agreement was not negotiated by telephone—the period starting on the day on which the agreement was made and ending at the end of the tenth business day after the day on which the agreement was made; or
 - (ii) if the agreement was negotiated by telephone—the period starting on the day on which the agreement was made and ending at the end of the tenth business day after the day on which the consumer was given the agreement document relating to the agreement; and

17 Section 86 of Schedule 2 (heading)

Repeal the heading, substitute:

86 Prohibition on supplies etc.

18 Subsection 86(1) of Schedule 2

Omit “the period of 10 business days starting”.

19 Paragraphs 86(1)(d) and (e) of Schedule 2

Repeal the paragraphs, substitute:

- (d) if the agreement was not negotiated by telephone—the period starting on the day on which the agreement was made and ending at the end of the tenth business day after the day on which the agreement was made; or
- (e) if the agreement was negotiated by telephone—the period starting on the day on which the agreement was made and ending at the end of the tenth business day after the day on which the consumer was given the agreement document relating to the agreement.

20 Section 179 of Schedule 2 (heading)

Repeal the heading, substitute:

179 Prohibition on supplies etc.

21 Paragraph 179(1)(b) of Schedule 2

Omit “the period of 10 business days starting”.

22 Subparagraphs 179(1)(b)(i) and (ii) of Schedule 2

Repeal the subparagraphs, substitute:

- (i) if the agreement was not negotiated by telephone—the period starting on the day on which the agreement was made and ending at the end of the tenth business day after the day on which the agreement was made; or
- (ii) if the agreement was negotiated by telephone—the period starting on the day on which the agreement was made and ending at the end of the tenth business day

after the day on which the consumer was given the agreement document relating to the agreement.

Part 7—Misleading conduct as to the nature etc. of goods

Competition and Consumer Act 2010

23 At the end of subsection 131(2)

Add:

; and (d) section 33 of Schedule 2 also applies as a law of the Commonwealth to, and in relation to, the conduct of any person.

24 Application of amendments

The amendment made by this Part applies in relation to conduct occurring on or after the commencement of this item.

Part 8—Power to obtain information, documents and evidence

Competition and Consumer Act 2010

25 After subsection 155(8)

Insert:

- (8A) If a person refuses or fails to comply with a notice under this section, a court may, on application by the Commission, make an order directing the person to comply with the notice.

26 Application of amendments

The amendment made by this Part applies in relation to a refusal or failure to comply with a notice given on or after the commencement of this item.

Part 9—Application and transitional provisions

Competition and Consumer Act 2010

27 At the end of Chapter 6 of Schedule 2

Add:

Part 2—Application and transitional provisions relating to the Competition and Consumer Amendment (Competition Policy Review) Act 2017

291 Application of amendments relating to confidentiality of notices

The amendment made by Part 4 of Schedule 14 to the *Competition and Consumer Amendment (Competition Policy Review) Act 2017* applies in relation to disclosures made on or after the commencement of that Part that relate to notices given on or after the commencement of that Part.

292 Application of amendments relating to prohibition on supplies

The amendments made by Part 6 of Schedule 14 to the *Competition and Consumer Amendment (Competition Policy Review) Act 2017* apply in relation to unsolicited consumer agreements made on or after the commencement of that Part.

[Minister's second reading speech made in—
House of Representatives on 30 March 2017
Senate on 6 September 2017]

(66/17)

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