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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Treasury Laws Amendment (2018
Measures No. 3) Bill 2018**

No. , 2018

(Treasury)

**A Bill for an Act to amend the *Competition and
Consumer Act 2010*, and for related purposes**

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A Bill for an Act to amend the *Competition and Consumer Act 2010*, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the *Treasury Laws Amendment (2018 Measures No. 3) Act 2018*.

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.	
2. Schedule 1	The later of: (a) 1 July 2018; and (b) the day after this Act receives the Royal Assent.	
3. Schedules 2 and 3	The day after this Act receives the Royal Assent.	

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Strengthening penalties under the Australian Consumer Law

Competition and Consumer Act 2010

1 Subsection 2(1) of Schedule 2

Insert:

annual turnover, of a body corporate during a 12-month period, means the sum of the values of all the supplies that the body corporate, and any body corporate related to the body corporate, have made, or are likely to make, during the 12-month period, other than:

- (a) supplies made from any of those bodies corporate to any other of those bodies corporate; or
- (b) supplies that are input taxed; or
- (c) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the *A New Tax System (Goods and Services Tax) Act 1999*); or
- (d) supplies that are not made in connection with an enterprise that the body corporate carries on; or
- (e) supplies that are not connected with Australia.

Expressions used in this definition that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as in that Act.

2 Subsection 151(1) of Schedule 2 (penalty)

Repeal the penalty.

3 At the end of section 151 of Schedule 2

Add:

Penalty

- (5) An offence against subsection (1) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:
 - (a) \$10,000,000;

- (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence—3 times the value of that benefit;
 - (c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.
- (6) An offence against subsection (1) committed by a person other than a body corporate is punishable on conviction by a fine of not more than \$500,000.

4 Subsection 152(1) of Schedule 2 (penalty)

Repeal the penalty.

5 After subsection 152(2) of Schedule 2

Insert:

Penalty

- (2A) An offence against subsection (1) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:
- (a) \$10,000,000;
 - (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence—3 times the value of that benefit;
 - (c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.
- (2B) An offence against subsection (1) committed by a person other than a body corporate is punishable on conviction by a fine of not more than \$500,000.

Other

6 Subsection 153(1) of Schedule 2 (penalty)

Repeal the penalty.

7 At the end of section 153 of Schedule 2

Add:

Penalty

- (3) An offence against subsection (1) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:
 - (a) \$10,000,000;
 - (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence—3 times the value of that benefit;
 - (c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.
- (4) An offence against subsection (1) committed by a person other than a body corporate is punishable on conviction by a fine of not more than \$500,000.

8 Subsections 154(1) and (2) of Schedule 2 (penalty)

Repeal the penalty.

9 After subsection 154(5) of Schedule 2

Insert:

Penalty

- (5A) An offence against subsection (1) or (2) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:
 - (a) \$10,000,000;

- (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence—3 times the value of that benefit;
 - (c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.
- (5B) An offence against subsection (1) or (2) committed by a person other than a body corporate is punishable on conviction by a fine of not more than \$500,000.

Other

10 Subsection 155(1) of Schedule 2 (penalty)

Repeal the penalty.

11 At the end of section 155 of Schedule 2

Add:

Penalty

- (3) An offence against subsection (1) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:
 - (a) \$10,000,000;
 - (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence—3 times the value of that benefit;
 - (c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.
- (4) An offence against subsection (1) committed by a person other than a body corporate is punishable on conviction by a fine of not more than \$500,000.

12 Subsection 156(1) of Schedule 2 (penalty)

Repeal the penalty.

13 At the end of section 156 of Schedule 2

Add:

Penalty

- (3) An offence against subsection (1) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:
 - (a) \$10,000,000;
 - (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence—3 times the value of that benefit;
 - (c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.
- (4) An offence against subsection (1) committed by a person other than a body corporate is punishable on conviction by a fine of not more than \$500,000.

14 Subsections 157(1) and (2) of Schedule 2 (penalty)

Repeal the penalty.

15 After subsection 157(3) of Schedule 2

Insert:

Penalty

- (3A) An offence against subsection (1) or (2) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:
 - (a) \$10,000,000;
 - (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body

corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence—3 times the value of that benefit;

- (c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.

- (3B) An offence against subsection (1) or (2) committed by a person other than a body corporate is punishable on conviction by a fine of not more than \$500,000.

Defence

16 Subsections 158(1), (3), (5) and (7) of Schedule 2 (penalty)

Repeal the penalty.

17 After subsection 158(10) of Schedule 2

Insert:

Penalty

- (10A) An offence against subsection (1), (3), (5) or (7) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:
 - (a) \$10,000,000;
 - (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence—3 times the value of that benefit;
 - (c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.
- (10B) An offence against subsection (1), (3), (5) or (7) committed by a person other than a body corporate is punishable on conviction by a fine of not more than \$500,000.

Other

18 Subsections 159(1) and (2) of Schedule 2 (penalty)

Repeal the penalty.

19 At the end of section 159 of Schedule 2

Add:

Penalty

- (4) An offence against subsection (1) or (2) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:
 - (a) \$10,000,000;
 - (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence—3 times the value of that benefit;
 - (c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.
- (5) An offence against subsection (1) or (2) committed by a person other than a body corporate is punishable on conviction by a fine of not more than \$500,000.

20 Subsections 161(1), (3) and (4) of Schedule 2 (penalty)

Repeal the penalty.

21 At the end of section 161 of Schedule 2

Add:

Penalty

- (7) An offence against subsection (1), (3) or (4) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:
 - (a) \$10,000,000;

- (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence—3 times the value of that benefit;
 - (c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.
- (8) An offence against subsection (1), (3) or (4) committed by a person other than a body corporate is punishable on conviction by a fine of not more than \$500,000.

22 Subsections 162(1), (2) and (3) of Schedule 2 (penalty)

Repeal the penalty.

23 At the end of section 162 of Schedule 2

Add:

Penalty

- (6) An offence against subsection (1), (2) or (3) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:
- (a) \$10,000,000;
 - (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence—3 times the value of that benefit;
 - (c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.
- (7) An offence against subsection (1), (2) or (3) committed by a person other than a body corporate is punishable on conviction by a fine of not more than \$500,000.

24 Subsections 163(1) and (2) of Schedule 2 (penalty)

Repeal the penalty.

25 After subsection 163(5) of Schedule 2

Insert:

Penalty

- (5A) An offence against subsection (1) or (2) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:
- (a) \$10,000,000;
 - (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence—3 times the value of that benefit;
 - (c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.
- (5B) An offence against subsection (1) or (2) committed by a person other than a body corporate is punishable on conviction by a fine of not more than \$500,000.

Other

26 Subsections 164(1) and (2) of Schedule 2 (penalty)

Repeal the penalty.

27 At the end of section 164 of Schedule 2

Add:

Penalty

- (4) An offence against subsection (1) or (2) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:
- (a) \$10,000,000;

- (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence—3 times the value of that benefit;
 - (c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.
- (5) An offence against subsection (1) or (2) committed by a person other than a body corporate is punishable on conviction by a fine of not more than \$500,000.

28 Subsection 166(1) of Schedule 2 (penalty)

Repeal the penalty.

29 At the end of section 166 of Schedule 2

Add:

Penalty

- (8) An offence against subsection (1) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:
- (a) \$10,000,000;
 - (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence—3 times the value of that benefit;
 - (c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.
- (9) An offence against subsection (1) committed by a person other than a body corporate is punishable on conviction by a fine of not more than \$500,000.

30 Subsection 167(1) of Schedule 2 (penalty)

Repeal the penalty.

31 At the end of section 167 of Schedule 2

Add:

Penalty

- (3) An offence against subsection (1) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:
 - (a) \$10,000,000;
 - (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence—3 times the value of that benefit;
 - (c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.
- (4) An offence against subsection (1) committed by a person other than a body corporate is punishable on conviction by a fine of not more than \$500,000.

32 Subsection 168(1) of Schedule 2 (penalty)

Repeal the penalty.

33 After subsection 168(2) of Schedule 2

Insert:

Penalty

- (2A) An offence against subsection (1) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:
 - (a) \$10,000,000;
 - (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body

corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence—3 times the value of that benefit;

- (c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.

- (2B) An offence against subsection (1) committed by a person other than a body corporate is punishable on conviction by a fine of not more than \$500,000.

Other

34 Subsections 194(1), (2), (3) and (5) of Schedule 2 (penalty)

Repeal the penalty.

35 At the end of section 194 of Schedule 2

Add:

Penalty

- (8) An offence against subsection (1), (2), (3) or (5) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:
 - (a) \$10,000,000;
 - (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence—3 times the value of that benefit;
 - (c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.
- (9) An offence against subsection (1), (2), (3) or (5) committed by a person other than a body corporate is punishable on conviction by a fine of not more than \$500,000.

36 Subsections 195(1) and (2) of Schedule 2 (penalty)

Repeal the penalty.

37 At the end of section 195 of Schedule 2

Add:

Penalty

- (4) An offence against subsection (1) or (2) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:
 - (a) \$10,000,000;
 - (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence—3 times the value of that benefit;
 - (c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.
- (5) An offence against subsection (1) or (2) committed by a person other than a body corporate is punishable on conviction by a fine of not more than \$500,000.

38 Subsections 197(1), (2), (3) and (5) of Schedule 2 (penalty)

Repeal the penalty.

39 At the end of section 197 of Schedule 2

Add:

Penalty

- (8) An offence against subsection (1), (2), (3) or (5) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:
 - (a) \$10,000,000;
 - (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body

corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence—3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.

(9) An offence against subsection (1), (2), (3) or (5) committed by a person other than a body corporate is punishable on conviction by a fine of not more than \$500,000.

40 Subsections 198(1) and (2) of Schedule 2 (penalty)

Repeal the penalty.

41 At the end of section 198 of Schedule 2

Add:

Penalty

(4) An offence against subsection (1) or (2) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:

(a) \$10,000,000;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence—3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.

(5) An offence against subsection (1) or (2) committed by a person other than a body corporate is punishable on conviction by a fine of not more than \$500,000.

42 Subsections 199(1) and (2) of Schedule 2 (penalty)

Repeal the penalty.

43 At the end of section 199 of Schedule 2

Add:

Penalty

- (4) An offence against subsection (1) or (2) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:
 - (a) \$10,000,000;
 - (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence—3 times the value of that benefit;
 - (c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.
- (5) An offence against subsection (1) or (2) committed by a person other than a body corporate is punishable on conviction by a fine of not more than \$500,000.

44 Subsections 203(1), (2) and (3) of Schedule 2 (penalty)

Repeal the penalty.

45 At the end of section 203 of Schedule 2

Add:

Penalty

- (9) An offence against subsection (1), (2) or (3) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:
 - (a) \$10,000,000;
 - (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence—3 times the value of that benefit;

- (c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.
- (10) An offence against subsection (1), (2) or (3) committed by a person other than a body corporate is punishable on conviction by a fine of not more than \$500,000.

46 Subsections 204(1) and (2) of Schedule 2 (penalty)

Repeal the penalty.

47 At the end of section 204 of Schedule 2

Add:

Penalty

- (4) An offence against subsection (1) or (2) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:
 - (a) \$10,000,000;
 - (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence—3 times the value of that benefit;
 - (c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.
- (5) An offence against subsection (1) or (2) committed by a person other than a body corporate is punishable on conviction by a fine of not more than \$500,000.

48 Subsection 224(3) of Schedule 2 (cell at table items 1, 2, 9, 11 and 13, column headed “the pecuniary penalty is not to exceed ...”)

Repeal the cell, substitute:

- (a) if the person is a body corporate—the greater of the

- amounts mentioned in subsection (3A); or
- (b) if the person is not a body corporate—\$500,000.

49 After subsection 224(3) of Schedule 2

Insert:

- (3A) For the purposes of items 1, 2, 9, 11 and 13 of the table in subsection (3), the amounts are as follows:
- (a) \$10,000,000;
 - (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the act or omission—3 times the value of that benefit;
 - (c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the act or omission occurred or started to occur.

50 In the appropriate position in Chapter 6 of Schedule 2

Insert:

Part 3—Application provision relating to the Treasury Laws Amendment (2018 Measures No. 3) Act 2018

295 Application of amendments

The amendments made by Schedule 1 to the *Treasury Laws Amendment (2018 Measures No. 3) Act 2018* apply in relation to acts or omissions that occur on or after the commencement of that Schedule.

Schedule 2—Safe harbour for complying with an information standard about free range eggs

Competition and Consumer Act 2010

1 Subsection 2(1) of Schedule 2

Insert:

egg has the meaning given by subsection 137A(3).

free range egg has the meaning given by subsection 137A(4).

2 At the end of Part 3-4 of Schedule 2

Add:

137A Safe harbour for complying with information standards about free range eggs

- (1) Neither section 18 nor paragraph 29(1)(a) or 151(1)(a) applies to a person in relation to the labelling or displaying of eggs as free range eggs if, when doing so, the person is complying with all requirements:
 - (a) specified in an information standard for eggs; and
 - (b) relating to the labelling or displaying of free range eggs, including requirements about:
 - (i) the use of the words “free range”; or
 - (ii) representing that eggs are free range eggs.
- (2) If:
 - (a) proceedings are brought against a person in respect of section 18 or paragraph 29(1)(a) or 151(1)(a); and
 - (b) the person seeks to rely on subsection (1) of this section in the proceedings;the person bears an evidential burden in relation to the matters set out in that subsection.

- (3) An **egg** is an egg laid by a female domestic chicken (*Gallus gallus domesticus*).
- (4) **Free range egg** has the meaning given by the information standard mentioned in paragraph (1)(a).

Schedule 3—Confidentiality of information

Competition and Consumer Act 2010

1 Before subsection 44AAF(2)

Insert:

Authorised use and disclosure

2 Subsection 44AAF(2)

Omit “as required or permitted”, substitute “to the extent required or permitted”.

3 Subsection 44AAF(2)

Omit “taken to be”.

4 Subsection 44AAF(3) (heading)

Repeal the heading.

5 Subsection 44AAF(6)

Omit “taken to be”.

6 At the end of section 44AAF

Add:

(9) Despite subsections (3) to (7), if:

(a) any of the following restricts or prohibits the use or disclosure of information:

(i) section 18D of the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia as in force from time to time;

(ii) that section applied as a law of another State or Territory; and

(b) the use or disclosure of the information would, apart from this subsection, be authorised under this section;

the use or disclosure of the information is authorised for the purposes of this section only to the extent that the use or disclosure

of the information is required or permitted in accordance with the relevant section mentioned in subparagraph (i) or (ii).

7 Application of amendments

The amendments made by this Schedule apply to the use or disclosure of information on or after the commencement of this item, regardless of when the information was acquired.