

# **Competition and Consumer Act 2010**

## **Act No. 51 of 1974 as amended**

This compilation was prepared on 1 January 2011  
taking into account amendments up to Act No. 148 of 2010

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## **Schedule 1—The Schedule version of Part IV**

### **Part 1—Schedule version of Part IV**

Note: See section 150A.

#### **Division 1—Cartel conduct**

##### **Subdivision A—Introduction**

##### **44ZZRA Simplified outline**

The following is a simplified outline of this Division:

- This Division sets out parallel offences and civil penalty provisions relating to cartel conduct.
- A person must not make, or give effect to, a contract, arrangement or understanding that contains a cartel provision.
- A cartel provision is a provision relating to:
  - (a) price-fixing; or
  - (b) restricting outputs in the production and supply chain; or
  - (c) allocating customers, suppliers or territories; or
  - (d) bid-rigging;by parties that are, or would otherwise be, in competition with each other.

##### **44ZZRB Definitions**

In this Division:

**annual turnover**, of a body corporate during a 12-month period, means the sum of the values of all the supplies that the body corporate, and any body corporate related to the body corporate,

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have made, or are likely to make, during the 12-month period, other than:

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

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

***benefit*** includes any advantage and is not limited to property.

***bid*** includes:

- (a) tender; and
- (b) the taking, by a potential bidder or tenderer, of a preliminary step in a bidding or tendering process.

***evidential burden***, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

***knowledge*** has the same meaning as in the *Criminal Code*.

***likely***, in relation to any of the following:

- (a) a supply of goods or services;
- (b) an acquisition of goods or services;
- (c) the production of goods;
- (d) the capacity to supply services;

includes a possibility that is not remote.

***obtaining*** includes:

- (a) obtaining for another person; and
- (b) inducing a third person to do something that results in another person obtaining.

***party*** has a meaning affected by section 44ZZRC.

**production** includes manufacture, processing, treatment, assembly, disassembly, renovation, restoration, growing, raising, mining, extraction, harvesting, fishing, capturing and gathering.

#### **44ZZRC Extended meaning of party**

For the purposes of this Division, if a body corporate is a party to a contract, arrangement or understanding (otherwise than because of this section), each body corporate related to that body corporate is taken to be a **party** to that contract, arrangement or understanding.

#### **44ZZRD Cartel provisions**

- (1) For the purposes of this Act, a provision of a contract, arrangement or understanding is a **cartel provision** if:
  - (a) either of the following conditions is satisfied in relation to the provision:
    - (i) the purpose/effect condition set out in subsection (2);
    - (ii) the purpose condition set out in subsection (3); and
  - (b) the competition condition set out in subsection (4) is satisfied in relation to the provision.

##### *Purpose/effect condition*

- (2) The purpose/effect condition is satisfied if the provision has the purpose, or has or is likely to have the effect, of directly or indirectly:
  - (a) fixing, controlling or maintaining; or
  - (b) providing for the fixing, controlling or maintaining of; the price for, or a discount, allowance, rebate or credit in relation to:
    - (c) goods or services supplied, or likely to be supplied, by any or all of the parties to the contract, arrangement or understanding; or
    - (d) goods or services acquired, or likely to be acquired, by any or all of the parties to the contract, arrangement or understanding; or
    - (e) goods or services re-supplied, or likely to be re-supplied, by persons or classes of persons to whom those goods or services were supplied by any or all of the parties to the contract, arrangement or understanding; or

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- (f) goods or services likely to be re-supplied by persons or classes of persons to whom those goods or services are likely to be supplied by any or all of the parties to the contract, arrangement or understanding.

Note 1: The purpose/effect condition can be satisfied when a provision is considered with related provisions—see subsection (8).

Note 2: **Party** has an extended meaning—see section 44ZZRC.

*Purpose condition*

- (3) The purpose condition is satisfied if the provision has the purpose of directly or indirectly:
  - (a) preventing, restricting or limiting:
    - (i) the production, or likely production, of goods by any or all of the parties to the contract, arrangement or understanding; or
    - (ii) the capacity, or likely capacity, of any or all of the parties to the contract, arrangement or understanding to supply services; or
    - (iii) the supply, or likely supply, of goods or services to persons or classes of persons by any or all of the parties to the contract, arrangement or understanding; or
  - (b) allocating between any or all of the parties to the contract, arrangement or understanding:
    - (i) the persons or classes of persons who have acquired, or who are likely to acquire, goods or services from any or all of the parties to the contract, arrangement or understanding; or
    - (ii) the persons or classes of persons who have supplied, or who are likely to supply, goods or services to any or all of the parties to the contract, arrangement or understanding; or
    - (iii) the geographical areas in which goods or services are supplied, or likely to be supplied, by any or all of the parties to the contract, arrangement or understanding; or
    - (iv) the geographical areas in which goods or services are acquired, or likely to be acquired, by any or all of the parties to the contract, arrangement or understanding; or

- (c) ensuring that in the event of a request for bids in relation to the supply or acquisition of goods or services:
- (i) one or more parties to the contract, arrangement or understanding bid, but one or more other parties do not; or
  - (ii) 2 or more parties to the contract, arrangement or understanding bid, but at least 2 of them do so on the basis that one of those bids is more likely to be successful than the others; or
  - (iii) 2 or more parties to the contract, arrangement or understanding bid, but not all of those parties proceed with their bids until the suspension or finalisation of the request for bids process; or
  - (iv) 2 or more parties to the contract, arrangement or understanding bid and proceed with their bids, but at least 2 of them proceed with their bids on the basis that one of those bids is more likely to be successful than the others; or
  - (v) 2 or more parties to the contract, arrangement or understanding bid, but a material component of at least one of those bids is worked out in accordance with the contract, arrangement or understanding.

Note 1: For example, subparagraph (3)(a)(iii) will not apply in relation to a roster for the supply of after-hours medical services if the roster does not prevent, restrict or limit the supply of services.

Note 2: The purpose condition can be satisfied when a provision is considered with related provisions—see subsection (9).

Note 3: **Party** has an extended meaning—see section 44ZZRC.

#### *Competition condition*

- (4) The competition condition is satisfied if at least 2 of the parties to the contract, arrangement or understanding:
- (a) are or are likely to be; or
  - (b) but for any contract, arrangement or understanding, would be or would be likely to be;
- in competition with each other in relation to:
- (c) if paragraph (2)(c) or (3)(b) applies in relation to a supply, or likely supply, of goods or services—the supply of those goods or services; or

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- (d) if paragraph (2)(d) or (3)(b) applies in relation to an acquisition, or likely acquisition, of goods or services—the acquisition of those goods or services; or
- (e) if paragraph (2)(e) or (f) applies in relation to a re-supply, or likely re-supply, of goods or services—the supply of those goods or services to that re-supplier; or
- (f) if subparagraph (3)(a)(i) applies in relation to preventing, restricting or limiting the production, or likely production, of goods—the production of those goods; or
- (g) if subparagraph (3)(a)(ii) applies in relation to preventing, restricting or limiting the capacity, or likely capacity, to supply services—the supply of those services; or
- (h) if subparagraph (3)(a)(iii) applies in relation to preventing, restricting or limiting the supply, or likely supply, of goods or services—the supply of those goods or services; or
- (i) if paragraph (3)(c) applies in relation to a supply of goods or services—the supply of those goods or services; or
- (j) if paragraph (3)(c) applies in relation to an acquisition of goods or services—the acquisition of those goods or services.

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

*Immaterial whether identities of persons can be ascertained*

- (5) It is immaterial whether the identities of the persons referred to in paragraph (2)(e) or (f) or subparagraph (3)(a)(iii), (b)(i) or (ii) can be ascertained.

*Recommending prices etc.*

- (6) For the purposes of this Division, a provision of a contract, arrangement or understanding is not taken:
  - (a) to have the purpose mentioned in subsection (2); or
  - (b) to have, or be likely to have, the effect mentioned in subsection (2);by reason only that it recommends, or provides for the recommending of, a price, discount, allowance, rebate or credit.

*Immaterial whether particular circumstances or particular conditions*

- (7) It is immaterial whether:
- (a) for the purposes of subsection (2), subparagraph (3)(a)(iii) and paragraphs (3)(b) and (c)—a supply or acquisition happens, or a likely supply or likely acquisition is to happen, in particular circumstances or on particular conditions; and
  - (b) for the purposes of subparagraph (3)(a)(i)—the production happens, or the likely production is to happen, in particular circumstances or on particular conditions; and
  - (c) for the purposes of subparagraph (3)(a)(ii)—the capacity exists, or the likely capacity is to exist, in particular circumstances or on particular conditions.

*Considering related provisions—purpose/effect condition*

- (8) For the purposes of this Division, a provision of a contract, arrangement or understanding is taken to have the purpose, or to have or be likely to have the effect, mentioned in subsection (2) if the provision, when considered together with any or all of the following provisions:
- (a) the other provisions of the contract, arrangement or understanding;
  - (b) the provisions of another contract, arrangement or understanding, if the parties to that other contract, arrangement or understanding consist of or include at least one of the parties to the first-mentioned contract, arrangement or understanding;
- has that purpose, or has or is likely to have that effect.

*Considering related provisions—purpose condition*

- (9) For the purposes of this Division, a provision of a contract, arrangement or understanding is taken to have the purpose mentioned in a paragraph of subsection (3) if the provision, when considered together with any or all of the following provisions:
- (a) the other provisions of the contract, arrangement or understanding;
  - (b) the provisions of another contract, arrangement or understanding, if the parties to that other contract, arrangement or understanding consist of or include at least

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one of the parties to the first-mentioned contract,  
arrangement or understanding;  
has that purpose.

*Purpose/effect of a provision*

- (10) For the purposes of this Division, a provision of a contract, arrangement or understanding is not to be taken not to have the purpose, or not to have or to be likely to have the effect, mentioned in subsection (2) by reason only of:
- (a) the form of the provision; or
  - (b) the form of the contract, arrangement or understanding; or
  - (c) any description given to the provision, or to the contract, arrangement or understanding, by the parties.

*Purpose of a provision*

- (11) For the purposes of this Division, a provision of a contract, arrangement or understanding is not to be taken not to have the purpose mentioned in a paragraph of subsection (3) by reason only of:
- (a) the form of the provision; or
  - (b) the form of the contract, arrangement or understanding; or
  - (c) any description given to the provision, or to the contract, arrangement or understanding, by the parties.

**44ZZRE Meaning of expressions in other provisions of this Act**

In determining the meaning of an expression used in a provision of this Act (other than this Division, subsection 6(2C), paragraph 76(1A)(aa) or subsection 93AB(1A)), this Division is to be disregarded.

**Subdivision B—Offences etc.**

**44ZZRF Making a contract etc. containing a cartel provision**

*Offence*

- (1) A person commits an offence if:
- (a) the person makes a contract or arrangement, or arrives at an understanding; and
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- (b) the contract, arrangement or understanding contains a cartel provision.
- (2) The fault element for paragraph (1)(b) is knowledge or belief.

*Penalty*

- (3) An offence against subsection (1) committed by a body corporate is punishable on conviction by a fine not exceeding the greater of the following:
  - (a) \$10,000,000;
  - (b) if the court can determine the total value of the benefits that:
    - (i) have been obtained by one or more persons; and
    - (ii) are reasonably attributable to the commission of the offence;3 times that total value;
  - (c) if the court cannot determine the total value of those benefits—10% of the body corporate's annual turnover during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.
- (4) An offence against subsection (1) committed by a person other than a body corporate is punishable on conviction by a term of imprisonment not exceeding 10 years or a fine not exceeding 2,000 penalty units, or both.

*Indictable offence*

- (5) An offence against subsection (1) is an indictable offence.

**44ZZRG Giving effect to a cartel provision**

*Offence*

- (1) A person commits an offence if:
  - (a) a contract, arrangement or understanding contains a cartel provision; and
  - (b) the person gives effect to the cartel provision.
- (2) The fault element for paragraph (1)(a) is knowledge or belief.

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*Penalty*

- (3) An offence against subsection (1) committed by a body corporate is punishable on conviction by a fine not exceeding the greater of the following:
- (a) \$10,000,000;
  - (b) if the court can determine the total value of the benefits that:
    - (i) have been obtained by one or more persons; and
    - (ii) are reasonably attributable to the commission of the offence;3 times that total value;
  - (c) if the court cannot determine the total value of those benefits—10% of the body corporate's annual turnover during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.
- (4) An offence against subsection (1) committed by a person other than a body corporate is punishable on conviction by a term of imprisonment not exceeding 10 years or a fine not exceeding 2,000 penalty units, or both.

*Pre-commencement contracts etc.*

- (5) Paragraph (1)(a) applies to contracts or arrangements made, or understandings arrived at, before, at or after the commencement of this section.

*Indictable offence*

- (6) An offence against subsection (1) is an indictable offence.

**44ZZRH Determining guilt**

- (1) A person may be found guilty of an offence against section 44ZZRF or 44ZZRG even if:
- (a) each other party to the contract, arrangement or understanding is a person who is not criminally responsible; or
  - (b) subject to subsection (2), all other parties to the contract, arrangement or understanding have been acquitted of the offence.

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

- (2) A person cannot be found guilty of an offence against section 44ZZRF or 44ZZRG if:
- (a) all other parties to the contract, arrangement or understanding have been acquitted of such an offence; and
  - (b) a finding of guilt would be inconsistent with their acquittal.

#### **44ZZRI Court may make related civil orders**

If a prosecution against a person for an offence against section 44ZZRF or 44ZZRG is being, or has been, heard by a court, the court may:

- (a) grant an injunction under section 80 against the person in relation to:
  - (i) the conduct that constitutes, or is alleged to constitute, the offence; or
  - (ii) other conduct of that kind; or
- (b) make an order under section 86C, 86D, 86E or 87 in relation to the offence.

#### **Subdivision C—Civil penalty provisions**

##### **44ZZRJ Making a contract etc. containing a cartel provision**

A person contravenes this section if:

- (a) the person makes a contract or arrangement, or arrives at an understanding; and
- (b) the contract, arrangement or understanding contains a cartel provision.

Note: For enforcement, see Part VI.

##### **44ZZRK Giving effect to a cartel provision**

- (1) A person contravenes this section if:
- (a) a contract, arrangement or understanding contains a cartel provision; and
  - (b) the person gives effect to the cartel provision.

Note: For enforcement, see Part VI.

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- (2) Paragraph (1)(a) applies to contracts or arrangements made, or understandings arrived at, before, at or after the commencement of this section.

**Subdivision D—Exceptions**

**44ZZRL Conduct notified**

- (1) Sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK do not apply to a person in relation to a contract, arrangement or understanding containing a cartel provision, in so far as:
- (a) the cartel provision:
    - (i) has the purpose, or has or is likely to have the effect, mentioned in subsection 44ZZRD(2); or
    - (ii) has the purpose mentioned in a paragraph of subsection 44ZZRD(3) other than paragraph (c); and
  - (b) the person has given the Commission a collective bargaining notice under subsection 93AB(1A) setting out particulars of the contract, arrangement or understanding; and
  - (c) the notice is in force under section 93AD.
- (2) A person who wishes to rely on subsection (1) bears an evidential burden in relation to that matter.

**44ZZRM Cartel provision subject to grant of authorisation**

- (1) Sections 44ZZRF and 44ZZRJ do not apply in relation to the making of a contract that contains a cartel provision if:
- (a) the contract is subject to a condition that the provision will not come into force unless and until the person is granted an authorisation to give effect to the provision; and
  - (b) the person applies for the grant of such an authorisation within 14 days after the contract is made.
- (2) A person who wishes to rely on subsection (1) bears an evidential burden in relation to that matter.

**44ZZRN Contracts, arrangements or understandings between related bodies corporate**

- (1) Sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK do not apply in relation to a contract, arrangement or understanding if the only
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parties to the contract, arrangement or understanding are bodies corporate that are related to each other.

- (2) A person who wishes to rely on subsection (1) bears an evidential burden in relation to that matter.

#### **44ZZRO Joint ventures—prosecution**

- (1) Sections 44ZZRF and 44ZZRG do not apply in relation to a contract containing a cartel provision if:
- (a) the cartel provision is for the purposes of a joint venture; and
  - (b) the joint venture is for the production and/or supply of goods or services; and
  - (c) in a case where subparagraph 4J(a)(i) applies to the joint venture—the joint venture is carried on jointly by the parties to the contract; and
  - (d) in a case where subparagraph 4J(a)(ii) applies to the joint venture—the joint venture is carried on by a body corporate formed by the parties to the contract for the purpose of enabling those parties to carry on the activity mentioned in paragraph (b) jointly by means of:
    - (i) their joint control; or
    - (ii) their ownership of shares in the capital;of that body corporate.

Note: For example, if a joint venture formed for the purpose of research and development provides the results of its research and development to participants in the joint venture, it may be a joint venture for the supply of services.

- (1A) Section 44ZZRF does not apply in relation to an arrangement or understanding containing a cartel provision if:
- (a) the arrangement or understanding is not a contract; and
  - (b) when the arrangement was made, or the understanding was arrived at, each party to the arrangement or understanding:
    - (i) intended the arrangement or understanding to be a contract; and
    - (ii) reasonably believed that the arrangement or understanding was a contract; and
  - (c) the cartel provision is for the purposes of a joint venture; and
  - (d) the joint venture is for the production and/or supply of goods or services; and

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- (e) in a case where subparagraph 4J(a)(i) applies to the joint venture—the joint venture is carried on jointly by the parties to the arrangement or understanding; and
- (f) in a case where subparagraph 4J(a)(ii) applies to the joint venture—the joint venture is carried on by a body corporate formed by the parties to the arrangement or understanding for the purpose of enabling those parties to carry on the activity mentioned in paragraph (d) jointly by means of:
  - (i) their joint control; or
  - (ii) their ownership of shares in the capital; of that body corporate.

Note: For example, if a joint venture formed for the purpose of research and development provides the results of its research and development to participants in the joint venture, it may be a joint venture for the supply of services.

- (1B) Section 44ZZRG does not apply in relation to giving effect to a cartel provision contained in an arrangement or understanding if:
  - (a) the arrangement or understanding is not a contract; and
  - (b) when the arrangement was made, or the understanding was arrived at, each party to the arrangement or understanding:
    - (i) intended the arrangement or understanding to be a contract; and
    - (ii) reasonably believed that the arrangement or understanding was a contract; and
  - (c) when the cartel provision was given effect to, each party to the arrangement or understanding reasonably believed that the arrangement or understanding was a contract; and
  - (d) the cartel provision is for the purposes of a joint venture; and
  - (e) the joint venture is for the production and/or supply of goods or services; and
  - (f) in a case where subparagraph 4J(a)(i) applies to the joint venture—the joint venture is carried on jointly by the parties to the arrangement or understanding; and
  - (g) in a case where subparagraph 4J(a)(ii) applies to the joint venture—the joint venture is carried on by a body corporate formed by the parties to the arrangement or understanding for the purpose of enabling those parties to carry on the activity mentioned in paragraph (e) jointly by means of:
    - (i) their joint control; or

(ii) their ownership of shares in the capital;  
of that body corporate.

Note: For example, if a joint venture formed for the purpose of research and development provides the results of its research and development to participants in the joint venture, it may be a joint venture for the supply of services.

(2) A person who wishes to rely on subsection (1), (1A) or (1B) bears an evidential burden in relation to that matter.

*Notice to prosecutor*

(3) A person is not entitled to rely on subsection (1), (1A) or (1B) in a trial for an offence unless, within 28 days after the day on which the person is committed for trial, the person gives the prosecutor:

(a) a written notice setting out:

(i) the facts on which the person proposes to rely for the purpose of discharging the evidential burden borne by the person in relation to the matter in subsection (1), (1A) or (1B), as the case may be; and

(ii) the names and address of any witnesses whom the person proposes to call for the purpose of discharging the evidential burden borne by the person in relation to the matter in subsection (1), (1A) or (1B), as the case may be; and

(b) certified copies of any documents which the person proposes to adduce or point to for the purpose of discharging the evidential burden borne by the person in relation to the matter in subsection (1), (1A) or (1B), as the case may be.

(4) If the trial of a person for an offence is being, or is to be, held in a court, the court may, by order:

(a) exempt the person from compliance with subsection (3); or

(b) extend the time within which the person is required to comply with subsection (3).

(5) For the purposes of paragraph (3)(b), a *certified copy* of a document is a copy of the document certified to be a true copy by:

(a) a Justice of the Peace; or

(b) a commissioner for taking affidavits.

**44ZZRP Joint ventures—civil penalty proceedings**

- (1) Sections 44ZZRJ and 44ZZRK do not apply in relation to a contract containing a cartel provision if:
- (a) the cartel provision is for the purposes of a joint venture; and
  - (b) the joint venture is for the production and/or supply of goods or services; and
  - (c) in a case where subparagraph 4J(a)(i) applies to the joint venture—the joint venture is carried on jointly by the parties to the contract; and
  - (d) in a case where subparagraph 4J(a)(ii) applies to the joint venture—the joint venture is carried on by a body corporate formed by the parties to the contract for the purpose of enabling those parties to carry on the activity mentioned in paragraph (b) jointly by means of:
    - (i) their joint control; or
    - (ii) their ownership of shares in the capital;of that body corporate.

Note: For example, if a joint venture formed for the purpose of research and development provides the results of its research and development to participants in the joint venture, it may be a joint venture for the supply of services.

- (1A) Section 44ZZRJ does not apply in relation to an arrangement or understanding containing a cartel provision if:
- (a) the arrangement or understanding is not a contract; and
  - (b) when the arrangement was made, or the understanding was arrived at, each party to the arrangement or understanding:
    - (i) intended the arrangement or understanding to be a contract; and
    - (ii) reasonably believed that the arrangement or understanding was a contract; and
  - (c) the cartel provision is for the purposes of a joint venture; and
  - (d) the joint venture is for the production and/or supply of goods or services; and
  - (e) in a case where subparagraph 4J(a)(i) applies to the joint venture—the joint venture is carried on jointly by the parties to the arrangement or understanding; and
  - (f) in a case where subparagraph 4J(a)(ii) applies to the joint venture—the joint venture is carried on by a body corporate

formed by the parties to the arrangement or understanding for the purpose of enabling those parties to carry on the activity mentioned in paragraph (d) jointly by means of:

- (i) their joint control; or
  - (ii) their ownership of shares in the capital;
- of that body corporate.

Note: For example, if a joint venture formed for the purpose of research and development provides the results of its research and development to participants in the joint venture, it may be a joint venture for the supply of services.

- (1B) Section 44ZZRK does not apply in relation to giving effect to a cartel provision contained in an arrangement or understanding if:
- (a) the arrangement or understanding is not a contract; and
  - (b) when the arrangement was made, or the understanding was arrived at, each party to the arrangement or understanding:
    - (i) intended the arrangement or understanding to be a contract; and
    - (ii) reasonably believed that the arrangement or understanding was a contract; and
  - (c) when the cartel provision was given effect to, each party to the arrangement or understanding reasonably believed that the arrangement or understanding was a contract; and
  - (d) the cartel provision is for the purposes of a joint venture; and
  - (e) the joint venture is for the production and/or supply of goods or services; and
  - (f) in a case where subparagraph 4J(a)(i) applies to the joint venture—the joint venture is carried on jointly by the parties to the arrangement or understanding; and
  - (g) in a case where subparagraph 4J(a)(ii) applies to the joint venture—the joint venture is carried on by a body corporate formed by the parties to the arrangement or understanding for the purpose of enabling those parties to carry on the activity mentioned in paragraph (e) jointly by means of:
    - (i) their joint control; or
    - (ii) their ownership of shares in the capital;of that body corporate.

Note: For example, if a joint venture formed for the purpose of research and development provides the results of its research and development to participants in the joint venture, it may be a joint venture for the supply of services.

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- (2) A person who wishes to rely on subsection (1), (1A) or (1B) bears an evidential burden in relation to that matter.

**44ZZRQ Covenants affecting competition**

- (1) Sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK do not apply in relation to a contract containing a cartel provision, in so far as the cartel provision constitutes a covenant to which section 45B applies or, but for subsection 45B(9), would apply.
- (2) A person who wishes to rely on subsection (1) bears an evidential burden in relation to that matter.

**44ZZRR Resale price maintenance**

- (1) Sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK do not apply in relation to a contract, arrangement or understanding containing a cartel provision, in so far as the cartel provision relates to:
- (a) conduct that contravenes section 48; or
  - (b) conduct that would contravene section 48 but for the operation of subsection 88(8A); or
  - (c) conduct that would contravene section 48 if this Act defined the acts constituting the practice of resale price maintenance by reference to the maximum price at which goods or services are to be sold or supplied or are to be advertised, displayed or offered for sale or supply.
- (2) A person who wishes to rely on subsection (1) bears an evidential burden in relation to that matter.

**44ZZRS Exclusive dealing**

- (1) Sections 44ZZRF and 44ZZRJ do not apply in relation to the making of a contract, arrangement or understanding that contains a cartel provision, in so far as giving effect to the cartel provision would, or would but for the operation of subsection 47(10) or 88(8) or section 93, constitute a contravention of section 47.
- (2) Sections 44ZZRG and 44ZZRK do not apply in relation to the giving effect to a cartel provision by way of:

- (a) engaging in conduct that contravenes, or would but for the operation of subsection 47(10) or 88(8) or section 93 contravene, section 47; or
- (b) doing an act by reason of a breach or threatened breach of a condition referred to in subsection 47(2), (4), (6) or (8), being an act done by a person at a time when:
  - (i) an authorisation under subsection 88(8) is in force in relation to conduct engaged in by that person on that condition; or
  - (ii) by reason of subsection 93(7), conduct engaged in by that person on that condition is not to be taken to have the effect of substantially lessening competition within the meaning of section 47; or
  - (iii) a notice under subsection 93(1) is in force in relation to conduct engaged in by that person on that condition.
- (3) A person who wishes to rely on subsection (1) or (2) bears an evidential burden in relation to that matter.

#### **44ZZRT Dual listed company arrangement**

- (1) Sections 44ZZRF and 44ZZRJ do not apply in relation to the making of a contract, arrangement or understanding that contains a cartel provision, in so far as:
  - (a) the contract, arrangement or understanding is a dual listed company arrangement; and
  - (b) the making of the contract, arrangement or understanding would, or would apart from subsection 88(8B), contravene section 49.
- (2) Sections 44ZZRG and 44ZZRK do not apply in relation to the giving effect to a cartel provision, in so far as:
  - (a) the cartel provision is a provision of a dual listed company arrangement; and
  - (b) the giving effect to the cartel provision would, or would apart from subsection 88(8B), contravene section 49.
- (3) A person who wishes to rely on subsection (1) or (2) bears an evidential burden in relation to that matter.

**44ZZRU Acquisition of shares or assets**

- (1) Sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK do not apply in relation to a contract, arrangement or understanding containing a cartel provision, in so far as the cartel provision provides directly or indirectly for the acquisition of:
  - (a) any shares in the capital of a body corporate; or
  - (b) any assets of a person.
- (2) A person who wishes to rely on subsection (1) bears an evidential burden in relation to that matter.

**44ZZRV Collective acquisition of goods or services by the parties to a contract, arrangement or understanding**

- (1) Sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK do not apply in relation to a contract, arrangement or understanding containing a cartel provision, in so far as:
  - (a) the cartel provision has the purpose, or has or is likely to have the effect, mentioned in subsection 44ZZRD(2); and
  - (b) either:
    - (i) the cartel provision relates to the price for goods or services to be collectively acquired, whether directly or indirectly, by the parties to the contract, arrangement or understanding; or
    - (ii) the cartel provision is for the joint advertising of the price for the re-supply of goods or services so acquired.
- (2) A person who wishes to rely on subsection (1) bears an evidential burden in relation to that matter.

## **Division 2—Other provisions**

### **45 Contracts, arrangements or understandings that restrict dealings or affect competition**

- (1) If a provision of a contract made before the commencement of this section:
  - (a) is an exclusionary provision; or
  - (b) has the purpose, or has or is likely to have the effect, of substantially lessening competition;that provision is unenforceable in so far as it confers rights or benefits or imposes duties or obligations on a person.
- (2) A person shall not:
  - (a) make a contract or arrangement, or arrive at an understanding, if:
    - (i) the proposed contract, arrangement or understanding contains an exclusionary provision; or
    - (ii) a provision of the proposed contract, arrangement or understanding has the purpose, or would have or be likely to have the effect, of substantially lessening competition; or
  - (b) give effect to a provision of a contract, arrangement or understanding, whether the contract or arrangement was made, or the understanding was arrived at, before or after the commencement of this section, if that provision:
    - (i) is an exclusionary provision; or
    - (ii) has the purpose, or has or is likely to have the effect, of substantially lessening competition.
- (3) For the purposes of this section, **competition**, in relation to a provision of a contract, arrangement or understanding or of a proposed contract, arrangement or understanding, means competition in any market in which a person who is a party to the contract, arrangement or understanding or would be a party to the proposed contract, arrangement or understanding, or any body corporate related to such a person, supplies or acquires, or is likely to supply or acquire, goods or services or would, but for the

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provision, supply or acquire, or be likely to supply or acquire, goods or services.

- (4) For the purposes of the application of this section in relation to a particular person, a provision of a contract, arrangement or understanding or of a proposed contract, arrangement or understanding shall be deemed to have or to be likely to have the effect of substantially lessening competition if that provision and any one or more of the following provisions, namely:
- (a) the other provisions of that contract, arrangement or understanding or proposed contract, arrangement or understanding; and
  - (b) the provisions of any other contract, arrangement or understanding or proposed contract, arrangement or understanding to which the person or a body corporate related to the person is or would be a party;
- together have or are likely to have that effect.
- (5) This section does not apply to or in relation to:
- (a) a provision of a contract where the provision constitutes a covenant to which section 45B applies or, but for subsection 45B(9), would apply;
  - (b) a provision of a proposed contract where the provision would constitute a covenant to which section 45B would apply or, but for subsection 45B(9), would apply; or
  - (c) a provision of a contract, arrangement or understanding or of a proposed contract, arrangement or understanding in so far as the provision relates to:
    - (i) conduct that contravenes section 48; or
    - (ii) conduct that would contravene section 48 but for the operation of subsection 88(8A); or
    - (iii) conduct that would contravene section 48 if this Act defined the acts constituting the practice of resale price maintenance by reference to the maximum price at which goods or services are to be sold or supplied or are to be advertised, displayed or offered for sale or supply.
- (6) The making of a contract, arrangement or understanding does not constitute a contravention of this section by reason that the contract, arrangement or understanding contains a provision the giving effect to which would, or would but for the operation of

subsection 47(10) or 88(8) or section 93, constitute a contravention of section 47 and this section does not apply to or in relation to the giving effect to a provision of a contract, arrangement or understanding by way of:

- (a) engaging in conduct that contravenes, or would but for the operation of subsection 47(10) or 88(8) or section 93 contravene, section 47; or
  - (b) doing an act by reason of a breach or threatened breach of a condition referred to in subsection 47(2), (4), (6) or (8), being an act done by a person at a time when:
    - (i) an authorization under subsection 88(8) is in force in relation to conduct engaged in by that person on that condition; or
    - (ii) by reason of subsection 93(7) conduct engaged in by that person on that condition is not to be taken to have the effect of substantially lessening competition within the meaning of section 47; or
    - (iii) a notice under subsection 93(1) is in force in relation to conduct engaged in by that person on that condition.
- (6A) The following conduct:
- (a) the making of a dual listed company arrangement;
  - (b) the giving effect to a provision of a dual listed company arrangement;
- does not contravene this section if the conduct would, or would apart from subsection 88(8B), contravene section 49.
- (7) This section does not apply to or in relation to a contract, arrangement or understanding in so far as the contract, arrangement or understanding provides, or to or in relation to a proposed contract, arrangement or understanding in so far as the proposed contract, arrangement or understanding would provide, directly or indirectly for the acquisition of any shares in the capital of a body corporate or any assets of a person.
- (8) This section does not apply to or in relation to a contract, arrangement or understanding, or a proposed contract, arrangement or understanding, the only parties to which are or would be bodies corporate that are related to each other.
- (8A) Subsection (2) does not apply to a person engaging in conduct described in that subsection if:

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- (a) the person has given the Commission a collective bargaining notice under subsection 93AB(1) describing the conduct; and
  - (b) the notice is in force under section 93AD.
- (9) The making by a person of a contract that contains a provision in relation to which subsection 88(1) applies is not a contravention of subsection (2) of this section if:
- (a) the contract is subject to a condition that the provision will not come into force unless and until the person is granted an authorization to give effect to the provision; and
  - (b) the person applies for the grant of such an authorization within 14 days after the contract is made;
- but nothing in this subsection prevents the giving effect by a person to such a provision from constituting a contravention of subsection (2).

**45B Covenants affecting competition**

- (1) A covenant, whether the covenant was given before or after the commencement of this section, is unenforceable in so far as it confers rights or benefits or imposes duties or obligations on a first person or on a person associated with a first person if the covenant has, or is likely to have, the effect of substantially lessening competition in any market in which the first person or any person associated with the first person supplies or acquires, or is likely to supply or acquire, goods or services or would, but for the covenant, supply or acquire, or be likely to supply or acquire, goods or services.
- (2) A first person or a person associated with a first person shall not:
- (a) require the giving of a covenant, or give a covenant, if the proposed covenant has the purpose, or would have or be likely to have the effect, of substantially lessening competition in any market in which:
    - (i) the first person, or any person associated with the first person by virtue of paragraph (7)(b), supplies or acquires, is likely to supply or acquire, or would, but for the covenant, supply or acquire, or be likely to supply or acquire, goods or services; or
    - (ii) any person associated with the first person by virtue of the operation of paragraph (7)(a) supplies or acquires, is likely to supply or acquire, or would, but for the

covenant, supply or acquire, or be likely to supply or acquire, goods or services, being a supply or acquisition in relation to which that person is, or would be, under an obligation to act in accordance with directions, instructions or wishes of the first person;

- (b) threaten to engage in particular conduct if a person who, but for subsection (1), would be bound by a covenant does not comply with the terms of the covenant; or
  - (c) engage in particular conduct by reason that a person who, but for subsection (1), would be bound by a covenant has failed to comply, or proposes or threatens to fail to comply, with the terms of the covenant.
- (3) Where a person:
- (a) issues an invitation to another person to enter into a contract containing a covenant;
  - (b) makes an offer to another person to enter into a contract containing a covenant; or
  - (c) makes it known that the person will not enter into a contract of a particular kind unless the contract contains a covenant of a particular kind or in particular terms;
- the first-mentioned person shall, by issuing that invitation, making that offer or making that fact known, be deemed to require the giving of the covenant.
- (4) For the purposes of this section, a covenant or proposed covenant shall be deemed to have, or to be likely to have, the effect of substantially lessening competition in a market if the covenant or proposed covenant, as the case may be, would have, or be likely to have, that effect when taken together with the effect or likely effect on competition in that market of any other covenant or proposed covenant to the benefit of which:
- (a) a person who is or would be, or but for subsection (1) would be, entitled to the benefit of the first-mentioned covenant or proposed covenant; or
  - (b) a person associated with the person referred to in paragraph (a);
- is or would be, or but for subsection (1) would be, entitled.
- (5) The requiring of the giving of, or the giving of, a covenant does not constitute a contravention of this section by reason that giving

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effect to the covenant would, or would but for the operation of subsection 88(8) or section 93, constitute a contravention of section 47 and this section does not apply to or in relation to engaging in conduct in relation to a covenant by way of:

- (a) conduct that contravenes, or would but for the operation of subsection 88(8) or section 93 contravene, section 47; or
  - (b) doing an act by reason of a breach or threatened breach of a condition referred to in subsection 47(2), (4), (6) or (8), being an act done by a person at a time when:
    - (i) an authorization under subsection 88(8) is in force in relation to conduct engaged in by that person on that condition; or
    - (ii) by reason of subsection 93(7) conduct engaged in by that person on that condition is not to be taken to have the effect of substantially lessening competition within the meaning of section 47; or
    - (iii) a notice under subsection 93(1) is in force in relation to conduct engaged in by that person on that condition.
- (6) This section does not apply to or in relation to a covenant or proposed covenant where the only persons who are or would be respectively bound by, or entitled to the benefit of, the covenant or proposed covenant are persons who are associated with each other or are bodies corporate that are related to each other.
- (7) For the purposes of this section, section 45C and subparagraph 87(3)(a)(ii), the first person and another person (the **second person**) shall be taken to be associated with each other in relation to a covenant or proposed covenant if, and only if:
- (a) the first person is a body corporate and the second person is under an obligation (otherwise than in pursuance of the covenant or proposed covenant), whether formal or informal, to act in accordance with directions, instructions or wishes of the first person in relation to the covenant or proposed covenant; or
  - (b) the second person is a body corporate in relation to which the first person is in the position mentioned in subparagraph 4A(1)(a)(ii).
- (8) The requiring by a person of the giving of, or the giving by a person of, a covenant in relation to which subsection 88(5) applies is not a contravention of subsection (2) of this section if:
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- (a) the covenant is subject to a condition that the covenant will not come into force unless and until the person is granted an authorization to require the giving of, or to give, the covenant; and
  - (b) the person applies for the grant of such an authorization within 14 days after the covenant is given;
- but nothing in this subsection affects the application of paragraph (2)(b) or (c) in relation to the covenant.
- (9) This section does not apply to or in relation to a covenant or proposed covenant if:
    - (a) the sole or principal purpose for which the covenant was or is required to be given was or is to prevent the relevant land from being used otherwise than for residential purposes;
    - (b) the person who required or requires the covenant to be given was or is a religious, charitable or public benevolent institution or a trustee for such an institution and the covenant was or is required to be given for or in accordance with the purposes or objects of that institution; or
    - (c) the covenant was or is required to be given in pursuance of a legally enforceable requirement made by, or by a trustee for, a religious, charitable or public benevolent institution, being a requirement made for or in accordance with the purposes or objects of that institution.

#### **45C Covenants in relation to prices**

- (1) In the application of subsection 45B(1) in relation to a covenant that has, or is likely to have, the effect of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods or services supplied or acquired by the persons who are, or but for that subsection would be, bound by or entitled to the benefit of the covenant, or by any of them, or by any persons associated with any of them, in competition with each other, that subsection has effect as if the words “if the covenant has, or is likely to have, the effect of substantially lessening competition in any market in which the first person or any person associated with the first person supplies or acquires, or is likely to supply or acquire, goods or services or would, but for the covenant, supply or acquire, or be likely to supply or acquire, goods or services” were omitted.

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- (2) In the application of subsection 45B(2) in relation to a proposed covenant that has the purpose, or would have or be likely to have the effect, of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods or services supplied or acquired by the persons who would, or would but for subsection 45B(1), be bound by or entitled to the benefit of the proposed covenant, or by any of them, or by any persons associated with any of them, in competition with each other, paragraph 45B(2)(a) has effect as if all the words after the words “require the giving of a covenant, or give a covenant” were omitted.
- (3) For the purposes of this Act, a covenant shall not be taken not to have, or not to be likely to have, the effect, or a proposed covenant shall not be taken not to have the purpose, or not to have, or not to be likely to have, the effect, of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods or services by reason only of:
  - (a) the form of the covenant or proposed covenant; or
  - (b) any description given to the covenant by any of the persons who are, or but for subsection 45B(1) would be, bound by or entitled to the benefit of the covenant or any description given to the proposed covenant by any of the persons who would, or would but for subsection 45B(1), be bound by or entitled to the benefit of the proposed covenant.
- (4) For the purposes of the preceding provisions of this section, but without limiting the generality of those provisions:
  - (a) a covenant shall be deemed to have, or to be likely to have, the effect of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods or services supplied as mentioned in subsection (1) if the covenant has, or is likely to have, the effect of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, such a price, discount, allowance, rebate or credit in relation to a re-supply of the goods or services by persons to whom the goods or services are supplied by the persons who are, or but for subsection 45B(1) would be, bound by or entitled to the benefit of the

covenant, or by any of them, or by any persons associated with any of them; and

- (b) a proposed covenant shall be deemed to have the purpose, or to have, or to be likely to have, the effect, of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods or services supplied as mentioned in subsection (2) if the proposed covenant has the purpose, or would have or be likely to have the effect, as the case may be, of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, such a price, discount, allowance, rebate or credit in relation to a re-supply of the goods or services by persons to whom the goods or services are supplied by the persons who would, or would but for subsection 45B(1), be bound by or entitled to the benefit of the proposed covenant, or by any of them, or by any persons associated with any of them.
- (5) The reference in subsection (1) to the supply or acquisition of goods or services by persons in competition with each other includes a reference to the supply or acquisition of goods or services by persons who, but for a provision of any contract, arrangement or understanding or of any proposed contract, arrangement or understanding, would be, or would be likely to be, in competition with each other in relation to the supply or acquisition of the goods or services.

#### **45D Secondary boycotts for the purpose of causing substantial loss or damage**

- (1) A person must not, in concert with a second person, engage in conduct:
  - (a) that hinders or prevents:
    - (i) a third person supplying goods or services to a fourth person (who is not an employer of the first person or the second person); or
    - (ii) a third person acquiring goods or services from a fourth person (who is not an employer of the first person or the second person); and

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- (b) that is engaged in for the purpose, and would have or be likely to have the effect, of causing substantial loss or damage to the business of the fourth person.

Note 1: Conduct that would otherwise contravene this section can be authorised under subsection 88(7).

Note 2: This section also has effect subject to section 45DD, which deals with permitted boycotts.

- (2) A person is taken to engage in conduct for a purpose mentioned in subsection (1) if the person engages in the conduct for purposes that include that purpose.

**45DA Secondary boycotts for the purpose of causing substantial lessening of competition**

- (1) A person must not, in concert with a second person, engage in conduct:
  - (a) that hinders or prevents:
    - (i) a third person supplying goods or services to a fourth person (who is not an employer of the first person or the second person); or
    - (ii) a third person acquiring goods or services from a fourth person (who is not an employer of the first person or the second person); and
  - (b) that is engaged in for the purpose, and would have or be likely to have the effect, of causing a substantial lessening of competition in any market in which the fourth person supplies or acquires goods or services.

Note 1: Conduct that would otherwise contravene this section can be authorised under subsection 88(7).

Note 2: This section also has effect subject to section 45DD, which deals with permitted boycotts.

- (2) A person is taken to engage in conduct for a purpose mentioned in subsection (1) if the person engages in the conduct for purposes that include that purpose.

Note: This version of Part IV does not contain an equivalent of section 45DB of the *Competition and Consumer Act 2010*.

## **45DC Involvement and liability of employee organisations**

### *Certain organisations taken to be acting in concert*

- (1) If 2 or more persons (the *participants*), each of whom is a member or officer of the same organisation of employees, engage in conduct in concert with one another, whether or not the conduct is also engaged in in concert with another person, then, unless the organisation proves otherwise, the organisation is taken for the purposes of sections 45D and 45DA:
- (a) to engage in that conduct in concert with the participants; and
  - (b) to have engaged in that conduct for the purposes for which the participants engaged in it.

### *Consequences of organisation contravening subsection 45D(1) or 45DA(1)*

- (2) The consequences of an organisation of employees engaging, or being taken by subsection (1) to engage, in conduct in concert with any of its members or officers in contravention of subsection 45D(1) or 45DA(1) are as set out in subsections (3), (4) and (5).

### *Loss or damage taken to have been caused by organisation's conduct*

- (3) Any loss or damage suffered by a person as a result of the conduct is taken, for the purposes of this Act, to have been caused by the conduct of the organisation.

### *Taking proceedings if organisation is a body corporate*

- (4) If the organisation is a body corporate, no action under section 82 to recover the amount of the loss or damage may be brought against any of the members or officers of the organisation in respect of the conduct.

### *Taking proceedings if organisation is not a body corporate*

- (5) If the organisation is not a body corporate:
- (a) a proceeding in respect of the conduct may be brought under section 77, 80 or 82 against an officer of the organisation as a representative of the organisation's members and the proceeding is taken to be a proceeding against all the persons

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who were members of the organisation at the time when the conduct was engaged in; and

- (b) subsection 76(2) does not prevent an order being made in a proceeding mentioned in paragraph (a) that was brought under section 77; and
- (c) the maximum pecuniary penalty that may be imposed in a proceeding mentioned in paragraph (a) that was brought under section 77 is the penalty applicable under section 76 in relation to a body corporate; and
- (d) except as provided by paragraph (a), a proceeding in respect of the conduct must not be brought under section 77 or 82 against any of the members or officers of the organisation; and
- (e) for the purpose of enforcing any judgment or order given or made in a proceeding mentioned in paragraph (a) that was brought under section 77 or 82, process may be issued and executed against the following property or interests as if the organisation were a body corporate and the absolute owner of the property or interests:
  - (i) any property of the organisation or of any branch or part of the organisation, whether vested in trustees or however otherwise held;
  - (ii) any property in which the organisation or any branch or part of the organisation has a beneficial interest, whether vested in trustees or however otherwise held;
  - (iii) any property in which any members of the organisation or of a branch or part of the organisation have a beneficial interest in their capacity as members, whether vested in trustees or however otherwise held; and
- (f) if paragraph (e) applies, no process is to be issued or executed against any property of members or officers of the organisation or of a branch or part of the organisation except as provided in that paragraph.

**45DD Situations in which boycotts permitted**

*Dominant purpose of conduct relates to employment matters—conduct by a person*

- (1) A person does not contravene, and is not involved in a contravention of, subsection 45D(1) or 45DA(1) by engaging in

conduct if the dominant purpose for which the conduct is engaged in is substantially related to the remuneration, conditions of employment, hours of work or working conditions of that person or of another person employed by an employer of that person.

*Dominant purpose of conduct relates to employment matters—conduct by employee organisation and employees*

- (2) If:
- (a) an employee, or 2 or more employees who are employed by the same employer, engage in conduct in concert with another person who is, or with other persons each of whom is:
    - (i) an organisation of employees; or
    - (ii) an officer of an organisation of employees; and
  - (b) the conduct is only engaged in by the persons covered by paragraph (a); and
  - (c) the dominant purpose for which the conduct is engaged in is substantially related to the remuneration, conditions of employment, hours of work or working conditions of the employee, or any of the employees, covered by paragraph (a);

the persons covered by paragraph (a) do not contravene, and are not involved in a contravention of, subsection 45D(1) or 45DA(1) by engaging in the conduct.

*Dominant purpose of conduct relates to environmental protection or consumer protection*

- (3) A person does not contravene, and is not involved in a contravention of, subsection 45D(1) or 45DA(1) by engaging in conduct if:
- (a) the dominant purpose for which the conduct is engaged in is substantially related to environmental protection or consumer protection; and
  - (b) engaging in the conduct is not industrial action.

Note 1: If an environmental organisation or a consumer organisation is a body corporate:

- (a) it is a “person” who may be subject to the prohibitions in subsections 45D(1) and 45DA(1) and who may also be covered by this exemption; and

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- (b) each of its members is a “person” who may be subject to the prohibitions in subsections 45D(1) and 45DA(1) and who may also be covered by this exemption.

Note 2: If an environmental organisation or a consumer organisation is not a body corporate:

- (a) it is not a “person” and is therefore not subject to the prohibitions in subsections 45D(1) and 45DA(1) (consequently, this exemption does not cover the organisation as such); but
- (b) each of its members is a “person” who may be subject to the prohibitions in subsections 45D(1) and 45DA(1) and who may also be covered by this exemption.

*Meaning of industrial action—basic definition*

(4) In subsection (3), **industrial action** means:

- (a) the performance of work in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, the result of which is a restriction or limitation on, or a delay in, the performance of the work, where:
  - (i) the terms and conditions of the work are prescribed, wholly or partly, by a workplace instrument or an order of an industrial body; or
  - (ii) the work is performed, or the practice is adopted, in connection with an industrial dispute; or
- (b) a ban, limitation or restriction on the performance of work, or on acceptance of or offering for work, in accordance with the terms and conditions prescribed by a workplace instrument or by an order of an industrial body; or
- (c) a ban, limitation or restriction on the performance of work, or on acceptance of or offering for work, that is adopted in connection with an industrial dispute; or
- (d) a failure or refusal by persons to attend for work or a failure or refusal to perform any work at all by persons who attend for work.

For this purpose, **industrial body** and **workplace instrument** have the same meanings as in the *Fair Work Act 2009*.

*Meaning of industrial action—further clarification*

- (5) For the purposes of subsection (3):
- (a) conduct is capable of constituting industrial action even if the conduct relates to part only of the duties that persons are required to perform in the course of their employment; and
  - (b) a reference to industrial action includes a reference to a course of conduct consisting of a series of industrial actions.

*Subsections (1), (2) and (3) do not protect people not covered by them*

- (6) In applying subsection 45D(1) or 45DA(1) to a person who is not covered by subsection (1), (2) or (3) in respect of certain conduct, disregard the fact that other persons may be covered by one of those subsections in respect of the same conduct.

Note: Section 415 of the *Fair Work Act 2009* limits the right to bring actions under the Competition Code in respect of industrial action that is protected action for the purposes of that section.

**45E Prohibition of contracts, arrangements or understandings affecting the supply or acquisition of goods or services**

*Situations to which section applies*

- (1) This section applies in the following situations:
- (a) a **supply situation**—in this situation, a person (the **first person**) has been accustomed, or is under an obligation, to supply goods or services to another person (the **second person**); or
  - (b) an **acquisition situation**—in this situation, a person (the **first person**) has been accustomed, or is under an obligation, to acquire goods or services from another person (the **second person**).

Note: For the meanings of **accustomed to supply** and **accustomed to acquire**, see subsections (5) and (7).

*Prohibition in a supply situation*

- (2) In a supply situation, the first person must not make a contract or arrangement, or arrive at an understanding, with an organisation of employees, an officer of such an organisation or a person acting for

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and on behalf of such an officer or organisation, if the proposed contract, arrangement or understanding contains a provision included for the purpose, or for purposes including the purpose, of:

- (a) preventing or hindering the first person from supplying or continuing to supply such goods or services to the second person; or
- (b) preventing or hindering the first person from supplying or continuing to supply such goods or services to the second person, except subject to a condition:
  - (i) that is not a condition to which the supply of such goods or services by the first person to the second person has previously been subject because of a provision in a contract between those persons; and
  - (ii) that is about the persons to whom, the manner in which or the terms on which the second person may supply any goods or services.

*Prohibition in an acquisition situation*

- (3) In an acquisition situation, the first person must not make a contract or arrangement, or arrive at an understanding, with an organisation of employees, an officer of such an organisation or a person acting for and on behalf of such an officer or organisation, if the proposed contract, arrangement or understanding contains a provision included for the purpose, or for purposes including the purpose, of:
  - (a) preventing or hindering the first person from acquiring or continuing to acquire such goods or services from the second person; or
  - (b) preventing or hindering the first person from acquiring or continuing to acquire such goods or services from the second person, except subject to a condition:
    - (i) that is not a condition to which the acquisition of such goods or services by the first person from the second person has previously been subject because of a provision in a contract between those persons; and
    - (ii) that is about the persons to whom, the manner in which or the terms on which the second person may supply any goods or services.

*No contravention if second person gives written consent to written contract etc.*

- (4) Subsections (2) and (3) do not apply to a contract, arrangement or understanding if it is in writing and was made or arrived at with the written consent of the second person.

*Meaning of accustomed to supply*

- (5) In this section, a reference to a person who has been **accustomed to supply** goods or services to a second person includes (subject to subsection (6)):
- (a) a regular supplier of such goods or services to the second person; or
  - (b) the latest supplier of such goods or services to the second person; or
  - (c) a person who, at any time during the immediately preceding 3 months, supplied such goods or services to the second person.

*Exception to subsection (5)*

- (6) If:
- (a) goods or services have been supplied by a person to a second person under a contract between them that required the first person to supply such goods or services over a period; and
  - (b) the period has ended; and
  - (c) after the end of the period, the second person has been supplied with such goods or services by another person and has not also been supplied with such goods or services by the first person;
- then, for the purposes of the application of this section in relation to anything done after the second person has been supplied with goods or services as mentioned in paragraph (c), the first person is not to be taken to be a person who has been accustomed to supply such goods or services to the second person.

*Meaning of accustomed to acquire*

- (7) In this section, a reference to a person who has been **accustomed to acquire** goods or services from a second person includes (subject to subsection (8)):

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- (a) a regular acquirer of such goods or services from the second person; or
- (b) a person who, when last acquiring such goods or services, acquired them from the second person; or
- (c) a person who, at any time during the immediately preceding 3 months, acquired such goods or services from the second person.

*Exception to subsection (7)*

(8) If:

- (a) goods or services have been acquired by a person from a second person under a contract between them that required the first person to acquire such goods or services over a period; and
- (b) the period has ended; and
- (c) after the end of the period, the second person has refused to supply such goods or services to the first person;

then, for the purposes of the application of this section in relation to anything done after the second person has refused to supply goods or services as mentioned in paragraph (c), the first person is not to be taken to be a person who has been accustomed to acquire such goods or services from the second person.

Note: Conduct that would otherwise contravene this section can be authorised under subsection 88(7A).

**45EA Provisions contravening section 45E not to be given effect**

A person must not give effect to a provision of a contract, arrangement or understanding if, because of the provision, the making of the contract or arrangement, or the arriving at the understanding, by the person:

- (a) contravened subsection 45E(2) or (3); or
- (b) would have contravened subsection 45E(2) or (3) if:
  - (i) section 45E had been in force when the contract or arrangement was made, or the understanding was arrived at; and
  - (ii) the words “is in writing and” and “written” were not included in subsection 45E(4).

Note: Conduct that would otherwise contravene this section can be authorised under subsection 88(7A).

**45EB Sections 45D to 45EA do not affect operation of other provisions of Part**

Nothing in section 45D, 45DA, 45DC, 45DD, 45E or 45EA affects the operation of any other provision of this Part.

**46 Misuse of market power**

- (1) A person (the *first person*) who has a substantial degree of power in a market shall not take advantage of that power in that or any other market for the purpose of:
- (a) eliminating or substantially damaging a competitor of the first person or of a body corporate that is related to the first person in that or any other market;
  - (b) preventing the entry of a person into that or any other market; or
  - (c) deterring or preventing a person from engaging in competitive conduct in that or any other market.
- (1AAA) If a person supplies goods or services for a sustained period at a price that is less than the relevant cost to the person of supplying the goods or services, the person may contravene subsection (1) even if the person cannot, and might not ever be able to, recoup losses incurred by supplying the goods or services.
- (1AA) A person that has a substantial share of a market must not supply, or offer to supply, goods or services for a sustained period at a price that is less than the relevant cost to the person of supplying such goods or services, for the purpose of:
- (a) eliminating or substantially damaging a competitor of the person or of a body corporate that is related to the person in that or any other market; or
  - (b) preventing the entry of a person into that or any other market; or
  - (c) deterring or preventing a person from engaging in competitive conduct in that or any other market.
- (1AB) For the purposes of subsection (1AA), without limiting the matters to which the Court may have regard for the purpose of determining whether a person has a substantial share of a market, the Court may have regard to the number and size of the competitors of the person in the market.

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(1A) For the purposes of subsections (1) and (1AA):

- (a) the reference in paragraphs (1)(a) and (1AA)(a) to a competitor includes a reference to competitors generally, or to a particular class or classes of competitors; and
- (b) the reference in paragraphs (1)(b) and (c) and (1AA)(b) and (c) to a person includes a reference to persons generally, or to a particular class or classes of persons.

(2) If:

- (a) a body corporate that is related to a person (the *first person*) has, or 2 or more bodies corporate each of which is related to the one person (the *first person*) together have, a substantial degree of power in a market; or
- (b) a person (the *first person*) and a body corporate that is, or a person (the *first person*) and 2 or more bodies corporate each of which is, related to the first person, together have a substantial degree of power in a market;

the first person shall be taken for the purposes of this section to have a substantial degree of power in that market.

(3) In determining for the purposes of this section the degree of power that a person (the *first person*) or bodies corporate has or have in a market, the court shall have regard to the extent to which the conduct of the first person or of any of those bodies corporate in that market is constrained by the conduct of:

- (a) competitors, or potential competitors, of the first person or of any of those bodies corporate in that market; or
- (b) persons to whom or from whom the first person or any of those bodies corporate supplies or acquires goods or services in that market.

(3A) In determining for the purposes of this section the degree of power that a person (the *first person*) or bodies corporate has or have in a market, the court may have regard to the power the first person or bodies corporate has or have in that market that results from:

- (a) any contracts, arrangements or understandings, or proposed contracts, arrangements or understandings, that the first person or bodies corporate has or have, or may have, with another party or other parties; and

- (b) any covenants, or proposed covenants, that the first person or bodies corporate is or are, or would be, bound by or entitled to the benefit of.
- (3B) Subsections (3) and (3A) do not, by implication, limit the matters to which regard may be had in determining, for the purposes of this section, the degree of power that a person or bodies corporate has or have in a market.
- (3C) For the purposes of this section, without limiting the matters to which the court may have regard for the purpose of determining whether a person has a substantial degree of power in a market, a person may have a substantial degree of power in a market even though:
- (a) the person does not substantially control the market; or
  - (b) the person does not have absolute freedom from constraint by the conduct of:
    - (i) competitors, or potential competitors, of the person in that market; or
    - (ii) persons to whom or from whom the person supplies or acquires goods or services in that market.
- (3D) To avoid doubt, for the purposes of this section, more than 1 person may have a substantial degree of power in a market.
- (4) In this section:
- (a) a reference to power is a reference to market power;
  - (b) a reference to a market is a reference to a market for goods or services; and
  - (c) a reference to power in relation to, or to conduct in, a market is a reference to power, or to conduct, in that market either as a supplier or as an acquirer of goods or services in that market.
- (4A) Without limiting the matters to which the court may have regard for the purpose of determining whether a person has contravened subsection (1), the court may have regard to:
- (a) any conduct of the person that consisted of supplying goods or services for a sustained period at a price that was less than the relevant cost to the person of supplying such goods or services; and
  - (b) the reasons for that conduct.

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- (5) Without extending by implication the meaning of subsection (1), a person shall not be taken to contravene that subsection by reason only that the person acquires plant or equipment.
- (6) This section does not prevent a person from engaging in conduct that does not constitute a contravention of any of the following sections, namely, sections 45, 45B, 47, 49 and 50, by reason that an authorization or clearance is in force or by reason of the operation of subsection 45(8A) or section 93.
- (6A) In determining for the purposes of this section whether, by engaging in conduct, a person has taken advantage of the person's substantial degree of power in a market, the court may have regard to any or all of the following:
- (a) whether the conduct was materially facilitated by the person's substantial degree of power in the market;
  - (b) whether the person engaged in the conduct in reliance on the person's substantial degree of power in the market;
  - (c) whether it is likely that the person would have engaged in the conduct if the person did not have a substantial degree of power in the market;
  - (d) whether the conduct is otherwise related to the person's substantial degree of power in the market.
- This subsection does not limit the matters to which the court may have regard.
- (7) Without in any way limiting the manner in which the purpose of a person may be established for the purposes of any other provision of this Act, a person may be taken to have taken advantage of the person's power for a purpose referred to in subsection (1) notwithstanding that, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from the conduct of the person or of any other person or from other relevant circumstances.

**47 Exclusive dealing**

- (1) Subject to this section, a person shall not, in trade or commerce, engage in the practice of exclusive dealing.
- (2) A person (the *first person*) engages in the practice of exclusive dealing if the first person:

- (a) supplies, or offers to supply, goods or services;
  - (b) supplies, or offers to supply, goods or services at a particular price; or
  - (c) gives or allows, or offers to give or allow, a discount, allowance, rebate or credit in relation to the supply or proposed supply of goods or services by the first person;
- on the condition that the person (the **second person**) to whom the first person supplies, or offers or proposes to supply, the goods or services or, if the second person is a body corporate, a body corporate related to that body corporate:
- (d) will not, or will not except to a limited extent, acquire goods or services, or goods or services of a particular kind or description, directly or indirectly from a competitor of the first person or from a competitor of a body corporate related to the first person;
  - (e) will not, or will not except to a limited extent, re-supply goods or services, or goods or services of a particular kind or description, acquired directly or indirectly from a competitor of the first person or from a competitor of a body corporate related to the first person; or
  - (f) in the case where the first person supplies or would supply goods or services, will not re-supply the goods or services to any person, or will not, or will not except to a limited extent, re-supply the goods or services:
    - (i) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or
    - (ii) in particular places or classes of places or in places other than particular places or classes of places.
- (3) A person (the **first person**) also engages in the practice of exclusive dealing if the first person refuses:
- (a) to supply goods or services to a second person;
  - (b) to supply goods or services to a second person at a particular price; or
  - (c) to give or allow a discount, allowance, rebate or credit in relation to the supply or proposed supply of goods or services to a second person;
- for the reason that the second person or, if the second person is a body corporate, a body corporate related to that body corporate:

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- (d) has acquired, or has not agreed not to acquire, goods or services, or goods or services of a particular kind or description, directly or indirectly from a competitor of the first person or from a competitor of a body corporate related to the first person;
  - (e) has re-supplied, or has not agreed not to re-supply, goods or services, or goods or services of a particular kind or description, acquired directly or indirectly from a competitor of the first person or from a competitor of a body corporate related to the first person; or
  - (f) has re-supplied, or has not agreed not to re-supply, goods or services, or goods or services of a particular kind or description, acquired from the first person to any person, or has re-supplied, or has not agreed not to re-supply, goods or services, or goods or services of a particular kind or description, acquired from the first person:
    - (i) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or
    - (ii) in particular places or classes of places or in places other than particular places or classes of places.
- (4) A person (the *first person*) also engages in the practice of exclusive dealing if the first person:
- (a) acquires, or offers to acquire, goods or services; or
  - (b) acquires, or offers to acquire, goods or services at a particular price;
- on the condition that the person (the *second person*) from whom the first person acquires or offers to acquire the goods or services or, if the second person is a body corporate, a body corporate related to that body corporate will not supply goods or services, or goods or services of a particular kind or description, to any person, or will not, or will not except to a limited extent, supply goods or services, or goods or services of a particular kind or description:
- (c) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or
  - (d) in particular places or classes of places or in places other than particular places or classes of places.
- (5) A person (the *first person*) also engages in the practice of exclusive dealing if the first person refuses:
- (a) to acquire goods or services from a second person; or

- (b) to acquire goods or services at a particular price from a second person;  
for the reason that the second person or, if the second person is a body corporate, a body corporate related to that body corporate has supplied, or has not agreed not to supply, goods or services, or goods or services of a particular kind or description:
- (c) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or
- (d) in particular places or classes of places or in places other than particular places or classes of places.
- (6) A person (the **first person**) also engages in the practice of exclusive dealing if the first person:
- (a) supplies, or offers to supply, goods or services;
- (b) supplies, or offers to supply, goods or services at a particular price; or
- (c) gives or allows, or offers to give or allow, a discount, allowance, rebate or credit in relation to the supply or proposed supply of goods or services by the first person;  
on the condition that the person (the **second person**) to whom the first person supplies or offers or proposes to supply the goods or services or, if the second person is a body corporate, a body corporate related to that body corporate will acquire goods or services of a particular kind or description directly or indirectly from another person not being a body corporate related to the first person.
- (7) A person (the **first person**) also engages in the practice of exclusive dealing if the first person refuses:
- (a) to supply goods or services to a second person;
- (b) to supply goods or services at a particular price to a second person; or
- (c) to give or allow a discount, allowance, rebate or credit in relation to the supply of goods or services to a second person;  
for the reason that the second person or, if the second person is a body corporate, a body corporate related to that body corporate has not acquired, or has not agreed to acquire, goods or services of a particular kind or description directly or indirectly from another person not being a body corporate related to the first person.

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- (8) A person (the *first person*) also engages in the practice of exclusive dealing if the first person grants or renews, or makes it known that the first person will not exercise a power or right to terminate, a lease of, or a licence in respect of, land or a building or part of a building on the condition that another party to the lease or licence or, if that other party is a body corporate, a body corporate related to that body corporate:
- (a) will not, or will not except to a limited extent:
    - (i) acquire goods or services, or goods or services of a particular kind or description, directly or indirectly from a competitor of the first person or from a competitor of a body corporate related to the first person; or
    - (ii) re-supply goods or services, or goods or services of a particular kind or description, acquired directly or indirectly from a competitor of the first person or from a competitor of a body corporate related to the first person;
  - (b) will not supply goods or services, or goods or services of a particular kind or description, to any person, or will not, or will not except to a limited extent, supply goods or services, or goods or services of a particular kind or description:
    - (i) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or
    - (ii) in particular places or classes of places or in places other than particular places or classes of places; or
  - (c) will acquire goods or services of a particular kind or description directly or indirectly from another person not being a body corporate related to the first person.
- (9) A person (the *first person*) also engages in the practice of exclusive dealing if the first person refuses to grant or renew, or exercises a power or right to terminate, a lease of, or a licence in respect of, land or a building or part of a building for the reason that another party to the lease or licence or, if that other party is a body corporate, a body corporate related to that body corporate:
- (a) has acquired, or has not agreed not to acquire, goods or services, or goods or services of a particular kind or description, directly or indirectly from a competitor of the first person or from a competitor of a body corporate related to the first person;

- (b) has re-supplied, or has not agreed not to re-supply, goods or services, or goods or services of a particular kind or description, acquired directly or indirectly from a competitor of the first person or from a competitor of a body corporate related to the first person;
  - (c) has supplied goods or services, or goods or services of a particular kind or description:
    - (i) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or
    - (ii) in particular places or classes of places or in places other than particular places or classes of places; or
  - (d) has not acquired, or has not agreed to acquire, goods or services of a particular kind or description directly or indirectly from another person not being a body corporate related to the first person.
- (10) Subsection (1) does not apply to the practice of exclusive dealing constituted by a person engaging in conduct of a kind referred to in subsection (2), (3), (4) or (5) or paragraph (8)(a) or (b) or (9)(a), (b) or (c) unless:
- (a) the engaging by the person in that conduct has the purpose, or has or is likely to have the effect, of substantially lessening competition; or
  - (b) the engaging by the person in that conduct, and the engaging by the person, or by a body corporate related to the person, in other conduct of the same or a similar kind, together have or are likely to have the effect of substantially lessening competition.
- (10A) Subsection (1) does not apply to a person engaging in conduct described in subsection (6) or (7) or paragraph (8)(c) or (9)(d) if:
- (a) the person has given the Commission a notice under subsection 93(1) describing the conduct; and
  - (b) the notice is in force under section 93.
- (11) Subsections (8) and (9) do not apply with respect to:
- (a) conduct engaged in by, or by a trustee for, a religious, charitable or public benevolent institution, being conduct engaged in for or in accordance with the purposes or objects of that institution; or

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- (b) conduct engaged in in pursuance of a legally enforceable requirement made by, or by a trustee for, a religious, charitable or public benevolent institution, being a requirement made for or in accordance with the purposes or objects of that institution.
- (12) Subsection (1) does not apply with respect to any conduct engaged in by a body corporate by way of restricting dealings by another body corporate if those bodies corporate are related to each other.
- (13) In this section:
- (a) a reference to a condition shall be read as a reference to any condition, whether direct or indirect and whether having legal or equitable force or not, and includes a reference to a condition the existence or nature of which is ascertainable only by inference from the conduct of persons or from other relevant circumstances;
  - (b) a reference to competition, in relation to conduct to which a provision of this section other than subsection (8) or (9) applies, shall be read as a reference to competition in any market in which:
    - (i) the person engaging in the conduct or any body corporate related to that person; or
    - (ii) any person whose business dealings are restricted, limited or otherwise circumscribed by the conduct or, if that person is a body corporate, any body corporate related to that body corporate;  
supplies or acquires, or is likely to supply or acquire, goods or services or would, but for the conduct, supply or acquire, or be likely to supply or acquire, goods or services; and
  - (c) a reference to competition, in relation to conduct to which subsection (8) or (9) applies, shall be read as a reference to competition in any market in which the person engaging in the conduct or any other person whose business dealings are restricted, limited or otherwise circumscribed by the conduct, or any body corporate related to either of those persons, supplies or acquires, or is likely to supply or acquire, goods or services or would, but for the conduct, supply or acquire, or be likely to supply or acquire, goods or services.

#### **48 Resale price maintenance**

A person shall not engage in the practice of resale price maintenance.

#### **49 Dual listed company arrangements that affect competition**

- (1) A person must not:
- (a) make a dual listed company arrangement if a provision of the proposed arrangement has the purpose, or would have or be likely to have the effect, of substantially lessening competition; or
  - (b) give effect to a provision of a dual listed company arrangement if that provision has the purpose, or has or is likely to have the effect, of substantially lessening competition.

Note: Conduct that would otherwise contravene this section can be authorised under subsection 88(8B).

##### *Exception*

- (2) The making by a person of a dual listed company arrangement that contains a provision that has the purpose, or would have or be likely to have the effect, of substantially lessening competition does not contravene this section if:
- (a) the arrangement is subject to a condition that the provision will not come into force unless and until the person is granted an authorisation to give effect to the provision; and
  - (b) the person applies for the grant of such an authorisation within 14 days after the arrangement is made.

However, this subsection does not permit the person to give effect to such a provision.

##### *Meaning of **competition***

- (3) For the purposes of this section, **competition**, in relation to a provision of a dual listed company arrangement or of a proposed dual listed company arrangement, means competition in any market in which:
- (a) a person that is a party to the arrangement or would be a party to the proposed arrangement; or
  - (b) any body corporate related to such a person;

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supplies or acquires, or is likely to supply or acquire, goods or services or would, apart from the provision, supply or acquire, or be likely to supply or acquire, goods or services.

- (4) For the purposes of the application of this section in relation to a particular person, a provision of a dual listed company arrangement or of a proposed dual listed company arrangement is taken to have, or to be likely to have, the effect of substantially lessening competition if that provision and any one or more of the following provisions:
- (a) the other provisions of that arrangement or proposed arrangement;
  - (b) the provisions of any other contract, arrangement or understanding or proposed contract, arrangement or understanding to which the person or a body corporate related to the person is or would be a party;
- together have or are likely to have that effect.

**50 Prohibition of acquisitions that would result in a substantial lessening of competition**

- (1) A person must not directly or indirectly:
- (a) acquire shares in the capital of a body corporate; or
  - (b) acquire any assets of a person;
- if the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in a market.

Note: The person will not be prevented from making the acquisition if the corporation is granted a clearance or an authorisation for the acquisition under Division 3 of Part VII: see subsections 95AC(2) and 95AT(2).

- (3) Without limiting the matters that may be taken into account for the purposes of subsection (1) in determining whether the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in a market, the following matters must be taken into account:
- (a) the actual and potential level of import competition in the market;
  - (b) the height of barriers to entry to the market;
  - (c) the level of concentration in the market;
  - (d) the degree of countervailing power in the market;

- (e) the likelihood that the acquisition would result in the acquirer being able to significantly and sustainably increase prices or profit margins;
  - (f) the extent to which substitutes are available in the market or are likely to be available in the market;
  - (g) the dynamic characteristics of the market, including growth, innovation and product differentiation;
  - (h) the likelihood that the acquisition would result in the removal from the market of a vigorous and effective competitor;
  - (i) the nature and extent of vertical integration in the market.
- (4) Where:
- (a) a person has entered into a contract to acquire shares in the capital of a body corporate or assets of a person;
  - (b) the contract is subject to a condition that the provisions of the contract relating to the acquisition will not come into force unless and until the person has been granted a clearance or an authorization to acquire the shares or assets; and
  - (c) the person applied for the grant of such a clearance or an authorization before the expiration of 14 days after the contract was entered into;
- the acquisition of the shares or assets shall not be regarded for the purposes of this Act as having taken place in pursuance of the contract before:
- (d) the application for the clearance or authorization is disposed of; or
  - (e) the contract ceases to be subject to the condition;
- whichever first happens.
- (5) For the purposes of subsection (4), an application for a clearance shall be taken to be disposed of:
- (a) in a case to which paragraph (b) of this subsection does not apply—at the expiration of 14 days after the period in which an application may be made to the Tribunal for a review of the determination by the Commission of the application for the clearance; or
  - (b) if an application is made to the Tribunal for a review of the determination by the Commission of the application for the clearance—at the expiration of 14 days after the date of the making by the Tribunal of a determination on the review.

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(5A) For the purposes of subsection (4), an application for an authorisation is taken to be disposed of 14 days after the day the Tribunal makes a determination on the application.

(6) In this section:

**market** means a substantial market for goods or services in:

- (a) Australia; or
- (b) a State; or
- (c) a Territory; or
- (d) a region of Australia.

## 51 Exceptions

(1) In deciding whether a person has contravened this Part, the following must be disregarded:

- (a) anything that is disregarded for the purposes of Part IV of the *Competition and Consumer Act 2010* because of subsection 51(1) of that Act;
- (b) anything done in a State, if the thing is specified in, and specifically authorised by:
  - (i) an Act passed by the Parliament of that State; or
  - (ii) regulations made under such an Act;
- (c) anything done in the Australian Capital Territory, if the thing is specified in, and specifically authorised by:
  - (i) an enactment as defined in section 3 of the *Australian Capital Territory (Self-Government) Act 1988*; or
  - (ii) regulations made under such an enactment;
- (d) anything done in the Northern Territory, if the thing is specified in, and specifically authorised by:
  - (i) an enactment as defined in section 4 of the *Northern Territory (Self-Government) Act 1978*; or
  - (ii) regulations made under such an enactment;
- (e) anything done in another Territory, if the thing is specified in, and specifically authorised by:
  - (i) an Ordinance of that Territory; or
  - (ii) regulations made under such an Ordinance.

- (1A) Without limiting subsection (1), conduct is taken to be specified in, and authorised by, a law for the purposes of that subsection if:
- (a) a licence or other instrument issued or made under the law specifies one or both of the following:
    - (i) the person authorised to engage in the conduct;
    - (ii) the place where the conduct is to occur; and
  - (b) the law specifies the attributes of the conduct except those mentioned in paragraph (a).

For this purpose, *law* means a State Act, enactment or Ordinance.

- (1B) Subsections (1) and (1A) apply regardless of when the State Acts, enactments, Ordinances, regulations or instruments referred to in those subsections were passed, made or issued.

- (1C) The operation of subsection (1) (other than paragraph (1)(a)) is subject to the following limitations:
- (a) in order for something to be regarded as specifically authorised for the purposes of subsection (1), the authorising provision must expressly refer to the Competition Code;
  - (b) paragraphs (1)(b), (c), (d) and (e) do not apply in deciding whether a person has contravened section 50;
  - (c) regulations referred to in subparagraph (1)(b)(ii), (c)(ii), (d)(ii) or (e)(ii) do not have the effect of requiring a particular thing to be disregarded if the thing happens more than 2 years after those regulations came into operation;
  - (d) regulations referred to in subparagraph (1)(b)(ii), (c)(ii) or (d)(ii) do not have the effect of requiring a particular thing to be disregarded to the extent that the regulations are the same in substance as other regulations that:
    - (i) were made for the purposes of the subparagraph concerned; and
    - (ii) came into operation more than 2 years before the particular thing happened.

- (2) In determining whether a contravention of a provision of this Part other than section 45D, 45DA, 45E, 45EA or 48 has been committed, regard shall not be had:
- (a) to any act done in relation to, or to the making of a contract or arrangement or the entering into of an understanding, or to any provision of a contract, arrangement or understanding, to the extent that the contract, arrangement or understanding, or

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the provision, relates to, the remuneration, conditions of employment, hours of work or working conditions of employees;

- (b) to any provision of a contract of service or of a contract for the provision of services, being a provision under which a person, not being a body corporate, agrees to accept restrictions as to the work, whether as an employee or otherwise, in which he or she may engage during, or after the termination of, the contract;
  - (c) to any provision of a contract, arrangement or understanding, being a provision obliging a person to comply with or apply standards of dimension, design, quality or performance prepared or approved by Standards Australia International Limited or by a prescribed association or body;
  - (d) to any provision of a contract, arrangement or understanding between partners none of whom is a body corporate, being a provision in relation to the terms of the partnership or the conduct of the partnership business or in relation to competition between the partnership and a party to the contract, arrangement or understanding while he or she is, or after he or she ceases to be, a partner;
  - (e) in the case of a contract for the sale of a business or of shares in the capital of a body corporate carrying on a business—to any provision of the contract that is solely for the protection of the purchaser in respect of the goodwill of the business; or
  - (g) to any provision of a contract, arrangement or understanding, being a provision that relates exclusively to the export of goods from Australia or to the supply of services outside Australia, if full and accurate particulars of the provision (not including particulars of prices for goods or services but including particulars of any method of fixing, controlling or maintaining such prices) were furnished to the Commission before the expiration of 14 days after the date on which the contract or arrangement was made or the understanding was arrived at, or before 8 September 1976, whichever was the later.
- (2A) In determining whether a contravention of a provision of this Part other than section 48 has been committed, regard shall not be had to any acts done, otherwise than in the course of trade or

commerce, in concert by ultimate users or consumers of goods or services against the suppliers of those goods or services.

(3) A contravention of a provision of this Part other than section 46 or 48 shall not be taken to have been committed by reason of:

(a) the imposing of, or giving effect to, a condition of:

(i) a licence granted by the proprietor, licensee or owner of a patent, of a registered design, of a copyright or of EL rights within the meaning of the *Circuit Layouts Act 1989*, or by a person who has applied for a patent or for the registration of a design; or

(ii) an assignment of a patent, of a registered design, of a copyright or of such EL rights, or of the right to apply for a patent or for the registration of a design;

to the extent that the condition relates to:

(iii) the invention to which the patent or application for a patent relates or articles made by the use of that invention;

(iv) goods in respect of which the design is, or is proposed to be, registered and to which it is applied;

(v) the work or other subject matter in which the copyright subsists; or

(vi) the eligible layout in which the EL rights subsist;

(b) the inclusion in a contract, arrangement or understanding authorizing the use of a certification trade mark of a provision in accordance with rules applicable under Part XI of the *Trade Marks Act 1955*, or the giving effect to such a provision; or

(c) the inclusion in a contract, arrangement or understanding between:

(i) the registered proprietor of a trade mark other than a certification trade mark; and

(ii) a person registered as a registered user of that trade mark under Part IX of the *Trade Marks Act 1955* or a person authorized by the contract to use the trade mark subject to his or her becoming registered as such a registered user;

of a provision to the extent that it relates to the kinds, qualities or standards of goods bearing the mark that may be

**Schedule 1** The Schedule version of Part IV

**Part 1** Schedule version of Part IV

**Division 2** Other provisions

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produced or supplied, or the giving effect to the provision to that extent.

- (4) This section applies in determining whether a provision of a contract is unenforceable by reason of subsection 45(1), or whether a covenant is unenforceable by reason of subsection 45B(1), in like manner as it applies in determining whether a contravention of a provision of this Part has been committed.

## **Schedule 2—The Australian Consumer Law**

Note: See Part XI.

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- 4 Misleading representations with respect to future matters
- 5 When donations are treated as supplies or acquisitions
- 6 Related bodies corporate
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- 12 Application of Schedule in relation to leases and licences of land and buildings
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- 18 Misleading or deceptive conduct
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- 21 Unconscionable conduct
- 22 Unconscionable conduct in business transactions

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- 25 Examples of unfair terms
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- 27 Standard form contracts
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- 56 Guarantee relating to the supply of goods by description

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64 Guarantees not to be excluded etc. by contract

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- 84 Obligations of suppliers on termination
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- 124 Obligations of a supplier in relation to a recall notice
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- 126 Interaction of multiple recall notices
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**Division 4—Safety warning notices**

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- 130 Announcement of the results of an investigation etc.

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- 133 Liability under a contract of insurance

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- 154 Offering rebates, gifts, prizes etc.
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- 159 Misleading representations about certain business activities
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#### **Division 3—Pyramid schemes**

- 164 Participation in pyramid schemes

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- 174 Requirement to give document to the consumer
- 175 Requirements for all unsolicited consumer agreements etc.
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**Subdivision C—Terminating unsolicited consumer agreements**

- 178 Obligations of suppliers on termination
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**Subdivision D—Miscellaneous**

- 182 Certain provisions of unsolicited consumer agreements void
- 183 Waiver of rights
- 184 Application of this Division to persons to whom rights of consumers and suppliers are assigned etc.
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- 196 Requirement to nominate a safety standard

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198 Supplying etc. product related services covered by a ban

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209 Publication of advertisements in the ordinary course of business

210 Supplying goods acquired for the purpose of re-supply

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213 Preference must be given to compensation for victims

214 Penalties for contraventions of the same nature etc.

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216 Granting of injunctions etc.

217 Criminal proceedings not to be brought for contraventions of Chapter 2 or 3

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- 274 Indemnification of suppliers by manufacturers
- 275 Limitation of liability etc.
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- 283 Enforcement of judgments etc.
- 284 Award of interest to consumers
- 285 Liability of suppliers to linked credit providers, and of linked credit providers to suppliers
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**Division 2—Non-linked credit contracts**

- 287 Liability of suppliers and credit providers relating to non-linked credit contracts

## Chapter 1—Introduction

### 1 Application of this Schedule

This Schedule applies to the extent provided by:

- (a) Part XI of the Competition and Consumer Act; or
- (b) an application law.

### 2 Definitions

(1) In this Schedule:

**ABN** has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

**acceptable quality**: see sections 54(2) to (7).

**ACN** has the meaning given by section 9 of the *Corporations Act 2001*.

**acquire** includes:

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

Note: Section 5 deals with when receipt of a donation is an acquisition.

**adverse publicity order**: see section 247(2).

**affected person**, in relation to goods, means:

- (a) a consumer who acquires the goods; or
- (b) a person who acquires the goods from the consumer (other than for the purpose of re-supply); or
- (c) a person who derives title to the goods through or under the consumer.

**agreement document**: see section 78(2).

**applicable industry code** has the meaning given by section 51ACA(1) of the Competition and Consumer Act.

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**application law** has the same meaning as in section 140 of the Competition and Consumer Act.

**article** includes a token, card or document.

**ASIC** means the Australian Securities and Investments Commission.

**assert a right to payment**: see section 10(1).

**associate regulator**:

- (a) for the purposes of the application of this Schedule as a law of the Commonwealth—means a body that is, for the purposes of the application of this Schedule as a law of a State or a Territory, the regulator within the meaning of the application law of the State or Territory; or
- (b) for the purposes of the application of this Schedule as a law of a State or a Territory—means:
  - (i) the Commission; or
  - (ii) a body that is, for the purposes of the application of this Schedule as a law of another State or a Territory, the regulator within the meaning of the application law of that other State or Territory.

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

- (a) a body corporate established for a purpose of the State or the Territory by or under a law of the State or Territory; or
- (b) an incorporated company in which the State or the Territory, or a body corporate referred to in paragraph (a), has a controlling interest.

**authority of the Commonwealth** means:

- (a) a body corporate established for a purpose of the Commonwealth by or under a law of the Commonwealth or a law of a Territory; or
- (b) an incorporated company in which the Commonwealth, or a body corporate referred to in paragraph (a), has a controlling interest.

**banker** has the same meaning as in section 4(1) of the Competition and Consumer Act.

***ban period*** for an interim ban: see section 111(1).

***business*** includes a business not carried on for profit.

***business day***, in relation to an unsolicited consumer agreement, means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a public holiday in the place where the agreement was made.

***business or professional relationship*** includes a relationship between employer and employee, or a similar relationship.

***call on***, in relation to negotiating an unsolicited consumer agreement, does not include call by telephone.

***Commission*** has the same meaning as in section 4(1) of the Competition and Consumer Act.

***Commonwealth mandatory standard***, in relation to goods, means a mandatory standard in respect of the goods imposed by a law of the Commonwealth.

***Commonwealth Minister*** means the Minister who administers Part XI of the Competition and Consumer Act.

***Competition and Consumer Act*** means the *Competition and Consumer Act 2010*.

***consumer***: see section 3.

***consumer contract***: see section 23(3).

***consumer goods*** means goods that are intended to be used, or are of a kind likely to be used, for personal, domestic or household use or consumption, and includes any such goods that have become fixtures since the time they were supplied if:

- (a) a recall notice for the goods has been issued; or
- (b) a person has voluntarily taken action to recall the goods.

***continuing credit contract***: see section 14(1).

***contravening conduct***: see section 239(1)(a)(i).

***court***, in relation to a matter, means any court having jurisdiction in the matter.

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**covering** includes a stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper.

**credit card**: see section 39(5).

**credit provider** means a person providing, or proposing to provide, in the course of a business carried on by the person, credit to consumers in relation to the acquisition of goods or services.

**dealer**: see section 71.

**debit card**: see section 39(6).

**declared term**: see section 239(1)(a)(ii).

**defective goods action** means an action under section 138, 139, 140 or 141, and includes such an action because of section 138(3) or 145.

**disclosed purpose**: see section 55(2).

**displayed price**: see sections 47(2) to (5).

**document** includes:

- (a) a book, plan, paper, parchment or other material on which there is writing or printing, or on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) a disc, tape, paper or other device from which sounds or messages are capable of being reproduced.

**enforcement proceeding** means:

- (a) a proceeding for an offence against Chapter 4; or
- (b) a proceeding instituted under Chapter 5 (other than under sections 237 and 239).

**evidential burden**, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

**express warranty**, in relation to goods, means an undertaking, assertion or representation:

- (a) that relates to:

- (i) the quality, state, condition, performance or characteristics of the goods; or
  - (ii) the provision of services that are or may at any time be required for the goods; or
  - (iii) the supply of parts that are or may at any time be required for the goods; or
  - (iv) the future availability of identical goods, or of goods constituting or forming part of a set of which the goods, in relation to which the undertaking, assertion or representation is given or made, form part; and
- (b) that is given or made in connection with the supply of the goods, or in connection with the promotion by any means of the supply or use of the goods; and
- (c) the natural tendency of which is to induce persons to acquire the goods.

**financial product** has the meaning given by section 12BAA of the *Australian Securities and Investments Commission Act 2001*.

**financial service** has the meaning given by section 12BAB of the *Australian Securities and Investments Commission Act 2001*.

**free item** includes a free service.

**goods** includes:

- (a) ships, aircraft and other vehicles; and
- (b) animals, including fish; and
- (c) minerals, trees and crops, whether on, under or attached to land or not; and
- (d) gas and electricity; and
- (e) computer software; and
- (f) second-hand goods; and
- (g) any component part of, or accessory to, goods.

**grown**: see section 255(7).

**GST** has the meaning given by section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

**industry code** has the meaning given by section 51ACA of the Competition and Consumer Act.

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**information provider:** see sections 19(5) and (6).

**information standard:** see sections 134(1) and 135(1).

**inner container** includes any container into which goods are packed, other than a shipping or airline container, pallet or other similar article.

**interest**, in relation to land, means:

- (a) a legal or equitable estate or interest in the land; or
- (b) a right of occupancy of the land, or of a building or part of a building erected on the land, arising by virtue of the holding of shares, or by virtue of a contract to purchase shares, in an incorporated company that owns the land or building; or
- (c) a right, power or privilege over, or in connection with, the land.

**interim ban:** see sections 109(1) and (2).

**involved:** a person is involved, in a contravention of a provision of this Schedule or in conduct that constitutes such a contravention, if the person:

- (a) has aided, abetted, counselled or procured the contravention; or
- (b) has induced, whether by threats or promises or otherwise, the contravention; or
- (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
- (d) has conspired with others to effect the contravention.

**joint liability proceedings** means proceedings relating to the joint and several liability under section 278 of a linked credit provider and a supplier of goods or services.

**label** includes a band or ticket.

**lay-by agreement:** see section 96(3).

**linked credit contract:** see section 278(2).

**linked credit provider**, in relation to a supplier of goods or services, means a credit provider:

- (a) with whom the supplier has a contract, arrangement or understanding relating to:

- (i) the supply to the supplier of goods in which the supplier deals; or
  - (ii) the business carried on by the supplier of supplying goods or services; or
  - (iii) the provision to persons to whom goods or services are supplied by the supplier of credit in respect of payment for those goods or services; or
- (b) to whom the supplier, by arrangement with the credit provider, regularly refers persons for the purpose of obtaining credit; or
- (c) whose forms of contract, forms of application or offers for credit are, by arrangement with the credit provider, made available to persons by the supplier; or
- (d) with whom the supplier has a contract, arrangement or understanding under which contracts, applications or offers for credit from the credit provider may be signed by persons at premises of the supplier.

**listed public company** has the meaning given by section 995-1(1) the *Income Tax Assessment Act 1997*.

**loan contract** means a contract under which a person in the course of a business carried on by that person provides or agrees to provide, whether on one or more occasions, credit to a consumer in one or more of the following ways:

- (a) by paying an amount to, or in accordance with the instructions of, the consumer;
- (b) by applying an amount in satisfaction or reduction of an amount owed to the person by the consumer;
- (c) by varying the terms of a contract under which money owed to the person by the consumer is payable;
- (d) by deferring an obligation of the consumer to pay an amount to the person;
- (e) by taking from the consumer a bill of exchange or other negotiable instrument on which the consumer (whether alone or with another person or other persons) is liable as drawer, acceptor or endorser.

**major failure**: see sections 260 and 268.

**mandatory standard**, in relation to goods, means a standard:

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- (a) for the goods or anything relating to the goods; and
- (b) that, under a law of the Commonwealth, a State or a Territory, must be complied with when the goods are supplied by their manufacturer, being a law creating an offence or liability if there is such non-compliance;

but does not include a standard which may be complied with by meeting a higher standard.

**manufacturer:** see section 7.

**market** has the same meaning as in section 4E of the Competition and Consumer Act.

**materials**, in relation to goods, means:

- (a) if the goods are unmanufactured raw products—those products; and
- (b) if the goods are manufactured goods—all matter or substances used or consumed in the manufacture of the goods (other than matter or substances that are treated as overheads); and
- (c) in either case—the inner containers in which the goods are packed.

**mixed supply:** see section 3(11).

**National Credit Code** has the meaning given by section 5(1) of the *National Consumer Credit Protection Act 2009*.

**negotiated by telephone:** see section 78(3).

**negotiation:** see section 72.

**new participant:** see section 45(2).

**non-linked credit contract:** see section 287(5).

**non-party consumer** means:

- (a) in relation to conduct referred to in section 239(1)(a)(i)—a person who is not, or has not been, a party to an enforcement proceeding in relation to the conduct; and
- (b) in relation to a term of a consumer contract referred to in section 239(1)(a)(ii)—a person who is not, or has not been, a party to an enforcement proceeding in relation to the term.

**participant**, in a pyramid scheme, means a person who participates in the scheme.

**participate**, in a pyramid scheme: see section 44(3).

**participation payment**: see section 45(1)(a).

**permanent ban**: see sections 114(1) and (2).

**premises** means:

- (a) an area of land or any other place (whether or not it is enclosed or built on); or
- (b) a building or other structure; or
- (c) a vehicle, vessel or aircraft; or
- (d) a part of any such premises.

**price**, of goods or services, means:

- (a) the amount paid or payable (including any charge of any description) for their acquisition; or
- (b) if such an amount is not specified because the acquisition is part only of a transaction for which a total amount is paid or payable:
  - (i) the lowest amount (including any charge of any description) for which the goods or services could reasonably have been acquired from the supplier at the time of the transaction or, if not from the supplier, from another supplier; or
  - (ii) if they could not reasonably have been acquired separately from another supplier—their value at the time of the transaction.

**prior negotiations or arrangements**, in relation to the acquisition of goods by a consumer, means negotiations or arrangements:

- (a) that were conducted or made with the consumer by another person in the course of a business carried on by the other person; and
- (b) that induced the consumer to acquire the goods, or otherwise promoted the acquisition of the goods by the consumer.

**product related service** means a service for or relating to:

- (a) the installation of consumer goods of a particular kind; or

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- (b) the maintenance, repair or cleaning of consumer goods of a particular kind; or
  - (c) the assembly of consumer goods of a particular kind; or
  - (d) the delivery of consumer goods of a particular kind;
- and, without limiting paragraphs (a) to (d), includes any other service that relates to the supply of consumer goods of that kind.

***proof of transaction***: see section 100(4).

***publish***, in relation to an advertisement, means include in a publication intended for sale or public distribution (whether to the public generally or to a restricted class or number of persons) or for public display (including in an electronic form).

***pyramid scheme***: see section 45(1).

***recall notice***: see section 122(1).

***recovery period***: see section 41(4).

***recruitment payment***: see section 45(1)(b).

***regulations*** means regulations made under section 139G of the Competition and Consumer Act.

***regulator***:

- (a) for the purposes of the application of this Schedule as a law of the Commonwealth—means the Commission; or
- (b) for the purposes of the application of this Schedule as a law of a State or a Territory—has the meaning given by the application law of the State or Territory.

***rejection period***: see section 262(2).

***related***, in relation to a body corporate: see section 6.

***related contract or instrument***: see section 83(2).

***rely on***, in relation to a term of a consumer contract, includes the following:

- (a) attempt to enforce the term;
- (b) attempt to exercise a right conferred, or purportedly conferred, by the term;

- (c) assert the existence of a right conferred, or purportedly conferred, by the term.

**responsible Minister** means:

- (a) the Commonwealth Minister; or
- (b) the Minister of a State who administers the application law of the State; or
- (c) the Minister of a Territory who administers the application law of the Territory.

**safety defect**, in relation to goods: see section 9.

**safety standard**: see sections 104(1) and 105(1).

**sale by auction**, in relation to the supply of goods by a person, means a sale by auction that is conducted by an agent of the person (whether the agent acts in person or by electronic means).

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

**serious injury or illness** means an acute physical injury or illness that requires medical or surgical treatment by, or under the supervision of, a medical practitioner or a nurse (whether or not in a hospital, clinic or similar place), but does not include:

- (a) an ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development); or
- (b) the recurrence, or aggravation, of such an ailment, disorder, defect or morbid condition.

**services** includes:

- (a) any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges or facilities that are, or are to be, provided, granted or conferred in trade or commerce; and
- (b) without limiting paragraph (a), the rights, benefits, privileges or facilities that are, or are to be, provided, granted or conferred under:
  - (i) a contract for or in relation to the performance of work (including work of a professional nature), whether with or without the supply of goods; or

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- (ii) a contract for or in relation to the provision of, or the use or enjoyment of facilities for, amusement, entertainment, recreation or instruction; or
  - (iii) a contract for or in relation to the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction; or
  - (iv) a contract of insurance; or
  - (v) a contract between a banker and a customer of the banker entered into in the course of the carrying on by the banker of the business of banking; or
  - (vi) any contract for or in relation to the lending of money;
- but does not include rights or benefits being the supply of goods or the performance of work under a contract of service.

*share* includes stock.

*ship* has the meaning given by section 3(1) of the *Admiralty Act 1988*.

*single price*: see section 48(7).

*substantially transformed*, in relation to goods: see section 255(3).

*substantiation notice* means a notice under section 219.

*substantiation notice compliance period*: see section 221(2).

*supply*, when used as a verb, includes:

- (a) in relation to goods—supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and
  - (b) in relation to services—provide, grant or confer;
- and, when used as a noun, has a corresponding meaning, and *supplied* and *supplier* have corresponding meanings.

Note: Section 5 deals with when a donation is a supply.

*supply of limited title*: see section 51(2).

*telecommunications service*: see section 65(2).

*termination charge*: see section 97(2).

*termination period*, in relation to an unsolicited consumer agreement, means the period within which the consumer under the

agreement is, under section 82 or under the agreement, entitled to terminate the agreement.

***tiered continuing credit contract*** means a continuing credit contract under which a credit provider provides credit in respect of the payment by a consumer for goods or services supplied by a supplier in relation to whom the credit provider is a linked credit provider.

***tiered loan contract*** means a loan contract entered into between a credit provider and a consumer where:

- (a) the credit provider knows, or ought reasonably to know, that the consumer enters into the loan contract wholly or partly for the purposes of payment for goods or services supplied by a supplier; and
- (b) at the time the loan contract is entered into the credit provider is a linked credit provider of the supplier.

***trade or commerce*** means:

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

and includes any business or professional activity (whether or not carried on for profit).

***transparent***:

- (a) in relation to a document—means:
  - (i) expressed in reasonably plain language; and
  - (ii) legible; and
  - (iii) presented clearly; and
- (b) in relation to a term of a consumer contract—see section 24(3).

***unfair***, in relation to a term of a consumer contract: see section 24(1).

***unsolicited consumer agreement***: see section 69.

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

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

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**upfront price:** see section 26(2).

**warranty against defects:** see section 102(3).

(2) In this Schedule:

- (a) a reference to engaging in conduct is a reference to doing or refusing to do any act, including:
  - (i) the making of, or the giving effect to a provision of, a contract or arrangement; or
  - (ii) the arriving at, or the giving effect to a provision of, an understanding; or
  - (iii) the requiring of the giving of, or the giving of, a covenant; and
- (b) a reference to conduct, when that expression is used as a noun otherwise than as mentioned in paragraph (a), is a reference to the doing of or the refusing to do any act, including:
  - (i) the making of, or the giving effect to a provision of, a contract or arrangement; or
  - (ii) the arriving at, or the giving effect to a provision of, an understanding; or
  - (iii) the requiring of the giving of, or the giving of, a covenant; and
- (c) a reference to refusing to do an act includes a reference to:
  - (i) refraining (otherwise than inadvertently) from doing that act; or
  - (ii) making it known that that act will not be done; and
- (d) a reference to a person offering to do an act, or to do an act on a particular condition, includes a reference to the person making it known that the person will accept applications, offers or proposals for the person to do that act or to do that act on that condition, as the case may be.

### 3 Meaning of *consumer*

#### *Acquiring goods as a consumer*

- (1) A person is taken to have acquired particular goods as a **consumer** if, and only if:
  - (a) the amount paid or payable for the goods, as worked out under subsections (4) to (9), did not exceed:

- (i) \$40,000; or
    - (ii) if a greater amount is prescribed for the purposes of this paragraph—that greater amount; or
  - (b) the goods were of a kind ordinarily acquired for personal, domestic or household use or consumption; or
  - (c) the goods consisted of a vehicle or trailer acquired for use principally in the transport of goods on public roads.
- (2) However, subsection (1) does not apply if the person acquired the goods, or held himself or herself out as acquiring the goods:
- (a) for the purpose of re-supply; or
  - (b) for the purpose of using them up or transforming them, in trade or commerce:
    - (i) in the course of a process of production or manufacture; or
    - (ii) in the course of repairing or treating other goods or fixtures on land.

*Acquiring services as a consumer*

- (3) A person is taken to have acquired particular services as a **consumer** if, and only if:
- (a) the amount paid or payable for the services, as worked out under subsections (4) to (9), did not exceed:
    - (i) \$40,000; or
    - (ii) if a greater amount is prescribed for the purposes of subsection (1)(a)—that greater amount; or
  - (b) the services were of a kind ordinarily acquired for personal, domestic or household use or consumption.

*Amounts paid or payable for purchases*

- (4) For the purposes of subsection (1) or (3), the amount paid or payable for goods or services purchased by a person is taken to be the price paid or payable by the person for the goods or services, unless subsection (5) applies.
- (5) For the purposes of subsection (1) or (3), if a person purchased goods or services by a mixed supply and a specified price was not allocated to the goods or services in the contract under which they

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were purchased, the amount paid or payable for goods or services is taken to be:

- (a) if, at the time of the acquisition, the person could have purchased from the supplier the goods or services other than by a mixed supply—the price at which they could have been purchased from the supplier; or
- (b) if:
  - (i) paragraph (a) does not apply; but
  - (ii) at the time of the acquisition, goods or services of the kind acquired could have been purchased from another supplier other than by a mixed supply;  
the lowest price at which the person could, at that time, reasonably have purchased goods or services of that kind from another supplier; or
- (c) if, at the time of the acquisition, goods or services of the kind acquired could not have been purchased from any supplier except by a mixed supply—the value of the goods or services at that time.

*Amounts paid or payable for other acquisitions*

- (6) For the purposes of subsection (1) or (3), the amount paid or payable for goods or services acquired by a person other than by way of purchase is taken to be the price at which, at the time of the acquisition, the person could have purchased the goods or services from the supplier, unless subsection (7) or (8) applies.
- (7) For the purposes of subsection (1) or (3), if:
  - (a) goods or services acquired by a person other than by way of purchase could not, at the time of the acquisition, have been purchased from the supplier, or could have been purchased only by a mixed supply; but
  - (b) at that time, goods or services of the kind acquired could have been purchased from another supplier other than by a mixed supply;  
the amount paid or payable for the goods or services is taken to be the lowest price at which the person could, at that time, reasonably have purchased goods or services of that kind from another supplier.

- (8) For the purposes of subsection (1) or (3), if goods or services acquired by a person other than by way of purchase could not, at the time of the acquisition, have been purchased from any supplier other than by a mixed supply, the amount paid or payable for the goods or services is taken to be the value of the goods or services at that time.

*Amounts paid or payable for obtaining credit*

- (9) If:
- (a) a person obtains credit in connection with the acquisition of goods or services by him or her; and
  - (b) the amount paid or payable by him or her for the goods or services is increased because he or she so obtains credit;
- obtaining the credit is taken for the purposes of subsection (3) to be the acquisition of a service, and the amount paid or payable by him or her for the service of being provided with the credit is taken to include the amount of the increase.

*Presumption that persons are consumers*

- (10) If it is alleged in any proceeding under this Schedule, or in any other proceeding in respect of a matter arising under this Schedule, that a person was a consumer in relation to particular goods or services, it is presumed, unless the contrary is established, that the person was a consumer in relation to those goods or services.

*Mixed supplies*

- (11) A purchase or other acquisition of goods or services is made by a ***mixed supply*** if the goods or services are purchased or acquired together with other property or services, or together with both other property and other services.

*Supplies to consumers*

- (12) In this Schedule, a reference to a supply of goods or services to a consumer is a reference to a supply of goods or services to a person who is taken to have acquired them as a consumer.

#### **4 Misleading representations with respect to future matters**

- (1) If:
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- (a) a person makes a representation with respect to any future matter (including the doing of, or the refusing to do, any act); and
  - (b) the person does not have reasonable grounds for making the representation;
- the representation is taken, for the purposes of this Schedule, to be misleading.
- (2) For the purposes of applying subsection (1) in relation to a proceeding concerning a representation made with respect to a future matter by:
    - (a) a party to the proceeding; or
    - (b) any other person;the party or other person is taken not to have had reasonable grounds for making the representation, unless evidence is adduced to the contrary.
  - (3) To avoid doubt, subsection (2) does not:
    - (a) have the effect that, merely because such evidence to the contrary is adduced, the person who made the representation is taken to have had reasonable grounds for making the representation; or
    - (b) have the effect of placing on any person an onus of proving that the person who made the representation had reasonable grounds for making the representation.
  - (4) Subsection (1) does not limit by implication the meaning of a reference in this Schedule to:
    - (a) a misleading representation; or
    - (b) a representation that is misleading in a material particular; or
    - (c) conduct that is misleading or is likely or liable to mislead;and, in particular, does not imply that a representation that a person makes with respect to any future matter is not misleading merely because the person has reasonable grounds for making the representation.

**5 When donations are treated as supplies or acquisitions**

- (1) For the purposes of this Schedule, other than Parts 3-3, 3-4, 4-3 and 4-4:

- (a) a donation of goods or services is not treated as a supply of the goods or services unless the donation is for promotional purposes; and
  - (b) receipt of a donation of goods or services is not treated as an acquisition of the goods or services unless the donation is for promotional purposes.
- (2) For the purposes of Parts 3-3, 3-4, 4-3 and 4-4:
- (a) any donation of goods or services is treated as a supply of the goods or services; and
  - (b) receipt of any donation of goods or services is treated as an acquisition of the goods or services.

## **6 Related bodies corporate**

- (1) A body corporate is taken to be *related* to another body corporate if the bodies corporate would, under section 4A(5) of the Competition and Consumer Act, be deemed to be related to each other.
- (2) In proceedings under this Schedule, it is presumed, unless the contrary is established, that bodies corporate are not, or were not at a particular time, related to each other.

## **7 Meaning of *manufacturer***

- (1) A *manufacturer* includes the following:
- (a) a person who grows, extracts, produces, processes or assembles goods;
  - (b) a person who holds himself or herself out to the public as the manufacturer of goods;
  - (c) a person who causes or permits the name of the person, a name by which the person carries on business or a brand or mark of the person to be applied to goods supplied by the person;
  - (d) a person (the *first person*) who causes or permits another person, in connection with:
    - (i) the supply or possible supply of goods by that other person; or
    - (ii) the promotion by that other person by any means of the supply or use of goods;

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to hold out the first person to the public as the manufacturer of the goods;

- (e) a person who imports goods into Australia if:
  - (i) the person is not the manufacturer of the goods; and
  - (ii) at the time of the importation, the manufacturer of the goods does not have a place of business in Australia.
- (2) For the purposes of subsection (1)(c):
  - (a) a name, brand or mark is taken to be applied to goods if:
    - (i) it is woven in, impressed on, worked into or annexed or affixed to the goods; or
    - (ii) it is applied to a covering, label, reel or thing in or with which the goods are supplied; and
  - (b) if the name of a person, a name by which a person carries on business or a brand or mark of a person is applied to goods, it is presumed, unless the contrary is established, that the person caused or permitted the name, brand or mark to be applied to the goods.
- (3) If goods are imported into Australia on behalf of a person, the person is taken, for the purposes of paragraph (1)(e), to have imported the goods into Australia.

## **8 Goods affixed to land or premises**

For the purposes of this Schedule, goods are taken to be supplied to a consumer even if they are affixed to land or premises at the time of the supply.

## **9 Meaning of *safety defect* in relation to goods**

- (1) For the purposes of this Schedule, goods have a *safety defect* if their safety is not such as persons generally are entitled to expect.
- (2) In determining the extent of the safety of goods, regard is to be given to all relevant circumstances, including:
  - (a) the manner in which, and the purposes for which, they have been marketed; and
  - (b) their packaging; and
  - (c) the use of any mark in relation to them; and

- (d) any instructions for, or warnings with respect to, doing, or refraining from doing, anything with or in relation to them; and
  - (e) what might reasonably be expected to be done with or in relation to them; and
  - (f) the time when they were supplied by their manufacturer.
- (3) An inference that goods have a safety defect is not to be made only because of the fact that, after they were supplied by their manufacturer, safer goods of the same kind were supplied.
- (4) An inference that goods have a safety defect is not to be made only because:
- (a) there was compliance with a Commonwealth mandatory standard for them; and
  - (b) that standard was not the safest possible standard having regard to the latest state of scientific or technical knowledge when they were supplied by their manufacturer.

## **10 Asserting a right to payment**

- (1) A person is taken to *assert a right to payment* from another person if the person:
- (a) makes a demand for the payment or asserts a present or prospective right to the payment; or
  - (b) threatens to bring any legal proceedings with a view to obtaining the payment; or
  - (c) places or causes to be placed the name of the other person on a list of defaulters or debtors, or threatens to do so, with a view to obtaining the payment; or
  - (d) invokes or causes to be invoked any other collection procedure, or threatens to do so, with a view to obtaining the payment; or
  - (e) sends any invoice or other document that:
    - (i) states the amount of the payment; or
    - (ii) sets out the price of unsolicited goods or unsolicited services; or
    - (iii) sets out the charge for placing, in a publication, an entry or advertisement;and does not contain a statement, to the effect that the document is not an assertion of a right to a payment, that

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complies with any requirements prescribed by the regulations.

- (2) For the purposes of this section, an invoice or other document purporting to have been sent by or on behalf of a person is taken to have been sent by that person unless the contrary is established.

## 11 References to acquisition, supply and re-supply

In this Schedule:

- (a) a reference to the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to, goods pursuant to a supply of the goods; and
- (b) a reference to the supply or acquisition of goods or services includes a reference to agreeing to supply or acquire goods or services; and
- (c) a reference to the supply or acquisition of goods includes a reference to the supply or acquisition of goods together with other property or services, or both; and
- (d) a reference to the supply or acquisition of services includes a reference to the supply or acquisition of services together with property or other services, or both; and
- (e) a reference to the re-supply of goods acquired from a person includes a reference to:
  - (i) a supply of the goods to another person in an altered form or condition; and
  - (ii) a supply to another person of goods in which the first-mentioned goods have been incorporated; and
- (f) a reference to the re-supply of services (the *original services*) acquired from a person (the *original supplier*) includes a reference to:
  - (i) a supply of the original services to another person in an altered form or condition; and
  - (ii) a supply to another person of other services that are substantially similar to the original services, and could not have been supplied if the original services had not been acquired by the person who acquired them from the original supplier.

## **12 Application of Schedule in relation to leases and licences of land and buildings**

In this Schedule:

- (a) a reference to a contract includes a reference to a lease of, or a licence in respect of, land or a building or part of a building (despite the express references in this Schedule to such leases or licences); and
- (b) a reference to making or entering into a contract, in relation to such a lease or licence, is a reference to granting or taking the lease or licence; and
- (c) a reference to a party to a contract, in relation to such a lease or licence, includes a reference to any person bound by, or entitled to the benefit of, any provision contained in the lease or licence.

## **13 Loss or damage to include injury**

In this Schedule:

- (a) a reference to loss or damage, other than a reference to the amount of any loss or damage, includes a reference to injury; and
- (b) a reference to the amount of any loss or damage includes a reference to damages in respect of an injury.

## **14 Meaning of *continuing credit contract***

(1) If:

- (a) a person (the ***creditor***), in the course of a business carried on by the creditor, agrees with a consumer to provide credit to the consumer in relation to:
  - (i) payment for goods or services; or
  - (ii) cash supplied by the creditor to the consumer from time to time; or
  - (iii) payment by the creditor to another person in relation to goods or services, or cash, supplied by that other person to the consumer from time to time; and
- (b) the creditor:
  - (i) has an agreement, arrangement or understanding (the ***credit agreement***) with the consumer in relation to the provision of the credit; or

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- (ii) is engaged in a course of dealing (the *credit dealing*) with the consumer in relation to the provision of the credit; and
  - (c) the amounts owing to the creditor from time to time under the credit agreement or credit dealing are, or are to be, calculated on the basis that:
    - (i) all amounts owing; and
    - (ii) all payments made;by the consumer under, or in respect of, the credit agreement or credit dealing are entered in one or more accounts kept for the purpose of that agreement or dealing;the credit agreement or credit dealing is taken, for the purposes of this Schedule, to be a *continuing credit contract*.
- (2) If subsection (1)(a)(iii) applies, the creditor is taken, for the purposes of this section, to have provided credit to the consumer in relation to any goods or services, or cash, supplied by another person to the consumer to the extent of any payments made, or to be made, by the creditor to that other person.

## **15 Contraventions of this Schedule**

Conduct is not taken, for the purposes of this Schedule, to contravene a provision of this Schedule merely because of the application of:

- (a) section 23(1); or
- (b) a provision of Division 1 of Part 3-2 (other than section 66(2)); or
- (c) a provision of Part 3-5.

## **16 Severability**

- (1) If the making of a contract after the commencement of this section contravenes this Schedule because the contract includes a particular provision, nothing in this Schedule affects the validity or enforceability of the contract otherwise than in relation to that provision, so far as that provision is severable.
- (2) This section has effect subject to any order made under Division 4 of Part 5-2.

## **17 References to provisions in this Schedule**

In this Schedule, a reference to a provision is a reference to a provision of this Schedule, unless the contrary intention appears.

## Chapter 2—General protections

### Part 2-1—Misleading or deceptive conduct

#### 18 Misleading or deceptive conduct

- (1) A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.
- (2) Nothing in Part 3-1 (which is about unfair practices) limits by implication subsection (1).

Note: For rules relating to representations as to the country of origin of goods, see Part 5-3.

#### 19 Application of this Part to information providers

- (1) This Part does not apply to a publication of matter by an information provider if:
  - (a) in any case—the information provider made the publication in the course of carrying on a business of providing information; or
  - (b) if the information provider is the Australian Broadcasting Corporation, the Special Broadcasting Service Corporation or the holder of a licence granted under the *Broadcasting Services Act 1992*—the publication was by way of a radio or television broadcast by the information provider.
- (2) Subsection (1) does not apply to a publication of an advertisement.
- (3) Subsection (1) does not apply to a publication of matter in connection with the supply or possible supply of, or the promotion by any means of the supply or use of, goods or services (the **publicised goods or services**), if:
  - (a) the publicised goods or services were goods or services of a kind supplied by the information provider or, if the information provider is a body corporate, by a body corporate that is related to the information provider; or
  - (b) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a person who

- supplies goods or services of the same kind as the publicised goods or services; or
- (c) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a body corporate that is related to a body corporate that supplies goods or services of the same kind as the publicised goods or services.
- (4) Subsection (1) does not apply to a publication of matter in connection with the sale or grant, or possible sale or grant, of, or the promotion by any means of the sale or grant of, interests in land (the **publicised interests in land**), if:
- (a) the publicised interests in land were interests of a kind sold or granted by the information provider or, if the information provider is a body corporate, by a body corporate that is related to the information provider; or
- (b) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a person who sells or grants interests of the same kind as the publicised interests in land; or
- (c) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a body corporate that is related to a body corporate that sells or grants interests of the same kind as the publicised interests in land.
- (5) An **information provider** is a person who carries on a business of providing information.
- (6) Without limiting subsection (5), each of the following is an **information provider**:
- (a) the holder of a licence granted under the *Broadcasting Services Act 1992*;
- (b) a person who is the provider of a broadcasting service under a class licence under that Act;
- (c) the holder of a licence continued in force by section 5(1) of the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*;
- (d) the Australian Broadcasting Corporation;
- (e) the Special Broadcasting Service Corporation.

## Part 2-2—Unconscionable conduct

### 20 Unconscionable conduct within the meaning of the unwritten law

- (1) A person must not, in trade or commerce, engage in conduct that is unconscionable, within the meaning of the unwritten law from time to time.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) This section does not apply to conduct that is prohibited by section 21 or 22.

### 21 Unconscionable conduct

- (1) A person must not, in trade or commerce, in connection with the supply or possible supply of goods or services to another person, engage in conduct that is, in all the circumstances, unconscionable.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) Without in any way limiting the matters to which the court may have regard for the purpose of determining whether a person (the *supplier*) has contravened subsection (1) in connection with the supply or possible supply of goods or services to another person (the *consumer*), the court may have regard to:
- (a) the relative strengths of the bargaining positions of the supplier and the consumer; and
  - (b) whether, as a result of conduct engaged in by the person, the consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier; and
  - (c) whether the consumer was able to understand any documents relating to the supply or possible supply of the goods or services; and
  - (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the consumer or a person acting on behalf of the consumer by the supplier or a person acting on behalf of the supplier in relation to the supply or possible supply of the goods or services; and

- (e) the amount for which, and the circumstances under which, the consumer could have acquired identical or equivalent goods or services from a person other than the supplier.
- (3) A person is not to be taken for the purposes of this section to engage in unconscionable conduct in connection with the supply or possible supply of goods or services to a person by reason only that the person institutes legal proceedings in relation to that supply or possible supply or refers a dispute or claim in relation to that supply or possible supply to arbitration.
- (4) For the purpose of determining whether a person has contravened subsection (1) in connection with the supply or possible supply of goods or services to another person:
  - (a) the court must not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and
  - (b) the court may have regard to conduct engaged in, or circumstances existing, before the commencement of this section.
- (5) A reference in this section to goods or services is a reference to goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption.
- (6) A reference in this section to the supply or possible supply of goods does not include a reference to the supply or possible supply of goods for the purpose of re-supply or for the purpose of using them up or transforming them in trade or commerce.
- (7) Section 4 applies for the purposes of this section in the same way as it applies for the purposes of Division 1 of Part 3-1.

## **22 Unconscionable conduct in business transactions**

- (1) A person must not, in trade or commerce, in connection with:
  - (a) the supply or possible supply of goods or services to another person (other than a listed public company); or
  - (b) the acquisition or possible acquisition of goods or services from another person (other than a listed public company);engage in conduct that is, in all the circumstances, unconscionable.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

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- (2) Without in any way limiting the matters to which the court may have regard for the purpose of determining whether a person (the **supplier**) has contravened subsection (1) in connection with the supply or possible supply of goods or services to another person (the **business consumer**), the court may have regard to:
- (a) the relative strengths of the bargaining positions of the supplier and the business consumer; and
  - (b) whether, as a result of conduct engaged in by the supplier, the business consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier; and
  - (c) whether the business consumer was able to understand any documents relating to the supply or possible supply of the goods or services; and
  - (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the business consumer or a person acting on behalf of the business consumer by the supplier or a person acting on behalf of the supplier in relation to the supply or possible supply of the goods or services; and
  - (e) the amount for which, and the circumstances under which, the business consumer could have acquired identical or equivalent goods or services from a person other than the supplier; and
  - (f) the extent to which the supplier's conduct towards the business consumer was consistent with the supplier's conduct in similar transactions between the supplier and other like business consumers; and
  - (g) the requirements of any applicable industry code; and
  - (h) the requirements of any other industry code, if the business consumer acted on the reasonable belief that the supplier would comply with that code; and
  - (i) the extent to which the supplier unreasonably failed to disclose to the business consumer:
    - (i) any intended conduct of the supplier that might affect the interests of the business consumer; and
    - (ii) any risks to the business consumer arising from the supplier's intended conduct (being risks that the supplier should have foreseen would not be apparent to the business consumer); and

- (j) if there is a contract between the supplier and the business consumer for the supply of the goods or services:
    - (i) the extent to which the supplier was willing to negotiate the terms and conditions of the contract with the business consumer; and
    - (ii) the terms and conditions of the contract; and
    - (iii) the conduct of the supplier and the business consumer in complying with the terms and conditions of the contract; and
    - (iv) any conduct that the supplier or the business consumer engaged in, in connection with their commercial relationship, after they entered into the contract; and
  - (k) without limiting paragraph (j), whether the supplier has a contractual right to vary unilaterally a term or condition of a contract between the supplier and the business consumer for the supply of the goods or services; and
  - (l) the extent to which the supplier and the business consumer acted in good faith.
- (3) Without in any way limiting the matters to which the court may have regard for the purpose of determining whether a person (the *acquirer*) has contravened subsection (1) in connection with the acquisition or possible acquisition of goods or services from another person (the *small business supplier*), the court may have regard to:
- (a) the relative strengths of the bargaining positions of the acquirer and the small business supplier; and
  - (b) whether, as a result of conduct engaged in by the acquirer, the small business supplier was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the acquirer; and
  - (c) whether the small business supplier was able to understand any documents relating to the acquisition or possible acquisition of the goods or services; and
  - (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the small business supplier or a person acting on behalf of the small business supplier by the acquirer or a person acting on behalf of the acquirer in relation to the acquisition or possible acquisition of the goods or services; and

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- (e) the amount for which, and the circumstances in which, the small business supplier could have supplied identical or equivalent goods or services to a person other than the acquirer; and
- (f) the extent to which the acquirer's conduct towards the small business supplier was consistent with the acquirer's conduct in similar transactions between the acquirer and other like small business suppliers; and
- (g) the requirements of any applicable industry code; and
- (h) the requirements of any other industry code, if the small business supplier acted on the reasonable belief that the acquirer would comply with that code; and
- (i) the extent to which the acquirer unreasonably failed to disclose to the small business supplier:
  - (i) any intended conduct of the acquirer that might affect the interests of the small business supplier; and
  - (ii) any risks to the small business supplier arising from the acquirer's intended conduct (being risks that the acquirer should have foreseen would not be apparent to the small business supplier); and
- (j) if there is a contract between the acquirer and the small business supplier for the acquisition of the goods or services:
  - (i) the extent to which the acquirer was willing to negotiate the terms and conditions of the contract with the small business supplier; and
  - (ii) the terms and conditions of the contract; and
  - (iii) the conduct of the acquirer and the small business supplier in complying with the terms and conditions of the contract; and
  - (iv) any conduct that the acquirer or the small business supplier engaged in, in connection with their commercial relationship, after they entered into the contract; and
- (k) without limiting paragraph (j), whether the acquirer has a contractual right to vary unilaterally a term or condition of a contract between the acquirer and the small business supplier for the acquisition of the goods or services; and
- (l) the extent to which the acquirer and the small business supplier acted in good faith.

- (4) A person is not to be taken for the purposes of this section to engage in unconscionable conduct in connection with:
- (a) the supply or possible supply of goods or services to another person; or
  - (b) the acquisition or possible acquisition of goods or services from another person;
- by reason only that the first-mentioned person institutes legal proceedings in relation to that supply, possible supply, acquisition or possible acquisition or refers to arbitration a dispute or claim in relation to that supply, possible supply, acquisition or possible acquisition.
- (5) For the purpose of determining whether a person has contravened subsection (1):
- (a) the court must not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and
  - (b) the court may have regard to circumstances existing before the commencement of this section but not to conduct engaged in before that commencement.
- (6) A reference in this section to the supply or possible supply of goods or services is a reference to the supply or possible supply of goods or services to a person whose acquisition or possible acquisition of the goods or services is or would be for the purpose of trade or commerce.
- (7) A reference in this section to the acquisition or possible acquisition of goods or services is a reference to the acquisition or possible acquisition of goods or services by a person whose acquisition or possible acquisition of the goods or services is or would be for the purpose of trade or commerce.
- (8) Section 4 applies for the purposes of this section in the same way as it applies for the purposes of Division 1 of Part 3-1.

## Part 2-3—Unfair contract terms

### 23 Unfair terms of consumer contracts

- (1) A term of a consumer contract is void if:
  - (a) the term is unfair; and
  - (b) the contract is a standard form contract.
- (2) The contract continues to bind the parties if it is capable of operating without the unfair term.
- (3) A *consumer contract* is a contract for:
  - (a) a supply of goods or services; or
  - (b) a sale or grant of an interest in land;to an individual whose acquisition of the goods, services or interest is wholly or predominantly for personal, domestic or household use or consumption.

### 24 Meaning of *unfair*

- (1) A term of a consumer contract is *unfair* if:
  - (a) it would cause a significant imbalance in the parties' rights and obligations arising under the contract; and
  - (b) it is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term; and
  - (c) it would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied on.
- (2) In determining whether a term of a consumer contract is unfair under subsection (1), a court may take into account such matters as it thinks relevant, but must take into account the following:
  - (a) the extent to which the term is transparent;
  - (b) the contract as a whole.
- (3) A term is *transparent* if the term is:
  - (a) expressed in reasonably plain language; and
  - (b) legible; and
  - (c) presented clearly; and

- (d) readily available to any party affected by the term.
- (4) For the purposes of subsection (1)(b), a term of a consumer contract is presumed not to be reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term, unless that party proves otherwise.

## **25 Examples of unfair terms**

- (1) Without limiting section 24, the following are examples of the kinds of terms of a consumer contract that may be unfair:
  - (a) a term that permits, or has the effect of permitting, one party (but not another party) to avoid or limit performance of the contract;
  - (b) a term that permits, or has the effect of permitting, one party (but not another party) to terminate the contract;
  - (c) a term that penalises, or has the effect of penalising, one party (but not another party) for a breach or termination of the contract;
  - (d) a term that permits, or has the effect of permitting, one party (but not another party) to vary the terms of the contract;
  - (e) a term that permits, or has the effect of permitting, one party (but not another party) to renew or not renew the contract;
  - (f) a term that permits, or has the effect of permitting, one party to vary the upfront price payable under the contract without the right of another party to terminate the contract;
  - (g) a term that permits, or has the effect of permitting, one party unilaterally to vary the characteristics of the goods or services to be supplied, or the interest in land to be sold or granted, under the contract;
  - (h) a term that permits, or has the effect of permitting, one party unilaterally to determine whether the contract has been breached or to interpret its meaning;
  - (i) a term that limits, or has the effect of limiting, one party's vicarious liability for its agents;
  - (j) a term that permits, or has the effect of permitting, one party to assign the contract to the detriment of another party without that other party's consent;
  - (k) a term that limits, or has the effect of limiting, one party's right to sue another party;

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- (l) a term that limits, or has the effect of limiting, the evidence one party can adduce in proceedings relating to the contract;
  - (m) a term that imposes, or has the effect of imposing, the evidential burden on one party in proceedings relating to the contract;
  - (n) a term of a kind, or a term that has an effect of a kind, prescribed by the regulations.
- (2) Before the Governor-General makes a regulation for the purposes of subsection (1)(n) prescribing a kind of term, or a kind of effect that a term has, the Minister must take into consideration:
- (a) the detriment that a term of that kind would cause to consumers; and
  - (b) the impact on business generally of prescribing that kind of term or effect; and
  - (c) the public interest.

**26 Terms that define main subject matter of consumer contracts etc. are unaffected**

- (1) Section 23 does not apply to a term of a consumer contract to the extent, but only to the extent, that the term:
- (a) defines the main subject matter of the contract; or
  - (b) sets the upfront price payable under the contract; or
  - (c) is a term required, or expressly permitted, by a law of the Commonwealth, a State or a Territory.
- (2) The *upfront price* payable under a consumer contract is the consideration that:
- (a) is provided, or is to be provided, for the supply, sale or grant under the contract; and
  - (b) is disclosed at or before the time the contract is entered into; but does not include any other consideration that is contingent on the occurrence or non-occurrence of a particular event.

**27 Standard form contracts**

- (1) If a party to a proceeding alleges that a contract is a standard form contract, it is presumed to be a standard form contract unless another party to the proceeding proves otherwise.

- (2) In determining whether a contract is a standard form contract, a court may take into account such matters as it thinks relevant, but must take into account the following:
- (a) whether one of the parties has all or most of the bargaining power relating to the transaction;
  - (b) whether the contract was prepared by one party before any discussion relating to the transaction occurred between the parties;
  - (c) whether another party was, in effect, required either to accept or reject the terms of the contract (other than the terms referred to in section 26(1)) in the form in which they were presented;
  - (d) whether another party was given an effective opportunity to negotiate the terms of the contract that were not the terms referred to in section 26(1);
  - (e) whether the terms of the contract (other than the terms referred to in section 26(1)) take into account the specific characteristics of another party or the particular transaction;
  - (f) any other matter prescribed by the regulations.

## **28 Contracts to which this Part does not apply**

- (1) This Part does not apply to:
- (a) a contract of marine salvage or towage; or
  - (b) a charterparty of a ship; or
  - (c) a contract for the carriage of goods by ship.
- (2) Without limiting subsection (1)(c), the reference in that subsection to a contract for the carriage of goods by ship includes a reference to any contract covered by a sea carriage document within the meaning of the amended Hague Rules referred to in section 7(1) of the *Carriage of Goods by Sea Act 1991*.
- (3) This Part does not apply to a contract that is the constitution (within the meaning of section 9 of the *Corporations Act 2001*) of a company, managed investment scheme or other kind of body.

## Chapter 3—Specific protections

### Part 3-1—Unfair practices

#### Division 1—False or misleading representations etc.

##### 29 False or misleading representations about goods or services

- (1) A person must not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services:
  - (a) make a false or misleading representation that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use; or
  - (b) make a false or misleading representation that services are of a particular standard, quality, value or grade; or
  - (c) make a false or misleading representation that goods are new; or
  - (d) make a false or misleading representation that a particular person has agreed to acquire goods or services; or
  - (e) make a false or misleading representation that purports to be a testimonial by any person relating to goods or services; or
  - (f) make a false or misleading representation concerning:
    - (i) a testimonial by any person; or
    - (ii) a representation that purports to be such a testimonial; relating to goods or services; or
  - (g) make a false or misleading representation that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits; or
  - (h) make a false or misleading representation that the person making the representation has a sponsorship, approval or affiliation; or
  - (i) make a false or misleading representation with respect to the price of goods or services; or

- (j) make a false or misleading representation concerning the availability of facilities for the repair of goods or of spare parts for goods; or
- (k) make a false or misleading representation concerning the place of origin of goods; or
- (l) make a false or misleading representation concerning the need for any goods or services; or
- (m) make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy (including a guarantee under Division 1 of Part 3-2); or
- (n) make a false or misleading representation concerning a requirement to pay for a contractual right that:
  - (i) is wholly or partly equivalent to any condition, warranty, guarantee, right or remedy (including a guarantee under Division 1 of Part 3-2); and
  - (ii) a person has under a law of the Commonwealth, a State or a Territory (other than an unwritten law).

Note 1: A pecuniary penalty may be imposed for a contravention of this subsection.

Note 2: For rules relating to representations as to the country of origin of goods, see Part 5-3.

- (2) For the purposes of applying subsection (1) in relation to a proceeding concerning a representation of a kind referred to in subsection (1)(e) or (f), the representation is taken to be misleading unless evidence is adduced to the contrary.
- (3) To avoid doubt, subsection (2) does not:
  - (a) have the effect that, merely because such evidence to the contrary is adduced, the representation is not misleading; or
  - (b) have the effect of placing on any person an onus of proving that the representation is not misleading.

### **30 False or misleading representations about sale etc. of land**

- (1) A person must not, in trade or commerce, in connection with the sale or grant, or the possible sale or grant, of an interest in land or in connection with the promotion by any means of the sale or grant of an interest in land:

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- (a) make a false or misleading representation that the person making the representation has a sponsorship, approval or affiliation; or
- (b) make a false or misleading representation concerning the nature of the interest in the land; or
- (c) make a false or misleading representation concerning the price payable for the land; or
- (d) make a false or misleading representation concerning the location of the land; or
- (e) make a false or misleading representation concerning the characteristics of the land; or
- (f) make a false or misleading representation concerning the use to which the land is capable of being put or may lawfully be put; or
- (g) make a false or misleading representation concerning the existence or availability of facilities associated with the land.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) This section does not affect the application of any other provision of Part 2-1 or this Part in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.

### **31 Misleading conduct relating to employment**

A person must not, in relation to employment that is to be, or may be, offered by the person or by another person, engage in conduct that is liable to mislead persons seeking the employment as to:

- (a) the availability, nature, terms or conditions of the employment; or
- (b) any other matter relating to the employment.

Note: A pecuniary penalty may be imposed for a contravention of this section.

### **32 Offering rebates, gifts, prizes etc.**

- (1) A person must not, in trade or commerce, offer any rebate, gift, prize or other free item with the intention of not providing it, or of not providing it as offered, in connection with:
  - (a) the supply or possible supply of goods or services; or

- (b) the promotion by any means of the supply or use of goods or services; or
- (c) the sale or grant, or the possible sale or grant, of an interest in land; or
- (d) the promotion by any means of the sale or grant of an interest in land.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) If a person offers any rebate, gift, prize or other free item in connection with:

- (a) the supply or possible supply of goods or services; or
- (b) the promotion by any means of the supply or use of goods or services; or
- (c) the sale or grant, or the possible sale or grant, of an interest in land; or
- (d) the promotion by any means of the sale or grant of an interest in land;

the person must, within the time specified in the offer or (if no such time is specified) within a reasonable time after making the offer, provide the rebate, gift, prize or other free item in accordance with the offer.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) Subsection (2) does not apply if:

- (a) the person's failure to provide the rebate, gift, prize or other free item in accordance with the offer was due to the act or omission of another person, or to some other cause beyond the person's control; and
- (b) the person took reasonable precautions and exercised due diligence to avoid the failure.

- (4) Subsection (2) does not apply to an offer that the person makes to another person if:

- (a) the person offers to the other person a different rebate, gift, prize or other free item as a replacement; and
- (b) the other person agrees to receive the different rebate, gift, prize or other free item.

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- (5) This section does not affect the application of any other provision of Part 2-1 or this Part in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.

**33 Misleading conduct as to the nature etc. of goods**

A person must not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of any goods.

Note: A pecuniary penalty may be imposed for a contravention of this section.

**34 Misleading conduct as to the nature etc. of services**

A person must not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose or the quantity of any services.

Note: A pecuniary penalty may be imposed for a contravention of this section.

**35 Bait advertising**

- (1) A person must not, in trade or commerce, advertise goods or services for supply at a specified price if:
- (a) there are reasonable grounds for believing that the person will not be able to offer for supply those goods or services at that price for a period that is, and in quantities that are, reasonable, having regard to:
    - (i) the nature of the market in which the person carries on business; and
    - (ii) the nature of the advertisement; and
  - (b) the person is aware or ought reasonably to be aware of those grounds.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A person who, in trade or commerce, advertises goods or services for supply at a specified price must offer such goods or services for supply at that price for a period that is, and in quantities that are, reasonable having regard to:

- (a) the nature of the market in which the person carries on business; and
- (b) the nature of the advertisement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

### **36 Wrongly accepting payment**

- (1) A person must not, in trade or commerce, accept payment or other consideration for goods or services if, at the time of the acceptance, the person intends not to supply the goods or services.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A person must not, in trade or commerce, accept payment or other consideration for goods or services if, at the time of the acceptance, the person intends to supply goods or services materially different from the goods or services in respect of which the payment or other consideration is accepted.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) A person must not, in trade or commerce, accept payment or other consideration for goods or services if, at the time of the acceptance:
  - (a) there are reasonable grounds for believing that the person will not be able to supply the goods or services:
    - (i) within the period specified by or on behalf of the person at or before the time the payment or other consideration was accepted; or
    - (ii) if no period is specified at or before that time—within a reasonable time; and
  - (b) the person is aware or ought reasonably to be aware of those grounds.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (4) A person who, in trade or commerce, accepts payment or other consideration for goods or services must supply all the goods or services:
  - (a) within the period specified by or on behalf of the person at or before the time the payment or other consideration was accepted; or

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- (b) if no period is specified at or before that time—within a reasonable time.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (5) Subsection (4) does not apply if:
  - (a) the person's failure to supply all the goods or services within the period, or within a reasonable time, was due to the act or omission of another person, or to some other cause beyond the person's control; and
  - (b) the person took reasonable precautions and exercised due diligence to avoid the failure.
- (6) Subsection (4) does not apply if:
  - (a) the person offers to supply different goods or services as a replacement to the person (the *customer*) to whom the original supply was to be made; and
  - (b) the customer agrees to receive the different goods or services.
- (7) Subsections (1), (2), (3) and (4) apply whether or not the payment or other consideration that the person accepted represents the whole or a part of the payment or other consideration for the supply of the goods or services.

**37 Misleading representations about certain business activities**

- (1) A person must not, in trade or commerce, make a representation that:
  - (a) is false or misleading in a material particular; and
  - (b) concerns the profitability, risk or any other material aspect of any business activity that the person has represented as one that can be, or can be to a considerable extent, carried on at or from a person's place of residence.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A person must not, in trade or commerce, make a representation that:
  - (a) is false or misleading in a material particular; and
  - (b) concerns the profitability, risk or any other material aspect of any business activity:

- (i) that the person invites (whether by advertisement or otherwise) other persons to engage or participate in, or to offer or apply to engage or participate in; and
- (ii) that requires the performance of work by other persons, or the investment of money by other persons and the performance by them of work associated with the investment.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

### **38 Application of provisions of this Division to information providers**

- (1) Sections 29, 30, 33, 34 and 37 do not apply to a publication of matter by an information provider if:
  - (a) in any case—the information provider made the publication in the course of carrying on a business of providing information; or
  - (b) if the information provider is the Australian Broadcasting Corporation, the Special Broadcasting Service Corporation or the holder of a licence granted under the *Broadcasting Services Act 1992*—the publication was by way of a radio or television broadcast by the information provider.
- (2) Subsection (1) does not apply to a publication of an advertisement.
- (3) Subsection (1) does not apply to a publication of matter in connection with the supply or possible supply of, or the promotion by any means of the supply or use of, goods or services (the **publicised goods or services**), if:
  - (a) the publicised goods or services were goods or services of a kind supplied by the information provider or, if the information provider is a body corporate, by a body corporate that is related to the information provider; or
  - (b) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a person who supplies goods or services of the same kind as the publicised goods or services; or
  - (c) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a body corporate that is related to a body corporate that supplies

goods or services of the same kind as the publicised goods or services.

- (4) Subsection (1) does not apply to a publication of matter in connection with the sale or grant, or possible sale or grant, of, or the promotion by any means of the sale or grant of, interests in land (the *publicised interests in land*), if:
- (a) the publicised interests in land were interests of a kind sold or granted by the information provider or, if the information provider is a body corporate, by a body corporate that is related to the information provider; or
  - (b) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a person who sells or grants interests of the same kind as the publicised interests in land; or
  - (c) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a body corporate that is related to a body corporate that sells or grants interests of the same kind as the publicised interests in land.

## Division 2—Unsolicited supplies

### 39 Unsolicited cards etc.

- (1) A person must not send a credit card or a debit card, or an article that may be used as a credit card and a debit card, to another person except:
- (a) pursuant to a written request by the person who will be under a liability to the person who issued the card or article in respect of the use of the card or article; or
  - (b) in renewal or replacement of, or in substitution for:
    - (i) a card or article of the same kind previously sent to the other person pursuant to a written request by the person who was under a liability, to the person who issued the card previously so sent, in respect of the use of that card; or
    - (ii) a card or article of the same kind previously sent to the other person and used for a purpose for which it was intended to be used.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) Subsection (1) does not apply unless the card or article is sent by or on behalf of the person who issued it.
- (3) A person must not take any action that enables another person who has a credit card to use the card as a debit card, except in accordance with the other person's written request.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (4) A person must not take any action that enables another person who has a debit card to use the card as a credit card, except in accordance with the other person's written request.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (5) A **credit card** is an article that is one or more of the following:
- (a) an article of a kind commonly known as a credit card;
  - (b) a similar article intended for use in obtaining cash, goods or services on credit;

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- (c) an article of a kind that persons carrying on business commonly issue to their customers, or prospective customers, for use in obtaining goods or services from those persons on credit;  
and includes an article that may be used as an article referred to in paragraph (a), (b) or (c).
- (6) A *debit card* is:
  - (a) an article intended for use by a person in obtaining access to an account that is held by the person for the purpose of withdrawing or depositing cash or obtaining goods or services; or
  - (b) an article that may be used as an article referred to in paragraph (a).

**40 Assertion of right to payment for unsolicited goods or services**

- (1) A person must not, in trade or commerce, assert a right to payment from another person for unsolicited goods unless the person has reasonable cause to believe that there is a right to the payment.  
Note: A pecuniary penalty may be imposed for a contravention of this subsection.
- (2) A person must not, in trade or commerce, assert a right to payment from another person for unsolicited services unless the person has reasonable cause to believe that there is a right to the payment.  
Note: A pecuniary penalty may be imposed for a contravention of this subsection.
- (3) A person must not, in trade or commerce, send to another person an invoice or other document that:
  - (a) states the amount of a payment, or sets out the charge, for supplying unsolicited goods or unsolicited services; and
  - (b) does not contain a warning statement that complies with the requirements set out in the regulations;unless the person has reasonable cause to believe that there is a right to the payment or charge.  
Note: A pecuniary penalty may be imposed for a contravention of this subsection.
- (4) In a proceeding against a person in relation to a contravention of this section, the person bears the onus of proving that the person

had reasonable cause to believe that there was a right to the payment or charge.

#### **41 Liability etc. of recipient for unsolicited goods**

- (1) If a person, in trade or commerce, supplies unsolicited goods to another person, the other person:
  - (a) is not liable to make any payment for the goods; and
  - (b) is not liable for loss of or damage to the goods, other than loss or damage resulting from the other person doing a wilful and unlawful act in relation to the goods during the recovery period.
- (2) If a person sends, in trade or commerce, unsolicited goods to another person:
  - (a) neither the sender nor any person claiming under the sender is entitled, after the end of the recovery period, to take action for the recovery of the goods from the other person; and
  - (b) at the end of the recovery period, the goods become, by force of this section, the property of the other person freed and discharged from all liens and charges of any description.
- (3) However, subsection (2) does not apply to or in relation to unsolicited goods sent to a person if:
  - (a) the person has, at any time during the recovery period, unreasonably refused to permit the sender or the owner of the goods to take possession of the goods; or
  - (b) the sender or the owner of the goods has within the recovery period taken possession of the goods; or
  - (c) the goods were received by the person in circumstances in which the person knew, or might reasonably be expected to have known, that the goods were not intended for him or her.
- (4) The *recovery period* is whichever of the following periods ends first:
  - (a) the period of 3 months starting on the day after the day on which the person received the goods;
  - (b) if the person who receives the unsolicited goods gives notice with respect to the goods to the supplier or sender in accordance with subsection (5)—the period of one month starting on the day after the day on which the notice is given.

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- (5) A notice under subsection (4)(b):
- (a) must be in writing; and
  - (b) must state the name and address of the person who received the goods; and
  - (c) must state the address at which possession may be taken of the goods, if it is not the address of the person; and
  - (d) must contain a statement to the effect that the goods are unsolicited goods.

**42 Liability of recipient for unsolicited services**

If a person, in trade or commerce, supplies unsolicited services to another person, the other person:

- (a) is not liable to make any payment for the services; and
- (b) is not liable for loss or damage as a result of the supply of the services.

**43 Assertion of right to payment for unauthorised entries or advertisements**

- (1) A person must not assert a right to payment from another person of a charge for placing, in a publication, an entry or advertisement relating to:
- (a) the other person; or
  - (b) the other person's profession, business, trade or occupation;
- unless the person knows, or has reasonable cause to believe, that the other person authorised the placing of the entry or advertisement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A person must not send to another person an invoice or other document that:
- (a) states the amount of a payment, or sets out the charge, for placing, in a publication, an entry or advertisement relating to:
    - (i) the other person; or
    - (ii) the other person's profession, business, trade or occupation; and

(b) does not contain a warning statement that complies with the requirements set out in the regulations;

unless the person knows, or has reasonable cause to believe, that the other person authorised the placing of the entry or advertisement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) Subsections (1) and (2) do not apply to an entry or advertisement that is placed in a publication published by a person who is:
- (a) the publisher of a publication that has an audited circulation of 10,000 copies or more per week, as confirmed by the most recent audit of the publication by a body specified in the regulations; or
  - (b) a body corporate related to such a publisher; or
  - (c) the Commonwealth, a State or a Territory, or an authority of the Commonwealth, a State or a Territory; or
  - (d) a person specified in the regulations.
- (4) A person:
- (a) is not liable to make any payment to another person; and
  - (b) is entitled to recover by action in a court against another person any payment made by the person to the other person; in full or part satisfaction of a charge for placing, in a publication, an entry or advertisement, unless the person authorised the placing of the entry or advertisement.
- (5) A person is not taken for the purposes of this section to have authorised the placing of the entry or advertisement, unless:
- (a) a document authorising the placing of the entry or advertisement has been signed by the person or by another person authorised by him or her; and
  - (b) a copy of the document has been given to the person before the right to payment of a charge for the placing of the entry or advertisement is asserted; and
  - (c) the document specifies:
    - (i) the name and address of the person publishing the entry or advertisement; and
    - (ii) particulars of the entry or advertisement; and

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- (iii) the amount of the charge for the placing of the entry or advertisement, or the basis on which the charge is, or is to be, calculated.
- (6) In a proceeding against a person in relation to a contravention of this section, the person bears the onus of proving that the person knew or had reasonable cause to believe that the person against whom a right to payment was asserted had authorised the placing of the entry or advertisement.

## Division 3—Pyramid schemes

### 44 Participation in pyramid schemes

- (1) A person must not participate in a pyramid scheme.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A person must not induce, or attempt to induce, another person to participate in a pyramid scheme.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) To *participate* in a pyramid scheme is:

- (a) to establish or promote the scheme (whether alone or together with another person); or
- (b) to take part in the scheme in any capacity (whether or not as an employee or agent of a person who establishes or promotes the scheme, or who otherwise takes part in the scheme).

### 45 Meaning of *pyramid scheme*

- (1) A *pyramid scheme* is a scheme with both of the following characteristics:

- (a) to take part in the scheme, some or all new participants must provide, to another participant or participants in the scheme, either of the following (a *participation payment*):
  - (i) a financial or non-financial benefit to, or for the benefit of, the other participant or participants;
  - (ii) a financial or non-financial benefit partly to, or for the benefit of, the other participant or participants and partly to, or for the benefit of, other persons;
- (b) the participation payments are entirely or substantially induced by the prospect held out to new participants that they will be entitled, in relation to the introduction to the scheme of further new participants, to be provided with either of the following (a *recruitment payment*):
  - (i) a financial or non-financial benefit to, or for the benefit of, new participants;

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- (ii) a financial or non-financial benefit partly to, or for the benefit of, new participants and partly to, or for the benefit of, other persons.
- (2) A *new participant* includes a person who has applied, or been invited, to participate in the scheme.
- (3) A scheme may be a pyramid scheme:
  - (a) no matter who holds out to new participants the prospect of entitlement to recruitment payments; and
  - (b) no matter who is to make recruitment payments to new participants; and
  - (c) no matter who is to make introductions to the scheme of further new participants.
- (4) A scheme may be a pyramid scheme even if it has any or all of the following characteristics:
  - (a) the participation payments may (or must) be made after the new participants begin to take part in the scheme;
  - (b) making a participation payment is not the only requirement for taking part in the scheme;
  - (c) the holding out of the prospect of entitlement to recruitment payments does not give any new participant a legally enforceable right;
  - (d) arrangements for the scheme are not recorded in writing (whether entirely or partly);
  - (e) the scheme involves the marketing of goods or services (or both).

#### 46 Marketing schemes as pyramid schemes

- (1) To decide, for the purpose of this Schedule, whether a scheme that involves the marketing of goods or services (or both) is a pyramid scheme, a court must have regard to the following matters in working out whether participation payments under the scheme are entirely or substantially induced by the prospect held out to new participants of entitlement to recruitment payments:
  - (a) whether the participation payments bear a reasonable relationship to the value of the goods or services that participants are entitled to be supplied with under the scheme

(as assessed, if appropriate, by reference to the price of comparable goods or services available elsewhere);

- (b) the emphasis given in the promotion of the scheme to the entitlement of participants to the supply of goods or services by comparison with the emphasis given to their entitlement to recruitment payments.
- (2) Subsection (1) does not limit the matters to which the court may have regard in working out whether participation payments are entirely or substantially induced by the prospect held out to new participants of entitlement to recruitment payments.

## Division 4—Pricing

### 47 Multiple pricing

- (1) A person must not, in trade or commerce, supply goods if:
  - (a) the goods have more than one displayed price; and
  - (b) the supply takes place for a price that is not the lower, or lowest, of the displayed prices.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A **displayed price** for goods is a price for the goods, or any representation that may reasonably be inferred to be a representation of a price for the goods:
  - (a) that is annexed or affixed to, or is written, printed, stamped or located on, or otherwise applied to, the goods or any covering, label, reel or thing used in connection with the goods; or
  - (b) that is used in connection with the goods or anything on which the goods are mounted for display or exposed for supply; or
  - (c) that is determined on the basis of anything encoded on or in relation to the goods; or
  - (d) that is published in relation to the goods in a catalogue available to the public if:
    - (i) a time is specified in the catalogue as the time after which the goods will not be sold at that price and that time has not passed; or
    - (ii) in any other case—the catalogue may reasonably be regarded as not out-of-date; or
  - (e) that is in any other way represented in a manner from which it may reasonably be inferred that the price or representation is applicable to the goods;and includes such a price or representation that is partly obscured by another such price or representation that is written, stamped or located partly over that price or representation.

- (3) If:
  - (a) a price or representation is included in a catalogue; and

- (b) the catalogue is expressed to apply only to goods supplied at a specified location, or in a specified region;  
the price or representation is taken, for the purposes of subsection (2)(d), not to have been made in relation to supply of the goods at a different location, or in a different region, as the case may be.
- (4) Despite subsection (2), a price or representation is not a displayed price for goods if:
- (a) the price or representation is wholly obscured by another such price or representation that is written, stamped or located wholly over that price or representation; or
  - (b) the price or representation:
    - (i) is expressed as a price per unit of mass, volume, length or other unit of measure; and
    - (ii) is presented as an alternative means of expressing the price for supply of the goods that is a displayed price for the goods; or
  - (c) the price or representation is expressed as an amount in a currency other than Australian currency; or
  - (d) the price or representation is expressed in a way that is unlikely to be interpreted as an amount of Australian currency.
- (5) Despite subsection (2), a displayed price for goods that is a displayed price because it has been published in a catalogue or advertisement ceases to be a displayed price for the goods if:
- (a) the displayed price is retracted; and
  - (b) the retraction is published in a manner that has at least a similar circulation or audience as the catalogue or advertisement.

#### **48 Single price to be specified in certain circumstances**

- (1) A person must not, in trade or commerce, in connection with:
- (a) the supply, or possible supply, to another person of goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption; or
  - (b) the promotion by any means of the supply to another person, or of the use by another person, of goods or services of a kind

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ordinarily acquired for personal, domestic or household use or consumption;

make a representation with respect to an amount that, if paid, would constitute a part of the consideration for the supply of the goods or services unless the person also specifies, in a prominent way and as a single figure, the single price for the goods or services.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A person is not required to include, in the single price for goods, a charge that is payable in relation to sending the goods from the supplier to the other person.
- (3) However, if:
  - (a) the person does not include in the single price a charge that is payable in relation to sending the goods from the supplier to the other person; and
  - (b) the person knows, at the time of the representation, the minimum amount of a charge in relation to sending the goods from the supplier to the other person that must be paid by the other person;the person must not make the representation referred to in subsection (1) unless the person also specifies that minimum amount.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.
- (4) Subsection (1) does not apply if the representation is made exclusively to a body corporate.
- (5) For the purposes of subsection (1), the person is taken not to have specified a single price for the goods or services in a prominent way unless the single price is at least as prominent as the most prominent of the parts of the consideration for the supply.
- (6) Subsection (5) does not apply in relation to services to be supplied under a contract if:
  - (a) the contract provides for the supply of the services for the term of the contract; and
  - (b) the contract provides for periodic payments for the services to be made during the term of the contract; and

- (c) if the contract also provides for the supply of goods—the goods are directly related to the supply of the services.
- (7) The *single price* is the minimum quantifiable consideration for the supply of the goods or services at the time of the representation, including each of the following amounts (if any) that is quantifiable at that time:
- (a) a charge of any description payable to the person making the representation by another person (other than a charge that is payable at the option of the other person);
  - (b) the amount which reflects any tax, duty, fee, levy or charge imposed on the person making the representation in relation to the supply;
  - (c) any amount paid or payable by the person making the representation in relation to the supply with respect to any tax, duty, fee, levy or charge if:
    - (i) the amount is paid or payable under an agreement or arrangement made under a law of the Commonwealth, a State or a Territory; and
    - (ii) the tax, duty, fee, levy or charge would have otherwise been payable by another person in relation to the supply.

Example 1: A person advertises lounge suites for sale. Persons have the option of paying for fabric protection. The fabric protection charge does not form part of the single price because of the exception in paragraph (a).

Example 2: The GST may be an example of an amount covered by paragraph (b).

Example 3: The passenger movement charge imposed under the *Passenger Movement Charge Act 1978* may be an example of an amount covered by paragraph (c). Under an arrangement under section 10 of the *Passenger Movement Charge Collection Act 1978*, airlines may pay an amount equal to the charge that would otherwise be payable by passengers departing Australia.

## Division 5—Other unfair practices

### 49 Referral selling

A person must not, in trade or commerce, induce a consumer to acquire goods or services by representing that the consumer will, after the contract for the acquisition of the goods or services is made, receive a rebate, commission or other benefit in return for:

- (a) giving the person the names of prospective customers; or
- (b) otherwise assisting the person to supply goods or services to other consumers;

if receipt of the rebate, commission or other benefit is contingent on an event occurring after that contract is made.

Note: A pecuniary penalty may be imposed for a contravention of this section.

### 50 Harassment and coercion

- (1) A person must not use physical force, or undue harassment or coercion, in connection with:

- (a) the supply or possible supply of goods or services; or
- (b) the payment for goods or services; or
- (c) the sale or grant, or the possible sale or grant, of an interest in land; or
- (d) the payment for an interest in land.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) Subsections (1)(c) and (d) do not affect the application of any other provision of Part 2-1 or this Part in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.

## **Part 3-2—Consumer transactions**

### **Division 1—Consumer guarantees**

#### **Subdivision A—Guarantees relating to the supply of goods**

##### **51 Guarantee as to title**

- (1) If a person (the *supplier*) supplies goods to a consumer, there is a guarantee that the supplier will have a right to dispose of the property in the goods when that property is to pass to the consumer.
- (2) Subsection (1) does not apply to a supply (a *supply of limited title*) if an intention that the supplier of the goods should transfer only such title as the supplier, or another person, may have:
  - (a) appears from the contract for the supply; or
  - (b) is to be inferred from the circumstances of that contract.
- (3) This section does not apply if the supply is a supply by way of hire or lease.

##### **52 Guarantee as to undisturbed possession**

- (1) If:
  - (a) a person (the *supplier*) supplies goods to a consumer; and
  - (b) the supply is not a supply of limited title;there is a guarantee that the consumer has the right to undisturbed possession of the goods.
- (2) Subsection (1) does not apply to the extent that the consumer's undisturbed possession of the goods may be lawfully disturbed by a person who is entitled to the benefit of any security, charge or encumbrance disclosed to the consumer before the consumer agreed to the supply.
- (3) If:
  - (a) a person (the *supplier*) supplies goods to a consumer; and
  - (b) the supply is a supply of limited title;

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there is a guarantee that the following persons will not disturb the consumer's possession of the goods:

- (c) the supplier;
  - (d) if the parties to the contract for the supply intend that the supplier should transfer only such title as another person may have—that other person;
  - (e) anyone claiming through or under the supplier or that other person (otherwise than under a security, charge or encumbrance disclosed to the consumer before the consumer agreed to the supply).
- (4) This section applies to a supply by way of hire or lease only for the period of the hire or lease.

**53 Guarantee as to undisclosed securities etc.**

- (1) If:
- (a) a person (the *supplier*) supplies goods to a consumer; and
  - (b) the supply is not a supply of limited title;
- there is a guarantee that:
- (c) the goods are free from any security, charge or encumbrance:
    - (i) that was not disclosed to the consumer, in writing, before the consumer agreed to the supply; or
    - (ii) that was not created by or with the express consent of the consumer; and
  - (d) the goods will remain free from such a security, charge or encumbrance until the time when the property in the goods passes to the consumer.
- (2) A supplier does not fail to comply with the guarantee only because of the existence of a floating charge over the supplier's assets unless and until the charge becomes fixed and enforceable by the person to whom the charge is given.

Note: Section 339 of the *Personal Property Securities Act 2009* affects the meaning of the references in this subsection to a floating charge and a fixed charge.

- (3) If:
- (a) a person (the *supplier*) supplies goods to a consumer; and
  - (b) the supply is a supply of limited title;

there is a guarantee that all securities, charges or encumbrances known to the supplier, and not known to the consumer, were disclosed to the consumer before the consumer agreed to the supply.

- (4) This section does not apply if the supply is a supply by way of hire or lease.

#### **54 Guarantee as to acceptable quality**

- (1) If:
- (a) a person supplies, in trade or commerce, goods to a consumer; and
  - (b) the supply does not occur by way of sale by auction;
- there is a guarantee that the goods are of acceptable quality.
- (2) Goods are of *acceptable quality* if they are as:
- (a) fit for all the purposes for which goods of that kind are commonly supplied; and
  - (b) acceptable in appearance and finish; and
  - (c) free from defects; and
  - (d) safe; and
  - (e) durable;
- as a reasonable consumer fully acquainted with the state and condition of the goods (including any hidden defects of the goods), would regard as acceptable having regard to the matters in subsection (3).
- (3) The matters for the purposes of subsection (2) are:
- (a) the nature of the goods; and
  - (b) the price of the goods (if relevant); and
  - (c) any statements made about the goods on any packaging or label on the goods; and
  - (d) any representation made about the goods by the supplier or manufacturer of the goods; and
  - (e) any other relevant circumstances relating to the supply of the goods.
- (4) If:
- (a) goods supplied to a consumer are not of acceptable quality; and

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- (b) the only reason or reasons why they are not of acceptable quality were specifically drawn to the consumer's attention before the consumer agreed to the supply;  
the goods are taken to be of acceptable quality.
- (5) If:
  - (a) goods are displayed for sale or hire; and
  - (b) the goods would not be of acceptable quality if they were supplied to a consumer;the reason or reasons why they are not of acceptable quality are taken, for the purposes of subsection (4), to have been specifically drawn to a consumer's attention if those reasons were disclosed on a written notice that was displayed with the goods and that was transparent.
- (6) Goods do not fail to be of acceptable quality if:
  - (a) the consumer to whom they are supplied causes them to become of unacceptable quality, or fails to take reasonable steps to prevent them from becoming of unacceptable quality; and
  - (b) they are damaged by abnormal use.
- (7) Goods do not fail to be of acceptable quality if:
  - (a) the consumer acquiring the goods examines them before the consumer agrees to the supply of the goods; and
  - (b) the examination ought reasonably to have revealed that the goods were not of acceptable quality.

**55 Guarantee as to fitness for any disclosed purpose etc.**

- (1) If:
  - (a) a person (the *supplier*) supplies, in trade or commerce, goods to a consumer; and
  - (b) the supply does not occur by way of sale by auction;there is a guarantee that the goods are reasonably fit for any disclosed purpose, and for any purpose for which the supplier represents that they are reasonably fit.
- (2) A *disclosed purpose* is a particular purpose (whether or not that purpose is a purpose for which the goods are commonly supplied) for which the goods are being acquired by the consumer and that:

- (a) the consumer makes known, expressly or by implication, to:
    - (i) the supplier; or
    - (ii) a person by whom any prior negotiations or arrangements in relation to the acquisition of the goods were conducted or made; or
  - (b) the consumer makes known to the manufacturer of the goods either directly or through the supplier or the person referred to in paragraph (a)(ii).
- (3) This section does not apply if the circumstances show that the consumer did not rely on, or that it was unreasonable for the consumer to rely on, the skill or judgment of the supplier, the person referred to in subsection (2)(a)(ii) or the manufacturer, as the case may be.

### **56 Guarantee relating to the supply of goods by description**

- (1) If:
- (a) a person supplies, in trade or commerce, goods by description to a consumer; and
  - (b) the supply does not occur by way of sale by auction;
- there is a guarantee that the goods correspond with the description.
- (2) A supply of goods is not prevented from being a supply by description only because, having been exposed for sale or hire, they are selected by the consumer.
- (3) If goods are supplied by description as well as by reference to a sample or demonstration model, the guarantees in this section and in section 57 both apply.

### **57 Guarantees relating to the supply of goods by sample or demonstration model**

- (1) If:
- (a) a person supplies, in trade or commerce, goods to a consumer by reference to a sample or demonstration model; and
  - (b) the supply does not occur by way of sale by auction;
- there is a guarantee that:
- (c) the goods correspond with the sample or demonstration model in quality, state or condition; and

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- (d) if the goods are supplied by reference to a sample—the consumer will have a reasonable opportunity to compare the goods with the sample; and
  - (e) the goods are free from any defect that:
    - (i) would not be apparent on reasonable examination of the sample or demonstration model; and
    - (ii) would cause the goods not to be of acceptable quality.
- (2) If goods are supplied by reference to a sample or demonstration model as well as by description, the guarantees in section 56 and in this section both apply.

**58 Guarantee as to repairs and spare parts**

- (1) If:
- (a) a person supplies, in trade or commerce, goods to a consumer; and
  - (b) the supply does not occur by way of sale by auction;
- there is a guarantee that the manufacturer of the goods will take reasonable action to ensure that facilities for the repair of the goods, and parts for the goods, are reasonably available for a reasonable period after the goods are supplied.
- (2) This section does not apply if the manufacturer took reasonable action to ensure that the consumer would be given written notice, at or before the time when the consumer agrees to the supply of the goods, that:
- (a) facilities for the repair of the goods would not be available or would not be available after a specified period; or
  - (b) parts for the goods would not be available or would not be available after a specified period.

**59 Guarantee as to express warranties**

- (1) If:
- (a) a person supplies, in trade or commerce, goods to a consumer; and
  - (b) the supply does not occur by way of sale by auction;
- there is a guarantee that the manufacturer of the goods will comply with any express warranty given or made by the manufacturer in relation to the goods.

- (2) If:
- (a) a person supplies, in trade or commerce, goods to a consumer; and
  - (b) the supply does not occur by way of sale by auction;
- there is a guarantee that the supplier will comply with any express warranty given or made by the supplier in relation to the goods.

## **Subdivision B—Guarantees relating to the supply of services**

### **60 Guarantee as to due care and skill**

If a person supplies, in trade or commerce, services to a consumer, there is a guarantee that the services will be rendered with due care and skill.

### **61 Guarantees as to fitness for a particular purpose etc.**

- (1) If:
- (a) a person (the *supplier*) supplies, in trade or commerce, services to a consumer; and
  - (b) the consumer, expressly or by implication, makes known to the supplier any particular purpose for which the services are being acquired by the consumer;
- there is a guarantee that the services, and any product resulting from the services, will be reasonably fit for that purpose.
- (2) If:
- (a) a person (the *supplier*) supplies, in trade or commerce, services to a consumer; and
  - (b) the consumer makes known, expressly or by implication, to:
    - (i) the supplier; or
    - (ii) a person by whom any prior negotiations or arrangements in relation to the acquisition of the services were conducted or made;the result that the consumer wishes the services to achieve;
- there is a guarantee that the services, and any product resulting from the services, will be of such a nature, and quality, state or condition, that they might reasonably be expected to achieve that result.

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- (3) This section does not apply if the circumstances show that the consumer did not rely on, or that it was unreasonable for the consumer to rely on, the skill or judgment of the supplier.
- (4) This section does not apply to a supply of services of a professional nature by a qualified architect or engineer.

**62 Guarantee as to reasonable time for supply**

If:

- (a) a person (the *supplier*) supplies, in trade or commerce, services to a consumer; and
- (b) the time within which the services are to be supplied:
  - (i) is not fixed by the contract for the supply of the services; or
  - (ii) is not to be determined in a manner agreed to by the consumer and supplier;

there is a guarantee that the services will be supplied within a reasonable time.

**63 Services to which this Subdivision does not apply**

This Subdivision does not apply to services that are, or are to be, supplied under:

- (a) a contract for or in relation to the transportation or storage of goods for the purposes of a business, trade, profession or occupation carried on or engaged in by the person for whom the goods are transported or stored; or
- (b) a contract of insurance.

**Subdivision C—Guarantees not to be excluded etc. by contract**

**64 Guarantees not to be excluded etc. by contract**

- (1) A term of a contract (including a term that is not set out in the contract but is incorporated in the contract by another term of the contract) is void to the extent that the term purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying:
  - (a) the application of all or any of the provisions of this Division; or

- (b) the exercise of a right conferred by such a provision; or
  - (c) any liability of a person for a failure to comply with a guarantee that applies under this Division to a supply of goods or services.
- (2) A term of a contract is not taken, for the purposes of this section, to exclude, restrict or modify the application of a provision of this Division unless the term does so expressly or is inconsistent with the provision.

#### **64A Limitation of liability for failures to comply with guarantees**

- (1) A term of a contract for the supply by a person of goods other than goods of a kind ordinarily acquired for personal, domestic or household use or consumption is not void under section 64 merely because the term limits the person's liability for failure to comply with a guarantee (other than a guarantee under section 51, 52 or 53) to one or more of the following:
- (a) the replacement of the goods or the supply of equivalent goods;
  - (b) the repair of the goods;
  - (c) the payment of the cost of replacing the goods or of acquiring equivalent goods;
  - (d) the payment of the cost of having the goods repaired.
- (2) A term of a contract for the supply by a person of services other than services of a kind ordinarily acquired for personal, domestic or household use or consumption is not void under section 64 merely because the term limits the person's liability for failure to comply with a guarantee to:
- (a) the supplying of the services again; or
  - (b) the payment of the cost of having the services supplied again.
- (3) This section does not apply in relation to a term of a contract if the person to whom the goods or services were supplied establishes that it is not fair or reasonable for the person who supplied the goods or services to rely on that term of the contract.
- (4) In determining for the purposes of subsection (3) whether or not reliance on a term of a contract is fair or reasonable, a court is to have regard to all the circumstances of the case, and in particular to the following matters:

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- (a) the strength of the bargaining positions of the person who supplied the goods or services and the person to whom the goods or services were supplied (the *buyer*) relative to each other, taking into account, among other things, the availability of equivalent goods or services and suitable alternative sources of supply;
- (b) whether the buyer received an inducement to agree to the term or, in agreeing to the term, had an opportunity of acquiring the goods or services or equivalent goods or services from any source of supply under a contract that did not include that term;
- (c) whether the buyer knew or ought reasonably to have known of the existence and extent of the term (having regard, among other things, to any custom of the trade and any previous course of dealing between the parties);
- (d) in the case of the supply of goods, whether the goods were manufactured, processed or adapted to the special order of the buyer.

### Subdivision D—Miscellaneous

#### 65 Application of this Division to supplies of gas, electricity and telecommunications

- (1) This Division does not apply to a supply if the supply:
  - (a) is a supply of a kind specified in the regulations; and
  - (b) is a supply of gas, electricity or a telecommunications service.
- (2) A *telecommunications service* is a service for carrying communications by means of guided or unguided electromagnetic energy or both.

#### 66 Display notices

- (1) The Commonwealth Minister may determine, in writing, that persons (the *suppliers*) who make supplies, or supplies of a specified kind, to which guarantees apply under this Division are required to display, in accordance with the determination, a notice that meets the requirements of the determination.

- (2) A supplier who makes a supply to a consumer to which a guarantee applies under this Division, and to which such a determination relates, must ensure that a notice that meets those requirements is, in accordance with the determination:
- (a) if the consumer takes delivery of the goods or services at the supplier's premises—displayed at those premises; or
  - (b) otherwise—drawn to the consumer's attention before the consumer agrees to the supply of the goods.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) Without limiting subsection (1), a determination under that subsection may do all or any of the following:
- (a) require the notice to include specified information about the application of all or any of the provisions of this Division and Part 5-4;
  - (b) specify where the notice must be displayed;
  - (c) specify how the notice must be drawn to the attention of consumers;
  - (d) specify requirements as to the form of the notice.

## **67 Conflict of laws**

If:

- (a) the proper law of a contract for the supply of goods or services to a consumer would be the law of any part of Australia but for a term of the contract that provides otherwise; or
  - (b) a contract for the supply of goods or services to a consumer contains a term that purports to substitute, or has the effect of substituting, the following provisions for all or any of the provisions of this Division:
    - (i) the provisions of the law of a country other than Australia;
    - (ii) the provisions of the law of a State or a Territory;
- the provisions of this Division apply in relation to the supply under the contract despite that term.

## **68 Convention on Contracts for the International Sale of Goods**

The provisions of the United Nations Convention on Contracts for the International Sale of Goods, done at Vienna on 11 April 1980, as amended and in force for Australia from time to time, prevail over the provisions of this Division to the extent of any inconsistency.

Note: The text of the Convention is set out in Australian Treaty Series 1988 No. 32 ([1988] ATS 32). In 2010, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

## **Division 2—Unsolicited consumer agreements**

### **Subdivision A—Introduction**

#### **69 Meaning of *unsolicited consumer agreement***

- (1) An agreement is an *unsolicited consumer agreement* if:
- (a) it is for the supply, in trade or commerce, of goods or services to a consumer; and
  - (b) it is made as a result of negotiations between a dealer and the consumer:
    - (i) in each other's presence at a place other than the business or trade premises of the supplier of the goods or services; or
    - (ii) by telephone;whether or not they are the only negotiations that precede the making of the agreement; and
  - (c) the consumer did not invite the dealer to come to that place, or to make a telephone call, for the purposes of entering into negotiations relating to the supply of those goods or services (whether or not the consumer made such an invitation in relation to a different supply); and
  - (d) the total price paid or payable by the consumer under the agreement:
    - (i) is not ascertainable at the time the agreement is made; or
    - (ii) if it is ascertainable at that time—is more than \$100 or such other amount prescribed by the regulations.
- (1A) The consumer is not taken, for the purposes of subsection (1)(c), to have invited the dealer to come to that place, or to make a telephone call, merely because the consumer has:
- (a) given his or her name or contact details other than for the predominant purpose of entering into negotiations relating to the supply of the goods or services referred to in subsection (1)(c); or
  - (b) contacted the dealer in connection with an unsuccessful attempt by the dealer to contact the consumer.

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- (2) An invitation merely to quote a price for a supply is not taken, for the purposes of subsection (1)(c), to be an invitation to enter into negotiations for a supply.
- (3) An agreement is also an *unsolicited consumer agreement* if it is an agreement of a kind that the regulations provide are unsolicited consumer agreements.
- (4) However, despite subsections (1) and (3), an agreement is not an *unsolicited consumer agreement* if it is an agreement of a kind that the regulations provide are not unsolicited consumer agreements.

**70 Presumption that agreements are unsolicited consumer agreements**

- (1) In a proceeding relating to a contravention or possible contravention of this Division (other than a criminal proceeding), an agreement is presumed to be an unsolicited consumer agreement if:
  - (a) a party to the proceeding alleges that the agreement is an unsolicited consumer agreement; and
  - (b) no other party to the proceeding proves that the agreement is not an unsolicited consumer agreement.
- (2) In a proceeding relating to a contravention or possible contravention of this Division (other than a criminal proceeding), it is presumed that a proposed agreement would be an unsolicited consumer agreement if it were made if:
  - (a) a party to the proceeding alleges that the proposed agreement would be an unsolicited consumer agreement if it were made; and
  - (b) no other party to the proceeding proves that the proposed agreement would not be an unsolicited consumer agreement if it were made.

**71 Meaning of *dealer***

A *dealer* is a person who, in trade or commerce:

- (a) enters into negotiations with a consumer with a view to making an agreement for the supply of goods or services to the consumer; or

- (b) calls on, or telephones, a consumer for the purpose of entering into such negotiations;  
whether or not that person is, or is to be, the supplier of the goods or services.

## **72 Meaning of *negotiation***

A *negotiation*, in relation to an agreement or a proposed agreement, includes any discussion or dealing directed towards the making of the agreement or proposed agreement (whether or not the terms of the agreement or proposed agreement are open to any discussion or dealing).

## **Subdivision B—Negotiating unsolicited consumer agreements**

### **73 Permitted hours for negotiating an unsolicited consumer agreement**

- (1) A dealer must not call on a person for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose:
- (a) at any time on a Sunday or a public holiday; or
  - (b) before 9 am on any other day; or
  - (c) after 6 pm on any other day (or after 5 pm if the other day is a Saturday).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) Subsection (1) does not apply if the dealer calls on the person in accordance with consent that:
- (a) was given by the person to the dealer or a person acting on the dealer's behalf; and
  - (b) was not given in the presence of the dealer or a person acting on the dealer's behalf.

Note: The *Do Not Call Register Act 2006* may apply to a telephone call made for the purpose of negotiating an unsolicited consumer agreement.

### **74 Disclosing purpose and identity**

A dealer who calls on a person for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related

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purpose, must, as soon as practicable and in any event before starting to negotiate:

- (a) clearly advise the person that the dealer's purpose is to seek the person's agreement to a supply of the goods or services concerned; and
- (b) clearly advise the person that the dealer is obliged to leave the premises immediately on request; and
- (c) provide to the person such information relating to the dealer's identity as is prescribed by the regulations.

Note: A pecuniary penalty may be imposed for a contravention of this section.

### 75 Ceasing to negotiate on request

- (1) A dealer who calls on a person at any premises for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose, must leave the premises immediately on the request of:

- (a) the occupier of the premises, or any person acting with the actual or apparent authority of the occupier; or
- (b) the person (the *prospective consumer*) with whom the negotiations are being conducted.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) If the prospective consumer makes such a request, the dealer must not contact the prospective consumer for the purpose of negotiating an unsolicited consumer agreement (or for an incidental or related purpose) for at least 30 days after the prospective consumer makes the request.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) If the dealer is not, or is not to be, the supplier of the goods or services to which the negotiations relate:

- (a) subsection (2) applies to that supplier, and any person acting on behalf of that supplier, in the same way that it applies to the dealer; but
- (b) subsection (2) does not apply to the dealer contacting the prospective customer in relation to a supply by another supplier.

## **76 Informing person of termination period etc.**

A dealer must not make an unsolicited consumer agreement with a person unless:

- (a) before the agreement is made, the person is given information as to the following:
  - (i) the person's right to terminate the agreement during the termination period;
  - (ii) the way in which the person may exercise that right;
  - (iii) such other matters as are prescribed by the regulations; and
- (b) if the agreement is made in the presence of both the dealer and the person—the person is given the information in writing; and
- (c) if the agreement is made by telephone—the person is given the information by telephone, and is subsequently given the information in writing; and
- (d) the form in which, and the way in which, the person is given the information complies with any other requirements prescribed by the regulations.

Note: A pecuniary penalty may be imposed for a contravention of this section.

## **77 Liability of suppliers for contraventions by dealers**

If:

- (a) a dealer contravenes a provision of this Subdivision in relation to an unsolicited consumer agreement; and
- (b) the dealer is not, or is not to be, the supplier of the goods or services to which the agreement relates;

the supplier of the goods or services is also taken to have contravened that provision in relation to the agreement.

## **Subdivision C—Requirements for unsolicited consumer agreements etc.**

### **78 Requirement to give document to the consumer**

- (1) If an unsolicited consumer agreement was not negotiated by telephone, the dealer who negotiated the agreement must give a

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copy of the agreement to the consumer under the agreement immediately after the consumer signs the agreement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) If an unsolicited consumer agreement was negotiated by telephone, the dealer who negotiated the agreement must, within 5 business days after the agreement was made or such longer period agreed by the parties, give to the consumer under the agreement:

- (a) personally; or
- (b) by post; or
- (c) with the consumer's consent—by electronic communication; a document (the *agreement document*) evidencing the agreement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) An unsolicited consumer agreement was *negotiated by telephone* if the negotiations that resulted in the making of the agreement took place by telephone (whether or not other negotiations preceded the making of the agreement).

## 79 Requirements for all unsolicited consumer agreements etc.

The supplier under an unsolicited consumer agreement must ensure that the agreement, or (if the agreement was negotiated by telephone) the agreement document, complies with the following requirements:

- (a) it must set out in full all the terms of the agreement, including:
  - (i) the total consideration to be paid or provided by the consumer under the agreement or, if the total consideration is not ascertainable at the time the agreement is made, the way in which it is to be calculated; and
  - (ii) any postal or delivery charges to be paid by the consumer;
- (b) its front page must include a notice that:
  - (i) conspicuously and prominently informs the consumer of the consumer's right to terminate the agreement; and
  - (ii) conspicuously and prominently sets out any other information prescribed by the regulations; and

- (iii) complies with any other requirements prescribed by the regulations;
- (c) it must be accompanied by a notice that:
  - (i) may be used by the consumer to terminate the agreement; and
  - (ii) complies with any requirements prescribed by the regulations;
- (d) it must conspicuously and prominently set out in full:
  - (i) the supplier's name; and
  - (ii) if the supplier has an ABN—the supplier's ABN; and
  - (iii) if the supplier does not have an ABN but has an ACN—the supplier's ACN; and
  - (iv) the supplier's business address (not being a post box) or, if the supplier does not have a business address, the supplier's residential address; and
  - (v) if the supplier has an email address—the supplier's email address; and
  - (vi) if the supplier has a fax number—the supplier's fax number;
- (e) it must be printed clearly or typewritten (apart from any amendments to the printed or typewritten form, which may be handwritten);
- (f) it must be transparent.

Note: A pecuniary penalty may be imposed for a contravention of this section.

## **80 Additional requirements for unsolicited consumer agreements not negotiated by telephone**

The supplier under an unsolicited consumer agreement that was not negotiated by telephone must ensure that, in addition to complying with the requirements of section 79, the agreement complies with the following requirements:

- (a) the agreement must be signed by the consumer under the agreement;
- (b) if the agreement is signed by a person on the supplier's behalf—the agreement must state that the person is acting on the supplier's behalf, and must set out in full:
  - (i) the person's name; and

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- (ii) the person's business address (not being a post box) or, if the person does not have a business address, the person's residential address; and
- (iii) if the person has an email address—the person's email address.

Note: A pecuniary penalty may be imposed for a contravention of this section.

### **81 Requirements for amendments of unsolicited consumer agreements**

The supplier under an unsolicited consumer agreement must ensure that any amendments to the agreement are signed by both parties to the agreement.

Note: A pecuniary penalty may be imposed for a contravention of this section.

### **Subdivision D—Terminating unsolicited consumer agreements**

#### **82 Terminating an unsolicited consumer agreement during the termination period**

- (1) The consumer under an unsolicited consumer agreement may, during the period provided under subsection (3), terminate the agreement by indicating, in an oral or written notice to the supplier under the agreement, an intention to terminate the agreement.
- (2) A right of termination under this section may be exercised:
  - (a) despite affirmation of the agreement by the consumer; and
  - (b) even though the agreement has been fully executed.
- (3) The period during which the consumer may terminate the agreement is whichever of the following periods is the longest:
  - (a) if the agreement was not negotiated by telephone—the period of 10 business days starting at the start of the first business day after the day on which the agreement was made;
  - (b) if the agreement was negotiated by telephone—the period of 10 business days starting at the start of the first business day after the day on which the consumer was given the agreement document relating to the agreement;

- (c) if one or more of the following were contravened in relation to the agreement:
    - (i) section 73 (permitted hours for negotiating an unsolicited consumer agreement);
    - (ii) section 74 (disclosing purpose and identity);
    - (iii) section 75 (ceasing to negotiate on request);  
the period of 3 months starting at the start of the first day after the day on which the agreement was made or, if the agreement was negotiated by telephone, the agreement document was given;
  - (d) if one or more of the following were contravened in relation to the agreement:
    - (i) section 76 (informing consumer of termination period);
    - (ii) a provision of Subdivision C (requirements for unsolicited consumer agreements);
    - (iii) section 86 (prohibition on supplies for 10 business days);  
the period of 6 months starting at the start of the first day after the day on which the agreement was made or, if the agreement was negotiated by telephone, the agreement document was given;
  - (e) such other period as the agreement provides.
- (4) If the notice under subsection (1) is written, it may be given:
- (a) by delivering it personally to the supplier; or
  - (b) by delivering it, or sending it by post, in an envelope addressed to the supplier, to the supplier's address referred to in section 79(d)(iv); or
  - (c) if the supplier has an email address—by sending it to the supplier's email address referred to in section 79(d)(v); or
  - (d) if the supplier has a fax number—by faxing it to the supplier's fax number referred to in section 79(d)(vi).
- (5) A notice under subsection (1) sent by post to a supplier is taken to have been given to the supplier at the time of posting.
- (6) There are no requirements relating to the form or content of a notice under subsection (1).

### 83 Effect of termination

- (1) If an unsolicited consumer agreement is terminated in accordance with section 82:
  - (a) the agreement is taken to have been rescinded by mutual consent; and
  - (b) any related contract or instrument is void.
- (2) A *related contract or instrument*, in relation to an unsolicited consumer agreement, is:
  - (a) any contract of guarantee or indemnity that is related to the agreement; or
  - (b) any instrument related to the agreement that creates a mortgage or charge in favour of the supplier under the contract or the dealer in relation to the contract (or a person nominated by the supplier or dealer); or
  - (c) any contract or instrument (other than an instrument of a kind referred to in paragraph (b)) that is collateral or related to the agreement;but does not include a tied continuing credit contract (within the meaning of section 127(2) of Schedule 1 to the *National Consumer Credit Protection Act 2009*), or a tied loan contract (within the meaning of section 127(3) of that Schedule).
- (3) The termination of an unsolicited consumer agreement has effect for the purposes of section 82 and this section even if:
  - (a) the supplier under the agreement has not received the notice of termination; or
  - (b) the goods or services supplied under the agreement have been wholly or partly consumed or used.

### 84 Obligations of suppliers on termination

If an unsolicited consumer agreement is terminated in accordance with section 82, the supplier under the agreement must, immediately upon being notified of the termination, return or refund to the consumer under the agreement any consideration (or the value of any consideration) that the consumer gave under the agreement or a related contract or instrument.

Note: A pecuniary penalty may be imposed for a contravention of this section.

## **85 Obligations and rights of consumers on termination**

- (1) If an unsolicited consumer agreement is terminated in accordance with section 82, the consumer under the agreement must, within a reasonable time:
  - (a) return to the supplier under the agreement any goods:
    - (i) that have been received from the supplier under the agreement; and
    - (ii) that the consumer has not already consumed; or
  - (b) notify the supplier of the place where the supplier may collect the goods.
- (2) The goods become the property of the consumer, freed and discharged from all liens and charges of any description, if:
  - (a) the consumer gives notice to the supplier under subsection (1)(b); and
  - (b) the supplier does not collect the goods within 30 days after the termination of the contract.
- (3) If:
  - (a) the agreement is terminated in accordance with section 82 after the end of the period of 10 business days starting:
    - (i) if the agreement was not negotiated by telephone—at the start of the first business day after the day on which the agreement was made; or
    - (ii) if the agreement was negotiated by telephone—at the start of the first business day after the day on which the consumer was given the agreement document relating to the agreement; and
  - (b) the consumer returns the goods to the supplier, or the supplier collects the goods, under this section; and
  - (c) the consumer has failed to take reasonable care of the goods; the consumer is liable to pay compensation to the supplier for the damage to, or depreciation in the value of, the goods.
- (4) The compensation is recoverable in a court of competent jurisdiction.
- (5) However, the consumer is not liable for any such damage or depreciation attributable to normal use of the goods or to circumstances beyond the consumer's control.

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- (6) If:
- (a) an unsolicited consumer agreement is terminated in accordance with section 82 after the end of the period of 10 business days starting:
    - (i) if the agreement was not negotiated by telephone—at the start of the first business day after the day on which the agreement was made; or
    - (ii) if the agreement was negotiated by telephone—at the start of the first business day after the day on which the consumer was given the agreement document relating to the agreement; and
  - (b) prior to the termination, but after the end of that period, a service was supplied under the agreement;
- the termination does not affect any liability of the consumer under the agreement to provide consideration for the service.

**86 Prohibition on supplies etc. for 10 business days**

- (1) The supplier under an unsolicited consumer agreement must not:
- (a) supply to the consumer under the agreement the goods or services to be supplied under the agreement; or
  - (b) accept any payment, or any other consideration, in connection with those goods or services; or
  - (c) require any payment, or any other consideration, in connection with those goods or services;
- during the period of 10 business days starting:
- (d) if the agreement was not negotiated by telephone—at the start of the first business day after the day on which the agreement was made; or
  - (e) if the agreement was negotiated by telephone—at the start of the first business day after the day on which the consumer was given the agreement document relating to the agreement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) If the supplier supplies goods to the consumer in contravention of this section, the consumer has the same rights in relation to the goods as if the goods were unsolicited goods.

Note: Section 41 deals with unsolicited goods.

- (3) If the supplier supplies services to the consumer in contravention of this section, the consumer has the same rights in relation to the services as if the services were unsolicited services.

Note: Section 42 deals with unsolicited services.

### **87 Repayment of payments received after termination**

If an unsolicited consumer agreement is terminated in accordance with section 82, the supplier under the agreement must immediately refund to the consumer under the agreement any payment:

- (a) that the consumer, or a person acting on the consumer's behalf, makes to the supplier after the termination; and
- (b) that purports to be made under the agreement or a related contract or instrument.

Note: A pecuniary penalty may be imposed for a contravention of this section.

### **88 Prohibition on recovering amounts after termination**

- (1) If an unsolicited consumer agreement is terminated in accordance with section 82, a person must not:

- (a) bring, or assert an intention to bring, legal proceedings against the consumer; or
- (b) take, or assert an intention to take, any other action against the consumer;

in relation to an amount alleged to be payable, under the agreement or a related contract or instrument, by the consumer under the agreement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (1A) Subsection (1) does not apply to:

- (a) bringing, or asserting an intention to bring, legal proceedings against the consumer; or
- (b) taking, or asserting an intention to take, any other action against the consumer;

to enforce a liability under section 85(3), or a liability of a kind referred to in section 85(6).

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- (2) If an unsolicited consumer agreement is terminated in accordance with section 82, a person must not, for the purpose of recovering an amount alleged to be payable, under the agreement or a related contract or instrument, by the consumer under the agreement:
- (a) place the consumer's name, or cause the consumer's name to be placed, on a list of defaulters or debtors; or
  - (b) assert an intention to place the consumer's name, or cause the consumer's name to be placed, on such a list.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) Without limiting Division 2 of Part 5-2, an injunction granted under that Division may require a person responsible for keeping a list of defaulters or debtors on which the consumer's name has been wrongly placed to remove the name from that list.

### Subdivision E—Miscellaneous

#### 89 Certain provisions of unsolicited consumer agreements void

- (1) A provision (however described) of an unsolicited consumer agreement is void if it has the effect of, or purports to have the effect of:
- (a) excluding, limiting, modifying or restricting a right of the consumer under the agreement to terminate the agreement under this Division; or
  - (b) otherwise excluding, limiting, modifying or restricting the effect or operation of this Division; or
  - (c) making a dispute relating to the agreement, or to a supply to which the agreement relates, justiciable by a court by which the dispute would not otherwise be justiciable.

- (2) The supplier under an unsolicited consumer agreement must ensure that the agreement does not include, or purport to include, a provision (however described) that is, or would be, void because of subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) The supplier under an unsolicited consumer agreement must not attempt to enforce or rely on a provision (however described) that is void because of subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

## **90 Waiver of rights**

- (1) The consumer under an unsolicited consumer agreement is not competent to waive any right conferred by this Division.
- (2) The supplier under the unsolicited consumer agreement must not induce, or attempt to induce, the consumer to waive any right conferred by this Division.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

## **91 Application of this Division to persons to whom rights of consumers and suppliers are assigned etc.**

- (1) This Division applies in relation to a person to whom the rights of a consumer (the *original consumer*) under a contract for the supply of goods or services are assigned or transferred, or pass by operation of law, (whether from the original consumer or from another person) as if the person were the original consumer.
- (2) This Division applies in relation to a person to whom the rights of a supplier (the *original supplier*) under a contract for the supply of goods or services are assigned or transferred, or pass by operation of law, (whether from the original supplier or from another person) as if the person were the original supplier.

## **92 Application of this Division to supplies to third parties**

This Division applies in relation to a contract for the supply of goods or services to a consumer (the *original consumer*) on the order of another person as if the other person were also the consumer.

## **93 Effect of contravening this Division**

- (1) The supplier under an unsolicited consumer agreement cannot enforce the agreement against the consumer under the agreement if a provision of this Division (other than section 85) has been contravened in relation to the agreement.

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- (2) This section does not prevent any action being taken under this Schedule in relation to the contravention.

**94 Regulations may limit the application of this Division**

This Division (other than section 73) does not apply, or provisions of this Division (other than section 73) that are specified in the regulations do not apply, to or in relation to:

- (a) circumstances of a kind specified in the regulations; or
- (b) agreements of a kind specified in the regulations; or
- (c) the conduct of businesses of a kind specified in the regulations.

**95 Application of this Division to certain conduct covered by the Corporations Act**

This Division does not apply in relation to conduct to which section 736, 992A or 992AA of the *Corporations Act 2001* applies.

Note: Section 736 of the *Corporations Act 2001* prohibits hawking of securities. Section 992A of that Act prohibits hawking of certain financial products. Section 992AA of that Act prohibits hawking of managed investment products.

### **Division 3—Lay-by agreements**

#### **96 Lay-by agreements must be in writing etc.**

- (1) A supplier of consumer goods who is a party to a lay-by agreement must ensure that:
  - (a) the agreement is in writing; and
  - (b) a copy of the agreement is given to the consumer to whom the goods are, or are to be, supplied.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A supplier of consumer goods who is a party to a lay-by agreement must ensure that the agreement is transparent.
- (3) A **lay-by agreement** is an agreement between a supplier of consumer goods and a consumer for the supply, in trade or commerce, of the consumer goods on terms (whether express or implied) which provide that:
  - (a) the goods will not be delivered to the consumer until the total price of the goods has been paid; and
  - (b) the price of the goods is to be paid by:
    - (i) 3 or more instalments; or
    - (ii) if the agreement specifies that it is a lay-by agreement—2 or more instalments.
- (4) For the purposes of subsection (3)(b), any deposit paid by the consumer for the consumer goods is taken to be an instalment.

#### **97 Termination of lay-by agreements by consumers**

- (1) A consumer who is party to a lay-by agreement may terminate the agreement at any time before the consumer goods to which the agreement relates are delivered to the consumer under the agreement.
- (2) A supplier of consumer goods who is a party to a lay-by agreement must ensure that the agreement does not require the consumer to pay a charge (a **termination charge**) for the termination of the agreement unless:
  - (a) the agreement is terminated by the consumer; and

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(b) the supplier has not breached the agreement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(3) A supplier of consumer goods who is a party to a lay-by agreement must ensure that, if the agreement provides that a termination charge is payable, the amount of the charge is not more than the supplier's reasonable costs in relation to the agreement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

### 98 Termination of lay-by agreements by suppliers

A supplier of consumer goods who is a party to a lay-by agreement must not terminate the agreement unless:

- (a) the consumer who is a party to the agreement breached a term of the agreement; or
- (b) the supplier is no longer engaged in trade or commerce; or
- (c) the consumer goods to which the agreement relates are no longer available.

Note: A pecuniary penalty may be imposed for a contravention of this section.

### 99 Effect of termination

(1) If a lay-by agreement is terminated by a party to the agreement, the supplier must refund to the consumer all the amounts paid by the consumer under the agreement other than any termination charge that is payable under the agreement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) The supplier is entitled to recover any unpaid termination charge from the consumer as a debt if the amounts paid by the consumer under the lay-by agreement are not enough to cover the charge.

(3) If a lay-by agreement is terminated by a party to the agreement, the supplier is not entitled to damages, or to enforce any other remedy, in relation to that termination except as provided for by this section.

## Division 4—Miscellaneous

### 100 Supplier must provide proof of transaction etc.

(1) If:

- (a) a person (the *supplier*), in trade or commerce, supplies goods or services to a consumer; and
- (b) the total price (excluding GST) of the goods or services is \$75 or more;

the supplier must give the consumer a proof of transaction as soon as practicable after the goods or services are so supplied.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(2) If:

- (a) a person (the *supplier*), in trade or commerce, supplies goods or services to a consumer; and
- (b) the total price (excluding GST) of the goods or services is less than \$75;

the consumer may request a proof of transaction from the supplier as soon as practicable after the goods or services are so supplied.

(3) If a request is made under subsection (2), the supplier must give the proof of transaction within 7 days after the request is made.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

(4) A *proof of transaction* for a supply of goods or services to a consumer is a document that:

- (a) identifies the supplier of the goods or services; and
- (b) if the supplier has an ABN—states the supplier's ABN; and
- (c) if the supplier does not have an ABN but has an ACN—states the supplier's ACN; and
- (d) states the date of the supply; and
- (e) states the goods or services supplied to the consumer; and
- (f) states the price of the goods or services.

Note: The following are examples of a proof of transaction:

- (a) a tax invoice within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*;

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- (b) a cash register receipt;
  - (c) a credit card or debit card statement;
  - (d) a handwritten receipt;
  - (e) a lay-by agreement;
  - (f) a confirmation or receipt number provided for a telephone or internet transaction.
- (5) The supplier must ensure that the proof of transaction given under subsection (1) or (3) is transparent.

**101 Consumer may request an itemised bill**

- (1) If a person (the *supplier*), in trade or commerce, supplies services to a consumer, the consumer may request that the supplier give the consumer an itemised bill that:
- (a) specifies how the price of the services was calculated; and
  - (b) includes, if applicable, the number of hours of labour that related to the supply of the services and the hourly rate for that labour; and
  - (c) includes, if applicable, a list of the materials used to supply the services and the amount charged for those materials.
- (2) The request under subsection (1) must be made within 30 days after:
- (a) the services are supplied; or
  - (b) the consumer receives a bill or account from the supplier for the supply of the services;
- whichever occurs later.
- (3) The supplier must give the consumer the itemised bill within 7 days after the request is made.
- Note: A pecuniary penalty may be imposed for a contravention of this subsection.
- (4) The supplier must not charge the consumer for the itemised bill.
- Note: A pecuniary penalty may be imposed for a contravention of this subsection.
- (5) The supplier must ensure that the itemised bill is transparent.

## 102 Prescribed requirements for warranties against defects

- (1) The regulations may prescribe requirements relating to the form and content of warranties against defects.
- (2) A person must not, in connection with the supply, in trade or commerce, of goods or services to a consumer:
  - (a) give to the consumer a document that evidences a warranty against defects that does not comply with the requirements prescribed for the purposes of subsection (1); or
  - (b) represent directly to the consumer that the goods or services are goods or services to which such a warranty against defects relates.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) A *warranty against defects* is a representation communicated to a consumer in connection with the supply of goods or services, at or about the time of supply, to the effect that a person will (unconditionally or on specified conditions):
  - (a) repair or replace the goods or part of them; or
  - (b) provide again or rectify the services or part of them; or
  - (c) wholly or partly recompense the consumer;if the goods or services or part of them are defective, and includes any document by which such a representation is evidenced.

## 103 Repairers must comply with prescribed requirements

- (1) The regulations may prescribe requirements relating to the form and content of notices to be given relating to the repair of consumer goods.
- (2) A person (the *repairer*) must not, in trade or commerce, accept from another person goods that the other person acquired as a consumer if the repairer:
  - (a) accepts the goods for the purpose of repairing them; and
  - (b) does not give to the other person a notice that complies with the requirements prescribed for the purposes of subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

## **Part 3-3—Safety of consumer goods and product related services**

### **Division 1—Safety standards**

#### **104 Making safety standards for consumer goods and product related services**

- (1) The Commonwealth Minister may, by written notice published on the internet, make a *safety standard* for one or both of the following:
  - (a) consumer goods of a particular kind;
  - (b) product related services of a particular kind.
- (2) A safety standard for consumer goods of a particular kind may consist of such requirements about the following matters as are reasonably necessary to prevent or reduce risk of injury to any person:
  - (a) the performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of consumer goods of that kind;
  - (b) the testing of consumer goods of that kind during, or after the completion of, manufacture or processing;
  - (c) the form and content of markings, warnings or instructions to accompany consumer goods of that kind.
- (3) A safety standard for product related services of a particular kind may consist of such requirements about the following matters as are reasonably necessary to prevent or reduce risk of injury to any person:
  - (a) the manner in which services of that kind are supplied (including, but not limited to, the method of supply);
  - (b) the skills or qualifications of persons who supply such services;
  - (c) the materials used in supplying such services;
  - (d) the testing of such services;

- (e) the form and content of warnings, instructions or other information about such services.

### **105 Declaring safety standards for consumer goods and product related services**

- (1) The Commonwealth Minister may, by written notice published on the internet, declare that the following is a *safety standard* for consumer goods, or product related services, of a kind specified in the instrument:
  - (a) a particular standard, or a particular part of a standard, prepared or approved by Standards Australia International Limited or by an association prescribed by the regulations;
  - (b) such a standard, or such a part of a standard, with additions or variations specified in the notice.
- (2) The Commonwealth Minister must not declare under subsection (1) that a standard, or a part of a standard, referred to in that subsection is a safety standard for:
  - (a) consumer goods of a particular kind; or
  - (b) product related services of a particular kind;if that standard or part is inconsistent with a safety standard for those goods or services that is in force and that was made under section 104(1).

### **106 Supplying etc. consumer goods that do not comply with safety standards**

- (1) A person must not, in trade or commerce, supply consumer goods of a particular kind if:
  - (a) a safety standard for consumer goods of that kind is in force; and
  - (b) those goods do not comply with the standard.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A person must not, in trade or commerce, offer for supply (other than for export) consumer goods the supply of which is prohibited by subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

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- (3) A person must not, in or for the purposes of trade or commerce, manufacture, possess or have control of consumer goods the supply of which is prohibited by subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (4) In a proceeding under Part 5-2 in relation to a contravention of subsection (3), it is a defence if the defendant proves that the defendant's manufacture, possession or control of the goods was not for the purpose of supplying the goods (other than for export).

- (5) A person must not, in trade or commerce, export consumer goods the supply of which is prohibited by subsection (1) unless:
- (a) the person applies, in writing, to the Commonwealth Minister for an approval to export those goods; and
  - (b) the Commonwealth Minister gives such an approval by written notice given to the person.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (6) If the Commonwealth Minister gives an approval under subsection (5), he or she must cause a statement setting out particulars of the approval to be tabled in each House of the Parliament of the Commonwealth within 7 sitting days of that House after the approval is given.

- (7) If:

- (a) a person supplies consumer goods in contravention of this section; and
- (b) another person suffers loss or damage:
  - (i) because of a defect in, or a dangerous characteristic of, the goods; or
  - (ii) because of a reasonably foreseeable use (including a misuse) of the goods; or
  - (iii) because, contrary to the safety standard, he or she was not provided with particular information in relation to the goods; and
- (c) the other person would not have suffered the loss or damage if the goods had complied with the safety standard;

the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of that supply.

### **107 Supplying etc. product related services that do not comply with safety standards**

- (1) A person must not, in trade or commerce, supply product related services of particular kind if:
- (a) a safety standard for services of that kind is in force; and
  - (b) those services do not comply with the standard.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A person must not, in trade or commerce, offer for supply product related services the supply of which is prohibited by subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) If:

- (a) a person supplies product related services in contravention of this section; and
- (b) another person suffers loss or damage:
  - (i) because of defect in, or a dangerous characteristic of, consumer goods that results from the services being supplied; or
  - (ii) because of a reasonably foreseeable use (including a misuse) of consumer goods that results from the services being supplied; or
  - (iii) because, contrary to the safety standard, he or she was not provided with particular information in relation to the services; and
- (c) the other person would not have suffered the loss or damage if the services had complied with the safety standard;

the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of that supply.

### **108 Requirement to nominate a safety standard**

If:

- (a) a safety standard for consumer goods of a particular kind is in force; and
- (b) the standard specifies, as alternative methods of complying with the standard (or part of the standard), 2 or more sets of requirements relating to goods of that kind; and

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- (c) the regulator gives to a supplier of goods of that kind a written request that the supplier nominate which of those sets of requirements the supplier intends to comply with as the supplier's method of complying with the standard;
- the supplier must, within the period specified in the request, give to the regulator a written notice specifying which of those sets of requirements the supplier intends to comply with as the supplier's method of complying with the standard.

## **Division 2—Bans on consumer goods and product related services**

### **Subdivision A—Interim bans**

#### **109 Interim bans on consumer goods or product related services that will or may cause injury to any person etc.**

- (1) A responsible Minister may, by written notice published on the internet, impose an *interim ban* on consumer goods of a particular kind if:
  - (a) it appears to the responsible Minister that:
    - (i) consumer goods of that kind will or may cause injury to any person; or
    - (ii) a reasonably foreseeable use (including a misuse) of consumer goods of that kind will or may cause injury to any person; or
  - (b) another responsible Minister has imposed, under paragraph (a), an interim ban:
    - (i) on consumer goods of the same kind; or
    - (ii) on consumer goods of a kind that includes those goods; and that ban is still in force.
- (2) A responsible Minister may, by written notice published on the internet, impose an *interim ban* on product related services of a particular kind if:
  - (a) it appears to the responsible Minister that:
    - (i) as a result of services of that kind being supplied, consumer goods of a particular kind will or may cause injury to any person; or
    - (ii) a reasonably foreseeable use (including a misuse) of consumer goods of a particular kind, to which such services relate, will or may cause injury to any person as a result of such services being supplied; or
  - (b) another responsible Minister has imposed, under paragraph (a), an interim ban:
    - (i) on product related services of the same kind; or
    - (ii) on product related services that include those services;

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and that ban is still in force.

**110 Places in which interim bans apply**

- (1) An interim ban imposed by the Commonwealth Minister applies in all States and Territories.
- (2) An interim ban imposed by a responsible Minister who is Minister of a State applies in the State.
- (3) An interim ban imposed by a responsible Minister who is a Minister of a Territory applies in the Territory.

**111 Ban period for interim bans**

- (1) An interim ban imposed by a responsible Minister is in force during the period (the *ban period*) that:
    - (a) starts on the day (the *start day*) specified in the notice imposing the ban; and
    - (b) subject to this Subdivision, ends at the end of 60 days after the start day.
  - (2) Before the ban period for the interim ban ends, the responsible Minister may, by written notice published on the internet, extend the ban period for the ban by a period of up to 30 days.
  - (3) If:
    - (a) the ban period for the interim ban is extended under subsection (2); and
    - (b) the extended ban period for the ban has not ended; and
    - (c) the interim ban was not imposed by the Commonwealth Minister;the responsible Minister may, in writing, request the Commonwealth Minister to extend the extended ban period for the ban.
  - (4) If a request is made under subsection (3), the Commonwealth Minister may, by written notice published on the internet, extend the extended ban period for the interim ban by a further period of up to 30 days.
  - (5) If:
    - (a) a request is made under subsection (3); and
-

- (b) the Commonwealth Minister has not made a decision on the request immediately before the extended ban period for the interim ban is to end;

the Commonwealth Minister is taken to have decided to extend the extended ban period for the ban by a further period of 30 days.

(6) If:

- (a) the ban period for the interim ban is extended under subsection (2); and  
(b) the extended ban period for the ban has not ended; and  
(c) the interim ban was imposed by the Commonwealth Minister;

the Commonwealth Minister may, by written notice published on the internet, extend the extended ban period for the interim ban by a further period of up to 30 days.

## 112 Interaction of multiple interim bans

(1) If:

- (a) an interim ban (the *original ban*) on consumer goods of a particular kind (the *banned goods*) is imposed by a responsible Minister other than the Commonwealth Minister; and  
(b) while the original ban is in force, the Commonwealth Minister imposes an interim ban (the *Commonwealth ban*):  
(i) on the banned goods; or  
(ii) on consumer goods of a kind that includes the banned goods;

the original ban, to the extent that it is a ban on the banned goods, ceases to be in force immediately before the Commonwealth ban comes into force.

(2) If:

- (a) an interim ban (the *original ban*) on product related services of a particular kind (the *banned services*) is imposed by a responsible Minister other than the Commonwealth Minister; and  
(b) while the original ban is in force, the Commonwealth Minister imposes an interim ban (the *Commonwealth ban*):  
(i) on the banned services; or

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- (ii) on product related services of a kind that includes the banned services;  
the original ban, to the extent that it is a ban on the banned services, ceases to be in force immediately before the Commonwealth ban comes into force.

### 113 Revocation of interim bans

If a responsible Minister imposes an interim ban:

- (a) the responsible Minister may, by written notice published on the internet, revoke the ban at any time; and
- (b) the ban ceases to be in force on the day specified by the responsible Minister in the notice.

## Subdivision B—Permanent bans

### 114 Permanent bans on consumer goods or product related services

- (1) The Commonwealth Minister may, by written notice published on the internet, impose a **permanent ban** on consumer goods of a particular kind if:
  - (a) one or more interim bans on consumer goods of that kind (the **banned goods**), or on consumer goods of a kind that include the banned goods, are in force; or
  - (b) it appears to the Commonwealth Minister that:
    - (i) consumer goods of that kind will or may cause injury to any person; or
    - (ii) a reasonably foreseeable use (including a misuse) of consumer goods of that kind will or may cause injury to any person.
- (2) The Commonwealth Minister may, by written notice published on the internet, impose a **permanent ban** on product related services of a particular kind if:
  - (a) one or more interim bans on product related services of that kind (the **banned services**), or on product related services of a kind that include the banned services, are in force; or
  - (b) it appears to the Commonwealth Minister that:
    - (i) as a result of services of that kind being supplied, consumer goods of a particular kind will or may cause injury to any person; or

- (ii) a reasonably foreseeable use (including a misuse) of consumer goods of a particular kind, to which such services relate, will or may cause injury to any person as a result of such services being supplied.

### **115 Places in which permanent bans apply**

A permanent ban applies in all States and Territories.

### **116 When permanent bans come into force**

A permanent ban comes into force on the day specified by the Commonwealth Minister in the instrument imposing the ban.

### **117 Revocation of permanent bans**

If the Commonwealth Minister imposes a permanent ban:

- (a) the Commonwealth Minister may, by written notice published on the internet, revoke the ban at any time; and
- (b) the ban ceases to be in force on the day specified by the Commonwealth Minister in the notice.

## **Subdivision C—Compliance with interim bans and permanent bans**

### **118 Supplying etc. consumer goods covered by a ban**

- (1) A person must not, in trade or commerce, supply consumer goods of a particular kind if:
  - (a) an interim ban on consumer goods of that kind is in force in the place where the supply occurs; or
  - (b) a permanent ban on consumer goods of that kind is in force.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A person must not, in trade or commerce, offer for supply (other than for export) consumer goods the supply of which is prohibited by subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

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- (3) A person must not, in or for the purposes of trade or commerce, manufacture, possess or have control of consumer goods the supply of which is prohibited by subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (4) In a proceeding under Part 5-2 in relation to a contravention of subsection (3), it is a defence if the defendant proves that the defendant's manufacture, possession or control of the goods was not for the purpose of supplying the goods (other than for export).

- (5) A person must not, in trade or commerce, export consumer goods the supply of which is prohibited by subsection (1) unless:
- (a) the person applies, in writing, to the Commonwealth Minister for an approval to export those goods; and
  - (b) the Commonwealth Minister gives such an approval by written notice given to the person.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (6) If the Commonwealth Minister gives an approval under subsection (5), he or she must cause a statement setting out particulars of the approval to be tabled in each House of the Parliament of the Commonwealth within 7 sitting days of that House after the approval is given.

- (7) If:

- (a) a person supplies consumer goods in contravention of subsection (1); and
- (b) another person suffers loss or damage:
  - (i) because of a defect in, or a dangerous characteristic of, the goods; or
  - (ii) because of a reasonably foreseeable use (including a misuse) of the goods;

the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of that supply.

**119 Supplying etc. product related services covered by a ban**

- (1) A person must not, in trade or commerce, supply product related services of a particular kind if:

- (a) an interim ban on services of that kind is in force in the place where the supply occurs; or
- (b) a permanent ban on services of that kind is in force.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A person must not, in trade or commerce, offer for supply product related services the supply of which is prohibited by subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) If:

- (a) a person supplies product related services in contravention of subsection (1); and
- (b) another person suffers loss or damage:
  - (i) because of a defect in, or a dangerous characteristic of, consumer goods that results from the services being supplied; or
  - (ii) because of a reasonably foreseeable use (including a misuse) of consumer goods that results from the services being supplied;

the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of that supply.

### **Subdivision D—Temporary exemption from mutual recognition principles**

#### **120 Temporary exemption under the *Trans-Tasman Mutual Recognition Act 1997***

- (1) If:

- (a) an interim ban on consumer goods of a particular kind is in force; or
- (b) a permanent ban on consumer goods of a particular kind is in force;

the goods are taken, for the purposes of section 46 of the *Trans-Tasman Mutual Recognition Act 1997*, to be goods of a kind that are declared, in the manner provided by section 46(2) of that Act, to be exempt from the operation of that Act.

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- (2) This section does not affect the application of section 46(4) of that Act in relation to such an exemption.

**121 Temporary exemption under the *Mutual Recognition Act 1992***

- (1) If:
- (a) an interim ban on consumer goods of a particular kind is in force; and
  - (b) the interim ban was not imposed by the Commonwealth Minister;
- the goods are taken, for the purposes of section 15 of the *Mutual Recognition Act 1992*, to be goods of a kind that are declared, in the manner provided by section 15(1) of that Act, to be goods to which that section applies.
- (2) This section does not affect the application of section 15(3) of that Act in relation to such an exemption.

## **Division 3—Recall of consumer goods**

### **Subdivision A—Compulsory recall of consumer goods**

#### **122 Compulsory recall of consumer goods**

- (1) A responsible Minister may, by written notice published on the internet, issue a *recall notice* for consumer goods of a particular kind if:
  - (a) a person, in trade or commerce, supplies consumer goods of that kind; and
  - (b) any of the following applies:
    - (i) it appears to the responsible Minister that such goods will or may cause injury to any person;
    - (ii) it appears to the responsible Minister that a reasonably foreseeable use (including a misuse) of such goods will or may cause injury to any person;
    - (iii) a safety standard for such goods is in force and the goods do not comply with the standard;
    - (iv) an interim ban, or a permanent ban, on such goods is in force; and
  - (c) it appears to the responsible Minister that one or more suppliers of such goods have not taken satisfactory action to prevent those goods causing injury to any person.
- (2) It is not necessary for the purposes of subsection (1)(c) for the responsible Minister to know the identities of any of the suppliers of the consumer goods of that kind.
- (3) A recall notice for consumer goods may be issued under subsection (1) even if the consumer goods have become fixtures since the time they were supplied.

#### **123 Contents of a recall notice**

- (1) A recall notice for the consumer goods may require one or more suppliers of the goods, or (if no such supplier is known to the responsible Minister who issued the notice) the regulator, to take one or more of the following actions:
  - (a) recall the goods;

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- (b) disclose to the public, or to a class of persons specified in the notice, one or more of the following:
    - (i) the nature of a defect in, or a dangerous characteristic of, the goods as identified in the notice;
    - (ii) the circumstances as identified in the notice in which a reasonably foreseeable use or misuse of the goods is dangerous;
    - (iii) procedures as specified in the notice for disposing of the goods;
  - (c) if the identities of any of those suppliers are known to the responsible Minister—inform the public, or a class of persons specified in the notice, that the supplier undertakes to do whichever of the following the supplier thinks is appropriate:
    - (i) unless the notice identifies a dangerous characteristic of the goods—repair the goods;
    - (ii) replace the goods;
    - (iii) refund to a person to whom the goods were supplied (whether by the supplier or by another person) the price of the goods.
- (2) The recall notice may specify:
- (a) the manner in which the action required to be taken by the notice must be taken; and
  - (b) the period within which the action must be taken.
- (3) If the recall notice requires the regulator to take action to recall the consumer goods, the responsible Minister may specify in the notice that the regulator must retain, destroy or otherwise dispose of the goods.
- (4) If the recall notice requires a supplier of the consumer goods to take action of a kind referred to in subsection (1)(c), the responsible Minister may specify in the notice that, if:
- (a) the supplier undertakes to refund the price of the goods; and
  - (b) a period of more than 12 months has elapsed since a person (whether or not the person to whom the refund is to be made) acquired the goods from the supplier;
- the amount of a refund may be reduced by the supplier by an amount calculated in a manner specified in the notice that is attributable to the use which a person has had of the goods.

### **124 Obligations of a supplier in relation to a recall notice**

- (1) This section applies if a recall notice for consumer goods requires a supplier to take action of a kind referred to in section 123(1)(c).
- (2) If the supplier undertakes to repair the consumer goods, the supplier must cause the goods to be repaired so that:
  - (a) any defect in the goods identified in the recall notice is remedied; and
  - (b) if a safety standard for the goods is in force—the goods comply with that standard.
- (3) If the supplier undertakes to replace the consumer goods, the supplier must replace the goods with similar consumer goods which:
  - (a) if a defect in, or a dangerous characteristic of, the goods to be replaced was identified in the recall notice—do not contain that defect or have that characteristic; and
  - (b) if a safety standard for the goods to be replaced is in force—comply with that standard.
- (4) If the supplier undertakes:
  - (a) to repair the consumer goods; or
  - (b) to replace the consumer goods;the cost of the repair or replacement, including any necessary transportation costs, must be paid by the supplier.

### **125 Notification by persons who supply consumer goods outside Australia if there is compulsory recall**

- (1) If consumer goods of a particular kind are recalled as required by a recall notice, a person who has supplied or supplies those consumer goods to a person outside Australia must give the person outside Australia a written notice that complies with subsection (2).
- (2) The notice given under subsection (1) must:
  - (a) state that the consumer goods are subject to recall; and
  - (b) if the consumer goods contain a defect or have a dangerous characteristic—set out the nature of that defect or characteristic; and

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- (c) if a reasonably foreseeable use or misuse of the consumer goods is dangerous—set out the circumstances of that use or misuse; and
  - (d) if the consumer goods do not comply with a safety standard for such goods that is in force—set out the nature of the non-compliance; and
  - (e) if an interim ban, or a permanent ban, on the consumer goods is in force—state that fact.
- (3) The notice under subsection (1) must be given as soon as practicable after the supply of the consumer goods to the person outside Australia.
- (4) A person who is required to give a notice under subsection (1) must, within 10 days after giving the notice, give a copy of the notice to the responsible Minister who issued the recall notice.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

### 126 Interaction of multiple recall notices

If:

- (a) a recall notice (the *original recall notice*) for consumer goods of a particular kind (the *recalled goods*) is issued by a responsible Minister other than the Commonwealth Minister; and
- (b) while the original recall notice is in force, the Commonwealth Minister issues a recall notice (the *Commonwealth recall notice*):
  - (i) for the recalled goods; or
  - (ii) for consumer goods of a kind that includes the recalled goods;

the original recall notice, to the extent that it relates to the recalled goods, ceases to be in force immediately before the Commonwealth recall notice is issued.

### 127 Compliance with recall notices

- (1) If:
- (a) a recall notice for consumer goods is in force; and

- (b) the notice requires a person (other than the regulator) to do one or more things;

the person must comply with the notice.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) If a recall notice for consumer goods is in force, a person must not, in trade or commerce:

- (a) if the notice identifies a defect in, or a dangerous characteristic of, the consumer goods—supply consumer goods of the kind to which the notice relates which contain that defect or have that characteristic; or
- (b) in any other case—supply consumer goods of the kind to which the notice relates.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) If:

- (a) a person contravenes subsection (1) or (2) in relation to consumer goods; and
- (b) another person suffers loss or damage:
  - (i) because of a defect in, or a dangerous characteristic of, the goods; or
  - (ii) because of a reasonably foreseeable use (including a misuse) of the goods; or
  - (iii) because, contrary to the recall notice, the other person was not provided with particular information in relation to the goods;

the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of the contravention.

## **Subdivision B—Voluntary recall of consumer goods**

### **128 Notification requirements for a voluntary recall of consumer goods**

- (1) This section applies if a person voluntarily takes action to recall consumer goods of a particular kind (including consumer goods that have become fixtures since being supplied) because:
  - (a) the consumer goods will or may cause injury to any other person; or

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- (b) a reasonably foreseeable use (including a misuse) of the consumer goods will or may cause injury to any other person;  
or
  - (c) a safety standard for the consumer goods is in force and they do not, or it is likely that they do not, comply with the standard; or
  - (d) an interim ban, or a permanent ban, on the consumer goods is in force.
- (2) The person must, within 2 days after taking the action, give the Commonwealth Minister a written notice that complies with subsection (7).
- Note: A pecuniary penalty may be imposed for a contravention of this subsection.
- (3) The Commonwealth Minister may publish a copy of the notice on the internet.
- (4) A person who has supplied or supplies consumer goods of that kind to another person outside Australia must give the other person a written notice that complies with subsection (7).
- (5) The notice under subsection (4) must be given as soon as practicable after the supply of the consumer goods to the person outside Australia.
- (6) A person who is required to give a notice under subsection (4) must, within 10 days after giving the notice, give a copy of the notice to the Commonwealth Minister.
- Note: A pecuniary penalty may be imposed for a contravention of this subsection.
- (7) A notice given under subsection (2) or (4) must:
- (a) state that the consumer goods are subject to recall; and
  - (b) if the consumer goods contain a defect or have a dangerous characteristic—set out the nature of that defect or characteristic; and
  - (c) if a reasonably foreseeable use or misuse of the consumer goods is dangerous—set out the circumstances of that use or misuse; and
  - (d) if the consumer goods do not, or it is likely that they do not, comply with a safety standard for the goods that is in force—

set out the nature of the non-compliance or likely non-compliance; and

- (e) if an interim ban, or a permanent ban, on the consumer goods is in force—state that fact.

## **Division 4—Safety warning notices**

### **129 Safety warning notices about consumer goods and product related services**

- (1) A responsible Minister may publish on the internet a written notice containing one or both of the following:
  - (a) a statement that consumer goods of a kind specified in the notice are under investigation to determine whether:
    - (i) those goods will or may cause injury to any person; or
    - (ii) a reasonably foreseeable use (including a misuse) of those goods will or may cause injury to any person;
  - (b) a warning of possible risks involved in the use of consumer goods of a kind specified in the notice.
- (2) A responsible Minister may publish on the internet a written notice containing one or both of the following:
  - (a) a statement that product related services of a kind specified in the notice are under investigation to determine whether:
    - (i) consumer goods of a particular kind will or may cause injury to any person as a result of services of that kind being supplied; or
    - (ii) a reasonably foreseeable use (including a misuse) of consumer goods of a particular kind, to which such services relate, will or may cause injury to any person as a result of such services being supplied;
  - (b) a warning of possible risks involved in the supply of product related services of a kind specified in the notice.

### **130 Announcement of the results of an investigation etc.**

- (1) If:
  - (a) an investigation of consumer goods, or product related services, specified in a notice under section 129(1) or (2) has been completed; and
  - (b) none of the following have been published or issued in relation to those goods or services:
    - (i) a proposed ban notice under section 132 of the Competition and Consumer Act;

- (ii) a proposed recall notice under section 132A of that Act;
  - (iii) a notice under section 132J(1) or (2) of that Act;
- the responsible Minister who issued the notice under section 129(1) or (2) must, as soon as practicable after the completion of the investigation, announce, by written notice published on the internet, the results of the investigation.
- (2) The responsible Minister may announce in a notice published under subsection (1) of this section:
    - (a) whether any action under this Part is proposed to be taken in relation to the consumer goods or product related services; and
    - (b) if it is proposed to take any such action—what action is proposed to be taken.

**Division 5—Consumer goods, or product related services,  
associated with death or serious injury or illness**

**131 Suppliers to report consumer goods associated with the death or  
serious injury or illness of any person**

- (1) If:
- (a) a person (the *supplier*), in trade or commerce, supplies consumer goods; and
  - (b) the supplier becomes aware of the death or serious injury or illness of any person and:
    - (i) considers that the death or serious injury or illness was caused, or may have been caused, by the use or foreseeable misuse of the consumer goods; or
    - (ii) becomes aware that a person other than the supplier considers that the death or serious injury or illness was caused, or may have been caused, by the use or foreseeable misuse of the consumer goods;

the supplier must, within 2 days of becoming so aware, give the Commonwealth Minister a written notice that complies with subsection (5).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) Subsection (1) does not apply if:
- (a) it is clear that the death or serious injury or illness was not caused by the use or foreseeable misuse of the consumer goods; or
  - (b) it is very unlikely that the death or serious injury or illness was caused by the use or foreseeable misuse of the consumer goods; or
  - (c) the supplier, or another person, is required to notify the death or serious injury or illness in accordance with a law of the Commonwealth, a State or a Territory that is a law specified in the regulations; or
  - (d) the supplier, or another person, is required to notify the death or serious injury or illness in accordance with an industry code of practice that:
    - (i) applies to the supplier or other person; and

- (ii) is specified in the regulations.
- (3) Subsection (1) applies whether or not the consumer goods were being used before or at the time the death or serious injury or illness occurred.
- (4) Without limiting subsection (1), the ways in which the supplier may become aware as mentioned in subsection (1)(b) include receiving the relevant information from any of the following:
  - (a) a consumer;
  - (b) a person who re-supplies the consumer goods;
  - (c) a repairer or insurer of the goods;
  - (d) an industry organisation or consumer organisation.
- (5) The notice must:
  - (a) identify the consumer goods; and
  - (b) include information about the following matters to the extent that it is known by the supplier at the time the notice is given:
    - (i) when, and in what quantities, the consumer goods were manufactured in Australia, supplied in Australia, imported into Australia or exported from Australia;
    - (ii) the circumstances in which the death or serious injury or illness occurred;
    - (iii) the nature of any serious injury or illness suffered by any person;
    - (iv) any action that the supplier has taken, or is intending to take, in relation to the consumer goods.
- (6) The giving of the notice under subsection (1) is not to be taken for any purpose to be an admission by the supplier of any liability in relation to:
  - (a) the consumer goods; or
  - (b) the death or serious injury or illness of any person.

### **132 Suppliers to report product related services associated with the death or serious injury or illness of any person**

- (1) If:
  - (a) a person (the *supplier*), in trade or commerce, supplies product related services; and

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- (b) the supplier becomes aware of the death or serious injury or illness of any person and:
  - (i) considers that the death or serious injury or illness was caused, or may have been caused, by the use or foreseeable misuse of the consumer goods to which the services relate; or
  - (ii) becomes aware that a person other than the supplier considers that the death or serious injury or illness was caused, or may have been caused, by the use or foreseeable misuse of the consumer goods to which the services relate;

the supplier must, within 2 days of becoming so aware, give the Commonwealth Minister a written notice that complies with subsection (5).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) Subsection (1) does not apply if:
  - (a) it is clear that the death or serious injury or illness was not caused by the use or foreseeable misuse of the consumer goods to which the services relate; or
  - (b) it is very unlikely that the death or serious injury or illness was caused by the use or foreseeable misuse of the consumer goods to which the services relate; or
  - (c) the supplier, or another person, is required to notify the death or serious injury or illness in accordance with a law of the Commonwealth, a State or a Territory that is a law specified in the regulations; or
  - (d) the supplier, or another person, has notified the death or serious injury or illness in accordance with an industry code of practice that:
    - (i) applies to the supplier or other person; and
    - (ii) is specified in the regulations.
- (3) Subsection (1) applies whether or not consumer goods to which the product related services relate were being used before or at the time the death or serious injury or illness occurred.
- (4) Without limiting subsection (1), the ways in which the supplier may become aware as mentioned in subsection (1)(b) include receiving the relevant information from any of the following:

- (a) a consumer;
  - (b) a person who re-supplies the product related services;
  - (c) an insurer of the services;
  - (d) an industry organisation or consumer organisation.
- (5) The notice must:
- (a) identify the product related services and the consumer goods to which the services relate; and
  - (b) include information about the following matters to the extent that it is known by the supplier at the time the notice is given:
    - (i) when the services have been supplied;
    - (ii) the circumstances in which the death or serious injury or illness occurred;
    - (iii) the nature of any serious injury or illness suffered by any person;
    - (iv) any action that the supplier has taken, or is intending to take, in relation to the services.
- (6) The giving of the notice under subsection (1) is not to be taken for any purpose to be an admission by the supplier of any liability in relation to:
- (a) the product related services; or
  - (b) the consumer goods to which the services relate; or
  - (c) the death or serious injury or illness of any person.

### **132A Confidentiality of notices given under this Division**

- (1) A person must not disclose to any other person a notice given under this Division, or any part of or information contained in such a notice, unless the person who gave the notice has consented to the notice, or that part or information, not being treated as confidential.
- (2) This section does not apply if:
- (a) the disclosure is made by the Commonwealth Minister to:
    - (i) another responsible Minister; or
    - (ii) the regulator; or
    - (iii) an associate regulator; or

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- (b) the disclosure is made by the Commonwealth Minister and the Commonwealth Minister considers that the disclosure is in the public interest; or
- (c) 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:
  - (i) to another member of the staff of the regulator or associate regulator; or
  - (ii) if the person making the disclosure is a member of the staff of the regulator—to an associate regulator; or
  - (iii) if the person making the disclosure is a member of the staff of an associate regulator—to the regulator or another associate regulator; or
- (d) the disclosure is required or authorised by or under law; or
- (e) the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty.

## **Division 6—Miscellaneous**

### **133 Liability under a contract of insurance**

If:

- (a) a contract of insurance between an insurer and a person relates to:
  - (i) the recall of consumer goods that are supplied by the person, or which the person proposes to supply; or
  - (ii) the liability of the person with respect to possible defects in such consumer goods; and
- (b) the person gives information relating to any such consumer goods to:
  - (i) a responsible Minister; or
  - (ii) the regulator; or
  - (iii) a person appointed or engaged under the *Public Service Act 1999*, or under a corresponding law of a State or a Territory; or
  - (iv) an officer of an authority of the Commonwealth or of a State or Territory;

the liability of the insurer under the contract is not affected only because the person gave the information.

## Part 3-4—Information standards

### 134 Making information standards for goods and services

- (1) The Commonwealth Minister may, by written notice published on the internet, make an *information standard* for one or both of the following:
  - (a) goods of a particular kind;
  - (b) services of a particular kind.
- (2) Without limiting subsection (1), an information standard for goods or services of a particular kind may:
  - (a) make provision in relation to the content of information about goods or services of that kind; or
  - (b) require the provision of specified information about goods or services of that kind; or
  - (c) provide for the manner or form in which such information is to be provided; or
  - (d) provide that such information is not to be provided in a specified manner or form; or
  - (e) provide that information of a specified kind is not to be provided about goods or services of that kind; or
  - (f) assign a meaning to specified information about goods or services.

### 135 Declaring information standards for goods and services

- (1) The Commonwealth Minister may, by written notice published on the internet, declare that the following is an *information standard* for goods or services of a kind specified in the instrument:
  - (a) a particular standard, or a particular part of a standard, prepared or approved by Standards Australia International Limited or by an association prescribed by the regulations;
  - (b) such a standard, or such a part of a standard, with additions or variations specified in the notice.
- (2) The Commonwealth Minister must not declare under subsection (1) that a standard, or a part of a standard, referred to in that subsection is an information standard for:

- (a) goods of a particular kind; or
  - (b) services of a particular kind;
- if that standard or part is inconsistent with an information standard for those goods or services that is in force and was made under section 134(1).

### **136 Supplying etc. goods that do not comply with information standards**

- (1) A person must not, in trade or commerce, supply goods of a particular kind if:
- (a) an information standard for goods of that kind is in force; and
  - (b) the person has not complied with that standard.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A person must not, in trade or commerce, offer for supply goods the supply of which is prohibited by subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) A person must not, in or for the purposes of trade or commerce, manufacture, possess or have control of goods the supply of which is prohibited by subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (4) In a proceeding under Part 5-2 in relation to a contravention of subsection (3), it is a defence if the defendant proves that the defendant's manufacture, possession or control of the goods was not for the purpose of supplying the goods.

- (5) Subsections (1), (2) and (3) do not apply to goods that are intended to be used outside Australia.

- (6) Unless the contrary is established, it is presumed, for the purposes of this section, that goods are intended to be used outside Australia if either of the following is applied to the goods:

- (a) a statement that the goods are for export only;

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- (b) a statement indicating, by the use of words authorised by the regulations to be used for the purposes of this subsection, that the goods are intended to be used outside Australia.
- (7) Without limiting subsection (6), a statement may, for the purposes of that subsection, be applied to goods by being:
  - (a) woven in, impressed on, worked into or annexed or affixed to the goods; or
  - (b) applied to a covering, label, reel or thing in or with which the goods are supplied.
- (8) If:
  - (a) a person (the *supplier*) supplies goods in contravention of subsection (1), (2) or (3); and
  - (b) another person suffers loss or damage because, contrary to the information standard, he or she was not provided with particular information in relation to the goods; and
  - (c) the other person would not have suffered the loss or damage if the supplier had complied with the information standard;the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of that supply.

**137 Supplying etc. services that do not comply with information standards**

- (1) A person must not, in trade or commerce, supply services of a particular kind if:
  - (a) an information standard for services of that kind is in force; and
  - (b) the person has not complied with that standard.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A person must not, in trade or commerce, offer for supply services the supply of which is prohibited by subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) If:
  - (a) a person (the *supplier*) supplies services in contravention of subsection (1) or (2); and

- (b) another person suffers loss or damage because, contrary to the information standard, he or she was not provided with particular information in relation to the services; and
  - (c) the other person would not have suffered the loss or damage if the supplier had complied with the information standard;
- the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of that supply.

## **Part 3-5—Liability of manufacturers for goods with safety defects**

### **Division 1—Actions against manufacturers for goods with safety defects**

#### **138 Liability for loss or damage suffered by an injured individual**

- (1) A manufacturer of goods is liable to compensate an individual if:
  - (a) the manufacturer supplies the goods in trade or commerce; and
  - (b) the goods have a safety defect; and
  - (c) the individual suffers injuries because of the safety defect.
- (2) The individual may recover, by action against the manufacturer, the amount of the loss or damage suffered by the individual.
- (3) If the individual dies because of the injuries, a law of a State or a Territory about liability in respect of the death of individuals applies as if:
  - (a) the action were an action under the law of the State or Territory for damages in respect of the injuries; and
  - (b) the safety defect were the manufacturer's wrongful act, neglect or default.

#### **139 Liability for loss or damage suffered by a person other than an injured individual**

- (1) A manufacturer of goods is liable to compensate a person if:
  - (a) the manufacturer supplies the goods in trade or commerce; and
  - (b) the goods have a safety defect; and
  - (c) an individual (other than the person) suffers injuries because of the safety defect; and
  - (d) the person suffers loss or damage because of:
    - (i) the injuries; or
    - (ii) if the individual dies because of the injuries—the individual's death; and

- (e) the loss or damage does not come about because of a business or professional relationship between the person and the individual.
- (2) The person may recover, by action against the manufacturer, the amount of the loss or damage suffered by the person.

**140 Liability for loss or damage suffered by a person if other goods are destroyed or damaged**

- (1) A manufacturer of goods is liable to compensate a person if:
- (a) the manufacturer supplies the goods in trade or commerce; and
  - (b) the goods have a safety defect; and
  - (c) other goods of a kind ordinarily acquired for personal, domestic or household use or consumption are destroyed or damaged because of the safety defect; and
  - (d) the person used or consumed, or intended to use or consume, the destroyed or damaged goods for personal, domestic or household use or consumption; and
  - (e) the person suffers loss or damage as a result of the destruction or damage.
- (2) The person may recover, by action against the manufacturer, the amount of the loss or damage suffered by the person.

**141 Liability for loss or damage suffered by a person if land, buildings or fixtures are destroyed or damaged**

- (1) A manufacturer of goods is liable to compensate a person if:
- (a) the manufacturer supplies the goods in trade or commerce; and
  - (b) the goods have a safety defect; and
  - (c) land, buildings or fixtures are destroyed or damaged because of the safety defect; and
  - (d) the land, buildings or fixtures are ordinarily acquired for private use; and
  - (e) the person used, or intended to use, the land, buildings or fixtures for private use; and
  - (f) the person suffers loss or damage as a result of the destruction or damage.

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- (2) The person may recover, by action against the manufacturer, the amount of the loss or damage suffered by the person.

**142 Defences to defective goods actions**

In a defective goods action, it is a defence if it is established that:

- (a) the safety defect in the goods that is alleged to have caused the loss or damage did not exist:
  - (i) in the case of electricity—at the time at which the electricity was generated, being a time before it was transmitted or distributed; or
  - (ii) in any other case—at the time when the goods were supplied by their actual manufacturer; or
- (b) the goods had that safety defect only because there was compliance with a mandatory standard for them; or
- (c) the state of scientific or technical knowledge at the time when the goods were supplied by their manufacturer was not such as to enable that safety defect to be discovered; or
- (d) if the goods that had that safety defect were comprised in other goods—that safety defect is attributable only to:
  - (i) the design of the other goods; or
  - (ii) the markings on or accompanying the other goods; or
  - (iii) the instructions or warnings given by the manufacturer of the other goods.

## **Division 2—Defective goods actions**

### **143 Time for commencing defective goods actions**

- (1) Subject to subsection (2), a person may commence a defective goods action at any time within 3 years after the time the person became aware, or ought reasonably to have become aware, of all of the following:
  - (a) the alleged loss or damage;
  - (b) the safety defect of the goods;
  - (c) the identity of the person who manufactured the goods.
- (2) A defective goods action must be commenced within 10 years of the supply by the manufacturer of the goods to which the action relates.

### **144 Liability joint and several**

If 2 or more persons are liable under Division 1 for the same loss or damage, they are jointly and severally liable.

### **145 Survival of actions**

A law of a State or a Territory about the survival of causes of action vested in persons who die applies to actions under Division 1.

### **146 No defective goods action where workers' compensation law etc. applies**

Division 1 does not apply to a loss or damage in respect of which an amount has been, or could be, recovered under a law of the Commonwealth, a State or a Territory that:

- (a) relates to workers' compensation; or
- (b) gives effect to an international agreement.

### **147 Unidentified manufacturer**

- (1) A person who:
  - (a) wishes to institute a defective goods action; but

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- (b) does not know who is the manufacturer of the goods to which the action would relate;  
may, by written notice given to a supplier, or each supplier, of the goods who is known to the person, request the supplier or suppliers to give the person particulars identifying the manufacturer of the goods, or the supplier of the goods to the supplier requested.
- (2) If, 30 days after the person made the request or requests, the person still does not know who is the manufacturer of the goods, then each supplier:
  - (a) to whom the request was made; and
  - (b) who did not comply with the request;is taken, for the purposes of the defective goods liability action (but not for the purposes of section 142(c)), to be the manufacturer of the goods.

**148 Commonwealth liability for goods that are defective only because of compliance with Commonwealth mandatory standard**

- (1) If a person (however described) against whom a defective goods action is brought raises the defence that the goods had the alleged safety defect only because there was compliance with a Commonwealth mandatory standard for the goods, the person must, as soon as practicable after raising that defence, give the Commonwealth:
  - (a) a prescribed notice of the action and of that defence; and
  - (b) a copy of the person's defence in the action.
- (2) The giving of the notice and defence makes the Commonwealth a defendant in the action.
- (3) If, in the action, the court finds that the person (the *plaintiff*) by whom the action is brought would, but for the defence referred to in subsection (1), have succeeded against the person (other than the Commonwealth) against which the action is brought, then:
  - (a) the Commonwealth, and not the person (other than the Commonwealth) against which the action is brought, is liable to pay the plaintiff for the amount of the loss or damage caused by the safety defect; and

- (b) the court is to enter judgment against the Commonwealth for that amount; and
- (c) the court may make such orders for costs as the court considers just.

#### **149 Representative actions by the regulator**

- (1) The regulator may, by application, commence a defective goods action on behalf of one or more persons identified in the application who have suffered the loss or damage in relation to which the action is commenced.
- (2) The regulator may only make the application if it has obtained the written consent of the person, or each of the persons, on whose behalf the application is being made.

### **Division 3—Miscellaneous**

#### **150 Application of all or any provisions of this Part etc. not to be excluded or modified**

- (1) Any term of a contract (including a term that is not set out in the contract but is incorporated in the contract by another term) that purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying, any of the following is void:
  - (a) the application of all or any of the provisions of this Part;
  - (b) the exercise of a right conferred by any of those provisions;
  - (c) any liability under any of those provisions.
- (2) A term of a contract is not taken to exclude, restrict or modify the application of a provision of this Part unless the term does so expressly or is inconsistent with that provision.

## **Chapter 4—Offences**

### **Part 4-1—Offences relating to unfair practices**

#### **Division 1—False or misleading representations etc.**

##### **151 False or misleading representations about goods or services**

- (1) A person commits an offence if the person, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services:
- (a) makes a false or misleading representation that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use; or
  - (b) makes a false or misleading representation that services are of a particular standard, quality, value or grade; or
  - (c) makes a false or misleading representation that goods are new; or
  - (d) makes a false or misleading representation that a particular person has agreed to acquire goods or services; or
  - (e) makes a false or misleading representation that purports to be a testimonial by any person relating to goods or services; or
  - (f) makes a false or misleading representation concerning:
    - (i) a testimonial by any person; or
    - (ii) a representation that purports to be such a testimonial; relating to goods or services; or
  - (g) makes a false or misleading representation that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits; or
  - (h) makes a false or misleading representation that the person making the representation has a sponsorship, approval or affiliation; or
  - (i) makes a false or misleading representation with respect to the price of goods or services; or

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- (j) makes a false or misleading representation concerning the availability of facilities for the repair of goods or of spare parts for goods; or
- (k) makes a false or misleading representation concerning the place of origin of goods; or
- (l) makes a false or misleading representation concerning the need for any goods or services; or
- (m) makes a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy (including a guarantee under Division 1 of Part 3-2); or
- (n) makes a false or misleading representation concerning a requirement to pay for a contractual right that:
  - (i) is wholly or partly equivalent to any condition, warranty, guarantee, right or remedy (including a guarantee under Division 1 of Part 3-2); and
  - (ii) a person has under a law of the Commonwealth, a State or a Territory (other than an unwritten law).

**Penalty:**

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

**Note:** For rules relating to representations as to the country of origin of goods, see Part 5-3.

- (2) For the purposes of applying subsection (1) in relation to a proceeding concerning a representation of a kind referred to in subsection (1)(e) or (f), the representation is taken to be misleading unless evidence is adduced to the contrary.
- (3) To avoid doubt, subsection (2) does not:
  - (a) have the effect that, merely because such evidence to the contrary is adduced, the representation is not misleading; or
  - (b) have the effect of placing on any person an onus of proving that the representation is not misleading.
- (4) Subsection (1) is an offence of strict liability.

**152 False or misleading representations about sale etc. of land**

- (1) A person commits an offence if the person, in trade or commerce, in connection with the sale or grant, or the possible sale or grant, of
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an interest in land or in connection with the promotion by any means of the sale or grant of an interest in land:

- (a) makes a false or misleading representation that the person making the representation has a sponsorship, approval or affiliation; or
- (b) makes a false or misleading representation concerning the nature of the interest in the land; or
- (c) makes a false or misleading representation concerning the price payable for the land; or
- (d) makes a false or misleading representation concerning the location of the land; or
- (e) makes a false or misleading representation concerning the characteristics of the land; or
- (f) makes a false or misleading representation concerning the use to which the land is capable of being put or may lawfully be put; or
- (g) makes a false or misleading representation concerning the existence or availability of facilities associated with the land.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
  - (b) if the person is not a body corporate—\$220,000.
- (2) Subsection (1) is an offence of strict liability.
- (3) This section does not affect the application of any other provision of this Part in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.

### **153 Misleading conduct relating to employment**

- (1) A person commits an offence if the person, in relation to employment that is to be, or may be, offered by the person or by another person, engages in conduct that is liable to mislead persons seeking the employment as to:
- (a) the availability, nature, terms or conditions of the employment; or
  - (b) any other matter relating to the employment.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or

- (b) if the person is not a body corporate—\$220,000.
- (2) Subsection (1) is an offence of strict liability.

**154 Offering rebates, gifts, prizes etc.**

- (1) A person commits an offence if:
  - (a) the person, in trade or commerce, offers any rebate, gift, prize or other free item; and
  - (b) the offer is connected with:
    - (i) the supply or possible supply of goods or services; or
    - (ii) the promotion by any means of the supply or use of goods or services; or
    - (iii) the sale or grant, or the possible sale or grant, of an interest in land; or
    - (iv) the promotion by any means of the sale or grant of an interest in land; and
  - (c) the offer is made with the intention of not providing the rebate, gift, prize or other free item, or of not providing it as offered.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.
- (2) A person commits an offence if:
  - (a) the person, in trade or commerce, offers any rebate, gift, prize or other free item; and
  - (b) the offer is connected with:
    - (i) the supply or possible supply of goods or services; or
    - (ii) the promotion by any means of the supply or use of goods or services; or
    - (iii) the sale or grant, or the possible sale or grant, of an interest in land; or
    - (iv) the promotion by any means of the sale or grant of an interest in land; and
  - (c) the person fails to provide the rebate, gift, prize or other free item, in accordance with the offer, within the time specified in the offer or (if no such time is specified) within a reasonable time after making the offer.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
  - (b) if the person is not a body corporate—\$220,000.
- (3) Subsection (2) does not apply if:
- (a) the person's failure to provide the rebate, gift, prize or other free item in accordance with the offer was due to the act or omission of another person, or to some other cause beyond the person's control; and
  - (b) the person took reasonable precautions and exercised due diligence to avoid the failure.
- (4) Subsection (2) does not apply to an offer that the person makes to another person if:
- (a) the person offers to the other person a different rebate, gift, prize or other free item as a replacement; and
  - (b) the other person agrees to receive the different rebate, gift, prize or other free item.
- (5) Strict liability applies to subsections (1)(b) and (2)(b).
- (6) This section does not affect the application of any other provision of this Part in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.

### **155 Misleading conduct as to the nature etc. of goods**

- (1) A person commits an offence if the person, in trade or commerce, engages in conduct that is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of any goods.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
  - (b) if the person is not a body corporate—\$220,000.
- (2) Subsection (1) is an offence of strict liability.

### **156 Misleading conduct as to the nature etc. of services**

- (1) A person commits an offence if the person, in trade or commerce, engages in conduct that is liable to mislead the public as to the

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nature, the characteristics, the suitability for their purpose or the quantity of any services.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

(2) Subsection (1) is an offence of strict liability.

**157 Bait advertising**

(1) A person commits an offence if:

- (a) the person, in trade or commerce, advertises goods or services for supply at a specified price; and
- (b) there are reasonable grounds for believing that the person will not be able to offer for supply those goods or services at that price for a period that is, and in quantities that are, reasonable, having regard to:
  - (i) the nature of the market in which the person carries on business; and
  - (ii) the nature of the advertisement.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

(2) A person commits an offence if:

- (a) the person, in trade or commerce, advertises goods or services for supply at a specified price; and
- (b) the person fails to offer such goods or services for supply at that price for a period that is, and in quantities that are, reasonable having regard to:
  - (i) the nature of the market in which the person carries on business; and
  - (ii) the nature of the advertisement.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

(3) Subsections (1) and (2) are offences of strict liability.

- (4) In a prosecution of a person (the *defendant*) under subsection (2), for failing to offer goods or services to another person (the *customer*), it is a defence if:
- (a) the defendant proves that:
    - (i) he or she offered to supply, or to procure a third person to supply, goods or services of the kind advertised to the customer within a reasonable time, in a reasonable quantity and at the advertised price; or
    - (ii) he or she offered to supply immediately, or to procure a third person to supply within a reasonable time, equivalent goods or services to the customer in a reasonable quantity and at the price at which the first-mentioned goods or services were advertised; and
  - (b) in either case, if the offer was accepted by the customer, the defendant proves that he or she has so supplied, or procured a third person to supply, the goods or services.

### **158 Wrongly accepting payment**

- (1) A person commits an offence if:
- (a) the person, in trade or commerce, accepts payment or other consideration for goods or services; and
  - (b) at the time of the acceptance, the person intends not to supply the goods or services.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (2) Strict liability applies to subsection (1)(a).

- (3) A person commits an offence if:
- (a) the person, in trade or commerce, accepts payment or other consideration for goods or services; and
  - (b) at the time of the acceptance, the person intends to supply goods or services materially different from the goods or services in respect of which the payment or other consideration is accepted.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or

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- (b) if the person is not a body corporate—\$220,000.
- (4) Strict liability applies to subsection (3)(a).
- (5) A person commits an offence if:
  - (a) the person, in trade or commerce, accepts payment or other consideration for goods or services; and
  - (b) at the time of the acceptance, the person was reckless as to whether he or she would be able to supply the goods or services:
    - (i) within the period specified by or on behalf of the person at or before the time the payment or other consideration was accepted; or
    - (ii) if no period is specified at or before that time—within a reasonable time.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.
- (6) Strict liability applies to subsection (5)(a).
- (7) A person commits an offence if:
  - (a) the person, in trade or commerce, accepts payment or other consideration for goods or services; and
  - (b) the person fails to supply all the goods or services:
    - (i) within the period specified by or on behalf of the person at or before the time the payment or other consideration was accepted; or
    - (ii) if no period is specified at or before that time—within a reasonable time.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.
- (8) Subsection (7) does not apply if:
  - (a) the person's failure to supply all the goods or services within the period, or within a reasonable time, was due to the act or omission of another person, or to some other cause beyond the person's control; and

- (b) the person took reasonable precautions and exercised due diligence to avoid the failure.
- (9) Subsection (7) does not apply if:
  - (a) the person offers to supply different goods or services as a replacement to the person (the *customer*) to whom the original supply was to be made; and
  - (b) the customer agrees to receive the different goods or services.
- (10) Subsection (7) is an offence of strict liability.
- (11) Subsections (1), (3), (5) and (7) apply whether or not the payment or other consideration that the person accepted represents the whole or a part of the payment or other consideration for the supply of the goods or services.

### **159 Misleading representations about certain business activities**

- (1) A person commits an offence if:
  - (a) the person, in trade or commerce, makes a representation; and
  - (b) the representation is false or misleading in a material particular; and
  - (c) the representation concerns the profitability, risk or any other material aspect of any business activity that the person has represented as one that can be, or can be to a considerable extent, carried on at or from a person's place of residence.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
  - (b) if the person is not a body corporate—\$220,000.
- (2) A person commits an offence if:
    - (a) the person, in trade or commerce, makes a representation; and
    - (b) the representation is false or misleading in a material particular; and
    - (c) the representation concerns the profitability, risk or any other material aspect of any business activity:
      - (i) that the person invites (whether by advertisement or otherwise) other persons to engage or participate in, or to offer or apply to engage or participate in; and

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- (ii) that requires the performance of work by other persons, or the investment of money by other persons and the performance by them of work associated with the investment.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
  - (b) if the person is not a body corporate—\$220,000.
- (3) Subsections (1) and (2) are offences of strict liability.

**160 Application of provisions of this Division to information providers**

- (1) Sections 151, 152, 155, 156 and 159 do not apply to a publication of matter by an information provider if:
  - (a) in any case—the information provider made the publication in the course of carrying on a business of providing information; or
  - (b) if the information provider is the Australian Broadcasting Corporation, the Special Broadcasting Service Corporation or the holder of a licence granted under the *Broadcasting Services Act 1992*—the publication was by way of a radio or television broadcast by the information provider.
- (2) Subsection (1) does not apply to a publication of an advertisement.
- (3) Subsection (1) does not apply to a publication of matter in connection with the supply or possible supply of, or the promotion by any means of the supply or use of, goods or services (the **publicised goods or services**), if:
  - (a) the publicised goods or services were goods or services of a kind supplied by the information provider or, if the information provider is a body corporate, by a body corporate that is related to the information provider; or
  - (b) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a person who supplies goods or services of the same kind as the publicised goods or services; or
  - (c) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a body corporate that is related to a body corporate that supplies

goods or services of the same kind as the publicised goods or services.

- (4) Subsection (1) does not apply to a publication of matter in connection with the sale or grant, or possible sale or grant, of, or the promotion by any means of the sale or grant of, interests in land (the *publicised interests in land*), if:
- (a) the publicised interests in land were interests of a kind sold or granted by the information provider or, if the information provider is a body corporate, by a body corporate that is related to the information provider; or
  - (b) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a person who sells or grants interests of the same kind as the publicised interests in land; or
  - (c) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a body corporate that is related to a body corporate that sells or grants interests of the same kind as the publicised interests in land.

## Division 2—Unsolicited supplies

### 161 Unsolicited cards etc.

- (1) A person commits an offence if:
- (a) the person sends a credit card or a debit card, or an article that may be used as a credit card and a debit card, to another person; and
  - (b) either:
    - (i) the person had issued the card; or
    - (ii) the card was sent on behalf of the person who had issued the card.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
  - (b) if the person is not a body corporate—\$220,000.
- (2) Subsection (1) does not apply if the person sends the card to the other person:
- (a) pursuant to a written request by the person who will be under a liability to the person who issued the card or article in respect of the use of the card or article; or
  - (b) in renewal or replacement of, or in substitution for:
    - (i) a card or article of the same kind previously sent to the other person pursuant to a written request by the person who was under a liability, to the person who issued the card previously so sent, in respect of the use of that card; or
    - (ii) a card or article of the same kind previously sent to the other person and used for a purpose for which it was intended to be used.
- (3) A person commits an offence if the person takes any action that enables another person who has a credit card to use the card as a debit card.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (4) A person commits an offence if the person takes any action that enables another person who has a debit card to use the card as a credit card.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or  
(b) if the person is not a body corporate—\$220,000.
- (5) Subsection (3) or (4) does not apply if the person takes the action in accordance with the other person's written request.
- (6) Subsections (1), (3) and (4) are offences of strict liability.

### **162 Assertion of right to payment for unsolicited goods or services**

- (1) A person commits an offence if the person, in trade or commerce, asserts a right to payment from another person for unsolicited goods.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or  
(b) if the person is not a body corporate—\$220,000.
- (2) A person commits an offence if the person, in trade or commerce, asserts a right to payment from another person for unsolicited services.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or  
(b) if the person is not a body corporate—\$220,000.
- (3) A person commits an offence if the person, in trade or commerce, sends to another person an invoice or other document that:
- (a) states the amount of a payment, or sets out the charge, for supplying unsolicited goods or unsolicited services; and  
(b) does not contain a warning statement that complies with the requirements set out in the regulations made for the purposes of section 40(3)(b).

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or  
(b) if the person is not a body corporate—\$220,000.

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- (4) Subsection (1), (2) or (3) does not apply if the person proves that he or she had reasonable cause to believe that there was a right to the payment or charge.
- (5) Subsections (1), (2) and (3) are offences of strict liability.

**163 Assertion of right to payment for unauthorised entries or advertisements**

- (1) A person commits an offence if the person asserts a right to payment from another person of a charge for placing, in a publication, an entry or advertisement relating to:
  - (a) the other person; or
  - (b) the other person's profession, business, trade or occupation.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
  - (b) if the person is not a body corporate—\$220,000.
- (2) A person commits an offence if the person sends to another person an invoice or other document that:
    - (a) states the amount of a payment, or sets out the charge, for placing, in a publication, an entry or advertisement relating to:
      - (i) the other person; or
      - (ii) the other person's profession, business, trade or occupation; and
    - (b) does not contain a warning statement that complies with the requirements set out in the regulations made for the purposes of section 43(2)(b).

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
  - (b) if the person is not a body corporate—\$220,000.
- (3) Subsections (1) and (2) do not apply if the person proves that he or she knew, or had reasonable cause to believe, that the other person authorised the placing of the entry or advertisement.
  - (4) Subsections (1) and (2) do not apply to an entry or advertisement that is placed in a publication published by a person who is:

- (a) the publisher of a publication that has an audited circulation of 10,000 copies or more per week, as confirmed by the most recent audit of the publication by a body specified in the regulations made for the purposes of section 43(3)(a); or
  - (b) a body corporate related to such a publisher; or
  - (c) the Commonwealth, a State or a Territory, or an authority of the Commonwealth, a State or a Territory; or
  - (d) a person specified in regulations made for the purposes of section 43(3)(d).
- (5) Subsections (1) and (2) are offences of strict liability.
- (6) A person is not taken for the purposes of this section to have authorised the placing of the entry or advertisement, unless:
- (a) a document authorising the placing of the entry or advertisement has been signed by the person or by another person authorised by him or her; and
  - (b) a copy of the document has been given to the person before the right to payment of a charge for the placing of the entry or advertisement is asserted; and
  - (c) the document specifies:
    - (i) the name and address of the person publishing the entry or advertisement; and
    - (ii) particulars of the entry or advertisement; and
    - (iii) the amount of the charge for the placing of the entry or advertisement, or the basis on which the charge is, or is to be, calculated.

### **Division 3—Pyramid schemes**

#### **164 Participation in pyramid schemes**

- (1) A person commits an offence if the person participates in a pyramid scheme.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or  
(b) if the person is not a body corporate—\$220,000.

- (2) A person commits an offence if the person induces another person to participate in a pyramid scheme.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or  
(b) if the person is not a body corporate—\$220,000.

- (3) Subsections (1) and (2) are offences of strict liability.

## **Division 4—Pricing**

### **165 Multiple pricing**

- (1) A person commits an offence if:
- (a) the person, in trade or commerce, supplies goods; and
  - (b) the goods have more than one displayed price; and
  - (c) the supply takes place for a price that is not the lower, or lowest, of the displayed prices.

Penalty:

- (a) if the person is a body corporate—\$5,000; or
  - (b) if the person is not a body corporate—\$1,000.
- (2) Subsection (1) is an offence of strict liability.

### **166 Single price to be specified in certain circumstances**

- (1) A person commits an offence if the person, in trade or commerce, in connection with:
- (a) the supply, or possible supply, to another person of goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption; or
  - (b) the promotion by any means of the supply to another person, or of the use by another person, of goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption;

makes a representation with respect to an amount that, if paid, would constitute a part of the consideration for the supply of the goods or services.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
  - (b) if the person is not a body corporate—\$220,000.
- (2) A person is not required to include, in the single price for goods, a charge that is payable in relation to sending the goods from the supplier to the other person.
- (3) Subsection (1) does not apply if the person also:

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- (a) specifies, in a prominent way and as a single figure, the single price for the goods or services; and
- (b) if, in relation to goods:
  - (i) the person does not include in the single price a charge that is payable in relation to sending the goods from the supplier to the other person; and
  - (ii) the person knows, at the time of the representation, the minimum amount of a charge in relation to sending the goods from the supplier to the other person that must be paid by the other person;specifies that minimum amount.
- (4) Subsection (1) does not apply if the representation is made exclusively to a body corporate.
- (5) For the purposes of subsection (3)(a), the person is taken not to have specified a single price for the goods or services in a prominent way unless the single price is at least as prominent as the most prominent of the parts of the consideration for the supply.
- (6) Subsection (5) does not apply in relation to services to be supplied under a contract if:
  - (a) the contract provides for the supply of the services for the term of the contract; and
  - (b) the contract provides for periodic payments for the services to be made during the term of the contract; and
  - (c) if the contract also provides for the supply of goods—the goods are directly related to the supply of the services.
- (7) Subsection (1) is an offence of strict liability.

## **Division 5—Other unfair practices**

### **167 Referral selling**

- (1) A person commits an offence if:
- (a) the person, in trade or commerce, induces a consumer to acquire goods or services by representing that the consumer will, after the contract for the acquisition of the goods or services is made, receive a rebate, commission or other benefit in return for:
    - (i) giving the person the names of prospective customers; or
    - (ii) otherwise assisting the person to supply goods or services to other consumers; and
  - (b) the receipt of the rebate, commission or other benefit is contingent on an event occurring after that contract is made.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
  - (b) if the person is not a body corporate—\$220,000.
- (2) Subsection (1) is an offence of strict liability.

### **168 Harassment and coercion**

- (1) A person commits an offence if:
- (a) the person uses physical force, or undue harassment or coercion; and
  - (b) the physical force, or undue harassment or coercion is used in connection with:
    - (i) the supply or possible supply of goods or services; or
    - (ii) the payment for goods or services; or
    - (iii) the sale or grant, or the possible sale or grant, of an interest in land; or
    - (iv) the payment for an interest in land.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

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- (2) Subsection (1) is an offence of strict liability.
- (3) Subsections (1)(b)(iii) and (iv) do not affect the application of any other provision of this Part in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.

## **Part 4-2—Offences relating to consumer transactions**

### **Division 1—Consumer guarantees**

#### **169 Display notices**

- (1) A person commits an offence if:
  - (a) the person makes a supply to a consumer to which:
    - (i) guarantees apply under Division 1 of Part 3-2; and
    - (ii) a determination under subsection 66(1) applies; and
  - (b) a notice that meets the requirements of the determination is not, in accordance with the determination:
    - (i) if the consumer takes delivery of the goods or services at the supplier's premises—displayed at those premises;  
or
    - (ii) otherwise—drawn to the consumer's attention before the consumer agrees to the supply of the goods.

Penalty:

- (a) if the person is a body corporate—\$50,000; or
  - (b) if the person is not a body corporate—\$10,000.
- (2) Subsection (1) is an offence of strict liability.

## **Division 2—Unsolicited consumer agreements**

### **Subdivision A—Negotiating unsolicited consumer agreements**

#### **170 Permitted hours for negotiating an unsolicited consumer agreement**

- (1) A dealer commits an offence if the dealer calls on a person for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose:
  - (a) at any time on a Sunday or a public holiday; or
  - (b) before 9 am on any other day; or
  - (c) after 6 pm on any other day (or after 5 pm if the other day is a Saturday).

Penalty:

- (a) if the person is a body corporate—\$50,000; or
  - (b) if the person is not a body corporate—\$10,000.
- (2) Subsection (1) does not apply if the dealer calls on, or telephones, the person in accordance with consent that:
  - (a) was given by the person to the dealer or a person acting on the dealer's behalf; and
  - (b) was not given in the presence of the dealer or a person acting on the dealer's behalf.
- (3) Subsection (1) is an offence of strict liability.

#### **171 Disclosing purpose and identity**

- (1) A dealer commits an offence if the dealer:
  - (a) calls on a person for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose; and
  - (b) does not as soon as practicable and in any event before starting to negotiate:
    - (i) clearly advise the person that the dealer's purpose is to seek the person's agreement to a supply of the goods or services concerned; and

- (ii) clearly advise the person that the dealer is obliged to leave the premises immediately on request; and
- (iii) provide to the person such information relating to the dealer's identity as is prescribed by the regulations made for the purposes of section 74(c).

Penalty:

- (a) if the person is a body corporate—\$50,000; or
  - (b) if the person is not a body corporate—\$10,000.
- (2) Subsection (1) is an offence of strict liability.

### **172 Ceasing to negotiate on request**

- (1) A dealer commits an offence if the dealer:
- (a) calls on a person at any premises for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose; and
  - (b) does not leave the premises immediately on the request of:
    - (i) the occupier of the premises, or any person acting with the actual or apparent authority of the occupier; or
    - (ii) the person (the *prospective consumer*) with whom the negotiations are being conducted.

Penalty:

- (a) if the person is a body corporate—\$50,000; or
  - (b) if the person is not a body corporate—\$10,000.
- (2) A dealer commits an offence if:
- (a) the prospective consumer has made the request referred to in subsection (1)(b); and
  - (b) the dealer contacts the prospective consumer for the purpose of negotiating an unsolicited consumer agreement (or for an incidental or related purpose) within 30 days after the prospective consumer made the request.

Penalty:

- (a) if the person is a body corporate—\$50,000; or
  - (b) if the person is not a body corporate—\$10,000.
- (3) If the dealer is not, or is not to be, the supplier of the goods or services to which the negotiations relate, subsection (2) applies to

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that supplier, and any person acting on behalf of the supplier, in the same way that it applies to the dealer.

- (4) Subsection (2) does not apply to the dealer contacting the prospective consumer if:
- (a) the dealer is not, or is not to be, the supplier of the goods or services to which the negotiations relate; and
  - (b) the contact relates to a supply by another supplier.
- (5) Subsections (1) and (2) are offences of strict liability.

**173 Informing person of termination period etc.**

- (1) A dealer commits an offence if the dealer makes an unsolicited consumer agreement with a person, and:
- (a) before the agreement is made, the person is not given information as to the following:
    - (i) the person's right to terminate the agreement during the termination period;
    - (ii) the way in which the person may exercise that right;
    - (iii) such other matters as are prescribed by regulations made for the purposes of section 76(a)(iii); or
  - (b) if the agreement is made in the presence of both the dealer and the person—the person is not given the information in writing; or
  - (c) if the agreement is made by telephone—the person is not:
    - (i) given the information by telephone; and
    - (ii) subsequently given the information in writing; or
  - (d) the form in which, and the way in which, the person is given the information does not comply with any other requirements prescribed by regulations made for the purposes of section 76(d).

Penalty:

- (a) if the person is a body corporate—\$50,000; or
  - (b) if the person is not a body corporate—\$10,000.
- (2) If:
- (a) a dealer contravenes subsection (1) in relation to an unsolicited consumer agreement; and

- (b) the dealer is not, or is not to be, the supplier of the goods or services to which the agreement relates;  
the supplier of the goods or services is also taken to have contravened subsection (1) in relation to the agreement.
- (3) Subsection (1) is an offence of strict liability.

### **Subdivision B—Requirements for unsolicited consumer agreements etc.**

#### **174 Requirement to give document to the consumer**

- (1) The dealer who negotiated an unsolicited consumer agreement commits an offence if:
  - (a) the agreement was not negotiated by telephone; and
  - (b) the dealer does not give a copy of the agreement to the consumer under the agreement immediately after the consumer signs the agreement.

Penalty:

- (a) if the person is a body corporate—\$50,000; or
  - (b) if the person is not a body corporate—\$10,000.
- (2) The dealer who negotiated an unsolicited consumer agreement commits an offence if:
    - (a) the agreement was negotiated by telephone; and
    - (b) the dealer does not, within 5 business days after the agreement was made or such longer period agreed by the parties, give to the consumer under the agreement:
      - (i) personally; or
      - (ii) by post; or
      - (iii) with the consumer's consent—by electronic communication;an agreement document evidencing the agreement.

Penalty:

- (a) if the person is a body corporate—\$50,000; or
  - (b) if the person is not a body corporate—\$10,000.
- (3) Subsections (1) and (2) are offences of strict liability.

**175 Requirements for all unsolicited consumer agreements etc.**

- (1) The supplier under an unsolicited consumer agreement commits an offence if the agreement, or (if the agreement was negotiated by telephone) the agreement document, does not comply with the following requirements:
- (a) it must set out in full all the terms of the agreement, including:
    - (i) the total consideration to be paid or provided by the consumer under the agreement or, if the total consideration is not ascertainable at the time the agreement is made, the way in which it is to be calculated; and
    - (ii) any postal or delivery charges to be paid by the consumer;
  - (b) its front page must include a notice that:
    - (i) conspicuously and prominently informs the consumer of the consumer's right to terminate the agreement; and
    - (ii) conspicuously and prominently sets out any other information prescribed by regulations made for the purposes of section 79(b)(ii); and
    - (iii) complies with any other requirements prescribed by regulations made for the purposes of section 79(b)(iii);
  - (c) it must be accompanied by a notice that:
    - (i) may be used by the consumer to terminate the agreement; and
    - (ii) complies with any requirements prescribed by regulations made for the purposes of section 79(c)(ii);
  - (d) it must conspicuously and prominently set out in full:
    - (i) the supplier's name; and
    - (ii) if the supplier has an ABN—the supplier's ABN; and
    - (iii) if the supplier does not have an ABN but has an ACN—the supplier's ACN; and
    - (iv) the supplier's business address (not being a post box) or, if the supplier does not have a business address, the supplier's residential address; and
    - (v) if the supplier has an email address—the supplier's email address; and

- (vi) if the supplier has a fax number—the supplier's fax number;
- (e) it must be printed clearly or typewritten (apart from any amendments to the printed or typewritten form, which may be handwritten);
- (f) it must be transparent.

Penalty:

- (a) if the person is a body corporate—\$50,000; or
  - (b) if the person is not a body corporate—\$10,000.
- (2) Subsection (1) is an offence of strict liability.

### **176 Additional requirements for unsolicited consumer agreements not negotiated by telephone**

- (1) The supplier under an unsolicited consumer agreement that was not negotiated by telephone commits an offence if the agreement does not comply with the following requirements:
- (a) the agreement must be signed by the consumer under the agreement;
  - (b) if the agreement is signed by a person on the supplier's behalf—the agreement must state that the person is acting on the supplier's behalf, and must set out in full:
    - (i) the person's name; and
    - (ii) the person's business address (not being a post box) or, if the person does not have a business address, the person's residential address; and
    - (iii) if the person has an email address—the person's email address.

Penalty:

- (a) if the person is a body corporate—\$50,000; or
  - (b) if the person is not a body corporate—\$10,000.
- (2) Subsection (1) is an offence of strict liability.
- (3) This section does not limit the operation of section 175.

**177 Requirements for amendments of unsolicited consumer agreements**

- (1) The supplier under an unsolicited consumer agreement commits an offence if any amendments to the agreement are not signed by both parties to the agreement.

Penalty:

- (a) if the person is a body corporate—\$50,000; or  
(b) if the person is not a body corporate—\$10,000.
- (2) Subsection (1) is an offence of strict liability.

**Subdivision C—Terminating unsolicited consumer agreements**

**178 Obligations of suppliers on termination**

- (1) The supplier under an unsolicited consumer agreement commits an offence if:
- (a) the agreement is terminated in accordance with section 82;  
and  
(b) the supplier does not, immediately upon being notified of the termination, return or refund to the consumer under the agreement any consideration (or the value of any consideration) that the consumer gave under the agreement or a related contract or instrument.

Penalty:

- (a) if the person is a body corporate—\$50,000; or  
(b) if the person is not a body corporate—\$10,000.
- (2) Subsection (1) is an offence of strict liability.

**179 Prohibition on supplies for 10 business days**

- (1) The supplier under an unsolicited consumer agreement commits an offence if:
- (a) the supplier:
- (i) supplies to the consumer under the agreement the goods or services to be supplied under the agreement; or  
(ii) accepts any payment, or any other consideration, in connection with those goods or services; or

- (iii) requires any payment, or any other consideration, in connection with those goods or services; and
- (b) the supply, acceptance or requirement occurs during the period of 10 business days starting:
  - (i) if the agreement was not negotiated by telephone—at the start of the first business day after the day on which the agreement was made; or
  - (ii) if the agreement was negotiated by telephone—at the start of the first business day after the day on which the consumer was given the agreement document relating to the agreement.

Penalty:

- (a) if the person is a body corporate—\$50,000; or
  - (b) if the person is not a body corporate—\$10,000.
- (2) Strict liability applies to subsection (1)(a).

### **180 Repayment of payments received after termination**

- (1) The supplier under an unsolicited consumer agreement commits an offence if:
- (a) the agreement is terminated in accordance with section 82; and
  - (b) the supplier does not immediately refund to the consumer under the agreement any payment:
    - (i) that the consumer, or a person acting on the consumer's behalf, makes to the supplier after the termination; and
    - (ii) that purports to be made under the agreement or a related contract or instrument.

Penalty:

- (a) if the person is a body corporate—\$50,000; or
  - (b) if the person is not a body corporate—\$10,000.
- (2) Subsection (1) is an offence of strict liability.

### **181 Prohibition on recovering amounts after termination**

- (1) A person commits an offence if:

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- (a) an unsolicited consumer agreement is terminated in accordance with section 82; and
- (b) the person:
  - (i) brings, or asserts an intention to bring, legal proceedings against the consumer; or
  - (ii) takes, or asserts an intention to take, any other action against the consumer;in relation to an amount alleged to be payable, under the agreement or a related contract or instrument, by the consumer under the agreement.

Penalty:

- (a) if the person is a body corporate—\$50,000; or
  - (b) if the person is not a body corporate—\$10,000.
- (2) A person commits an offence if:
- (a) an unsolicited consumer agreement is terminated in accordance with section 82; and
  - (b) for the purpose of recovering an amount alleged to be payable, under the agreement or a related contract or instrument, by the consumer under the agreement, the person:
    - (i) places the consumer's name, or causes the consumer's name to be placed, on a list of defaulters or debtors; or
    - (ii) asserts an intention to place the consumer's name, or to cause the consumer's name to be placed, on such a list.

Penalty:

- (a) if the person is a body corporate—\$50,000; or
  - (b) if the person is not a body corporate—\$10,000.
- (3) Subsection (1) is an offence of strict liability.
- (4) Strict liability applies to subsection (2)(a).

## **Subdivision D—Miscellaneous**

### **182 Certain provisions of unsolicited consumer agreements void**

- (1) The supplier under an unsolicited consumer agreement commits an offence if the agreement includes, or purports to include, a provision (however described) that is, or would be, void because of section 89(1).

Penalty:

- (a) if the person is a body corporate—\$50,000; or
  - (b) if the person is not a body corporate—\$10,000.
- (2) The supplier under an unsolicited consumer agreement commits an offence if the supplier attempts to enforce or rely on a provision (however described) that is void because of section 89(1).

Penalty:

- (a) if the person is a body corporate—\$50,000; or
  - (b) if the person is not a body corporate—\$10,000.
- (3) Subsections (1) and (2) are offences of strict liability.

### **183 Waiver of rights**

- (1) The supplier under an unsolicited consumer agreement commits an offence if the supplier induces the consumer to waive any right conferred by Division 2 of Part 3-2.

Penalty:

- (a) if the person is a body corporate—\$50,000; or
  - (b) if the person is not a body corporate—\$10,000.
- (2) Subsection (1) is an offence of strict liability.

### **184 Application of this Division to persons to whom rights of consumers and suppliers are assigned etc.**

- (1) This Division applies in relation to a person to whom the rights of a consumer (the *original consumer*) under a contract for the supply of goods or services are assigned or transferred, or pass by operation of law, (whether from the original consumer or from another person) as if the person were the original consumer.
- (2) This Division applies in relation to a person to whom the rights of a supplier (the *original supplier*) under a contract for the supply of goods or services are assigned or transferred, or pass by operation of law, (whether from the original supplier or from another person) as if the person were the original supplier.

### **185 Application of this Division to supplies to third parties**

This Division applies in relation to a contract for the supply of goods or services to a consumer (the *original consumer*) on the order of another person as if the other person were also the consumer.

### **186 Regulations may limit the application of this Division**

This Division (other than section 170) does not apply, or provisions of this Division (other than section 170) that are specified in regulations made for the purposes of section 94 do not apply, to or in relation to:

- (a) circumstances of a kind specified in those regulations; or
- (b) agreements of a kind specified in those regulations; or
- (c) the conduct of businesses of a kind specified in those regulations.

### **187 Application of this Division to certain conduct covered by the Corporations Act**

This Division does not apply in relation to conduct to which section 736, 992A or 992AA of the *Corporations Act 2001* applies.

Note: Section 736 of the *Corporations Act 2001* prohibits hawking of securities. Section 992A of that Act prohibits hawking of certain financial products. Section 992AA of that Act prohibits hawking of managed investment products.

### **Division 3—Lay-by agreements**

#### **188 Lay-by agreements must be in writing etc.**

- (1) A supplier of consumer goods who is a party to a lay-by agreement commits an offence if:
- (a) the agreement is not in writing; or
  - (b) a copy of the agreement is not given to the consumer to whom the goods are, or are to be, supplied.

Penalty:

- (a) if the person is a body corporate—\$30,000; or
  - (b) if the person is not a body corporate—\$6,000.
- (2) Subsection (1) is an offence of strict liability.

#### **189 Termination charges**

- (1) A supplier of consumer goods who is a party to a lay-by agreement commits an offence if the agreement requires the consumer to pay a termination charge.

Penalty:

- (a) if the person is a body corporate—\$30,000; or
  - (b) if the person is not a body corporate—\$6,000.
- (2) Subsection (1) does not apply if the termination charge is payable only if:
- (a) the agreement is terminated by the consumer; and
  - (b) the supplier has not breached the agreement.
- (3) A supplier of consumer goods who is a party to a lay-by agreement commits an offence if:
- (a) the agreement provides that a termination charge is payable; and
  - (b) the amount of the charge is more than the supplier's reasonable costs in relation to the agreement.

Penalty:

- (a) if the person is a body corporate—\$30,000; or

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- (b) if the person is not a body corporate—\$6,000.
- (4) Subsections (1) and (3) are offences of strict liability.

**190 Termination of lay-by agreements by suppliers**

- (1) A supplier of consumer goods who is a party to a lay-by agreement commits an offence if the supplier terminates the agreement.

Penalty:

- (a) if the person is a body corporate—\$30,000; or
  - (b) if the person is not a body corporate—\$6,000.
- (2) Subsection (1) does not apply if:
    - (a) the consumer who is a party to the agreement breached a term of the agreement; or
    - (b) the supplier is no longer engaged in trade or commerce; or
    - (c) the consumer goods to which the agreement relates are no longer available.
  - (3) Subsection (1) is an offence of strict liability.

**191 Refund of amounts**

- (1) A supplier of consumer goods who is a party to a lay-by agreement commits an offence if:
  - (a) the agreement is terminated by a party to the agreement; and
  - (b) the supplier fails to refund to the consumer all the amounts paid by the consumer under the agreement (other than any termination charge that is payable under the agreement).

Penalty:

- (a) if the person is a body corporate—\$30,000; or
  - (b) if the person is not a body corporate—\$6,000.
- (2) Subsection (1) is an offence of strict liability.

## **Division 4—Miscellaneous**

### **192 Prescribed requirements for warranties against defects**

- (1) A person commits an offence if the person, in connection with the supply, in trade or commerce, of goods or services to a consumer:
- (a) gives to the consumer a document that evidences a warranty against defects and that does not comply with the requirements prescribed for the purposes of section 102(1); or
  - (b) represents directly to the consumer that the goods or services are goods or services to which such a warranty against defects relates.

Penalty:

- (a) if the person is a body corporate—\$50,000; or
  - (b) if the person is not a body corporate—\$10,000.
- (2) Subsection (1) is an offence of strict liability.

### **193 Repairers must comply with prescribed requirements**

- (1) A person commits an offence if:
- (a) the person accepts from another person goods that the other person acquired as a consumer; and
  - (b) the goods are accepted for the purpose of repairing them; and
  - (c) the person does not give to the other person a notice that complies with the requirements prescribed for the purposes of section 103(1).

Penalty:

- (a) if the person is a body corporate—\$50,000; or
  - (b) if the person is not a body corporate—\$10,000.
- (2) Subsection (1) is an offence of strict liability.

## **Part 4-3—Offences relating to safety of consumer goods and product related services**

### **Division 1—Safety standards**

#### **194 Supplying etc. consumer goods that do not comply with safety standards**

- (1) A person commits an offence if:
- (a) the person, in trade or commerce, supplies consumer goods of a particular kind; and
  - (b) a safety standard for consumer goods of that kind is in force; and
  - (c) those goods do not comply with the standard.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (2) A person commits an offence if:
- (a) the person, in trade or commerce, offers for supply (other than for export) consumer goods of a particular kind; and
  - (b) a safety standard for consumer goods of that kind is in force; and
  - (c) those goods do not comply with the standard.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (3) A person commits an offence if:
- (a) the person, in or for the purposes of trade or commerce, manufactures, possesses or has control of consumer goods of a particular kind; and
  - (b) a safety standard for consumer goods of that kind is in force; and
  - (c) those goods do not comply with the standard.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
  - (b) if the person is not a body corporate—\$220,000.
- (4) Subsection (3) does not apply if the person does not manufacture, possess or control the goods for the purpose of supplying the goods (other than for export).
- (5) A person commits an offence if:
- (a) the person, in trade or commerce, exports consumer goods of a particular kind; and
  - (b) a safety standard for consumer goods of that kind is in force; and
  - (c) those goods do not comply with the standard.
- Penalty:
- (a) if the person is a body corporate—\$1,100,000; or
  - (b) if the person is not a body corporate—\$220,000.
- (6) Subsection (5) does not apply if the Commonwealth Minister has, by written notice given to the person, approved the export of the goods under section 106(5).
- (7) Subsections (1), (2), (3) and (5) are offences of strict liability.

### **195 Supplying etc. product related services that do not comply with safety standards**

- (1) A person commits an offence if:
- (a) the person, in trade or commerce, supplies product related services of a particular kind; and
  - (b) a safety standard for services of that kind is in force; and
  - (c) those services do not comply with the standard.
- Penalty:
- (a) if the person is a body corporate—\$1,100,000; or
  - (b) if the person is not a body corporate—\$220,000.
- (2) A person commits an offence if:
- (a) the person, in trade or commerce, offers for supply product related services of a particular kind; and
  - (b) a safety standard for services of that kind is in force; and
  - (c) those services do not comply with the standard.

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Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
  - (b) if the person is not a body corporate—\$220,000.
- (3) Subsections (1) and (2) are offences of strict liability.

**196 Requirement to nominate a safety standard**

- (1) A person commits an offence if the person refuses or fails to comply with a request given to the person under section 108.

Penalty:

- (a) if the person is a body corporate—\$22,000; or
  - (b) if the person is not a body corporate—\$4,400.
- (2) Subsection (1) is an offence of strict liability.

## **Division 2—Bans on consumer goods and product related services**

### **197 Supplying etc. consumer goods covered by a ban**

- (1) A person commits an offence if:
- (a) the person, in trade or commerce, supplies consumer goods of a particular kind; and
  - (b) either:
    - (i) an interim ban on goods of that kind is in force in the place where the supply occurs; or
    - (ii) a permanent ban on goods of that kind is in force.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (2) A person commits an offence if:
- (a) the person, in trade or commerce, offers for supply (other than for export) consumer goods of a particular kind; and
  - (b) the supply would be prohibited by subsection (1).

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (3) A person commits an offence if:
- (a) the person, in or for the purposes of trade or commerce, manufactures, possesses or has control of consumer goods of a particular kind; and
  - (b) supply of the goods would be prohibited by subsection (1).

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (4) Subsection (3) does not apply if the person does not manufacture, possess or control the goods for the purpose of supplying the goods (other than for export).

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- (5) A person commits an offence if:
- (a) the person exports consumer goods of a particular kind; and
  - (b) supply of the goods would be prohibited by subsection (1).

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
  - (b) if the person is not a body corporate—\$220,000.
- (6) Subsection (5) does not apply if the Commonwealth Minister has, by written notice given to the person, approved the export of the goods under section 118(5).
- (7) Subsections (1), (2), (3) and (5) are offences of strict liability.

**198 Supplying etc. product related services covered by a ban**

- (1) A person commits an offence if:
- (a) the person, in trade or commerce, supplies product related services of a particular kind; and
  - (b) either:
    - (i) an interim ban on services of that kind is in force in the place where the supply occurs; or
    - (ii) a permanent ban on services of that kind is in force.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
  - (b) if the person is not a body corporate—\$220,000.
- (2) A person commits an offence if:
- (a) the person, in trade or commerce, offers for supply product related services of a particular kind; and
  - (b) the supply would be prohibited by subsection (1).

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
  - (b) if the person is not a body corporate—\$220,000.
- (3) Subsections (1) and (2) are offences of strict liability.

## **Division 3—Recall of consumer goods**

### **199 Compliance with recall orders**

- (1) A person commits an offence if:
- (a) a recall notice for consumer goods is in force; and
  - (b) the notice requires the person (other than the regulator) to do one or more things; and
  - (c) the person refuses or fails to comply with the notice.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
  - (b) if the person is not a body corporate—\$220,000.
- (2) A person commits an offence if:
- (a) a recall notice for consumer goods is in force; and
  - (b) the person, in trade or commerce:
    - (i) if the notice identifies a defect in, or a dangerous characteristic of, the consumer goods—supplies consumer goods of the kind to which the notice relates which contain that defect or have that characteristic; or
    - (ii) in any other case—supplies consumer goods of the kind to which the notice relates.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
  - (b) if the person is not a body corporate—\$220,000.
- (3) Subsections (1) and (2) are offences of strict liability.

### **200 Notification by persons who supply consumer goods outside Australia if there is compulsory recall**

- (1) A person commits an offence if:
- (a) the person is required by section 125(4) to give a copy of a notice to a responsible Minister; and
  - (b) the person refuses or fails to give the copy as required by that section.

Penalty:

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- (a) if the person is a body corporate—\$16,650; or
  - (b) if the person is not a body corporate—\$3,330.
- (2) Subsection (1) is an offence of strict liability.

**201 Notification requirements for a voluntary recall of consumer goods**

- (1) A person commits an offence if:
- (a) the person is required by section 128(2) to give a notice to the Commonwealth Minister; and
  - (b) the person refuses or fails to give the notice as required by that section.

Penalty:

- (a) if the person is a body corporate—\$16,650; or
  - (b) if the person is not a body corporate—\$3,330.
- (2) A person commits an offence if:
- (a) the person is required by section 128(6) to give a copy of a notice to the Commonwealth Minister; and
  - (b) the person refuses or fails to give the copy as required by that section.

Penalty:

- (a) if the person is a body corporate—\$16,650; or
  - (b) if the person is not a body corporate—\$3,330.
- (3) Subsections (1) and (2) are offences of strict liability.

**Division 4—Consumer goods, or product related services,  
associated with death or serious injury or illness**

**202 Suppliers to report consumer goods etc. associated with the  
death or serious injury or illness of any person**

- (1) A person commits an offence if:
- (a) the person is required by section 131 or 132 to give a notice to the Commonwealth Minister; and
  - (b) the person refuses or fails to give the notice as required by that section.

Penalty:

- (a) if the person is a body corporate—\$16,650; or
  - (b) if the person is not a body corporate—\$3,330.
- (2) Subsection (1) is an offence of strict liability.

## Part 4-4—Offences relating to information standards

### 203 Supplying etc. goods that do not comply with information standards

- (1) A person commits an offence if:
- (a) the person, in trade or commerce, supplies goods of a particular kind; and
  - (b) an information standard for goods of that kind is in force; and
  - (c) the person has not complied with the standard in relation to the goods.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (2) A person commits an offence if:
- (a) the person, in trade or commerce, offers for supply goods of a particular kind; and
  - (b) an information standard for goods of that kind is in force; and
  - (c) the person has not complied with the standard in relation to the goods.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (3) A person commits an offence if:
- (a) the person, in or for the purposes of trade or commerce, manufactures, possesses or has control of goods of a particular kind; and
  - (b) an information standard for goods of that kind is in force; and
  - (c) the person has not complied with the standard in relation to the goods.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (4) Subsection (3) does not apply if the person does not manufacture, possess or control the goods for the purpose of supplying the goods.
- (5) Subsection (1), (2) or (3) does not apply to goods that are intended to be used outside Australia.
- (6) Unless the contrary is established, it is presumed, for the purposes of this section, that goods are intended to be used outside Australia if either of the following is applied to the goods:
  - (a) a statement that the goods are for export only;
  - (b) a statement indicating, by the use of words authorised by regulations made for the purposes of section 136(6)(b) to be used for the purposes of section 136(6), that the goods are intended to be used outside Australia.
- (7) Without limiting subsection (6), a statement may, for the purposes of that subsection, be applied to goods by being:
  - (a) woven in, impressed on, worked into or annexed or affixed to the goods; or
  - (b) applied to a covering, label, reel or thing in or with which the goods are supplied.
- (8) Subsections (1), (2) and (3) are offences of strict liability.

#### **204 Supplying etc. services that do not comply with information standards**

- (1) A person commits an offence if:
  - (a) the person, in trade or commerce, supplies services of a particular kind; and
  - (b) an information standard for services of that kind is in force; and
  - (c) the person has not complied with the standard in relation to the services.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
  - (b) if the person is not a body corporate—\$220,000.
- (2) A person commits an offence if:

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- (a) the person, in trade or commerce, offers for supply services of a particular kind; and
- (b) an information standard for services of that kind is in force; and
- (c) the person has not complied with the standard in relation to the services.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
  - (b) if the person is not a body corporate—\$220,000.
- (3) Subsections (1) and (2) are offences of strict liability.

## **Part 4-5—Offences relating to substantiation notices**

### **205 Compliance with substantiation notices**

- (1) A person commits an offence if the person:
- (a) is given a substantiation notice; and
  - (b) refuses or fails to comply with it within the substantiation notice compliance period for the notice.

Penalty:

- (a) if the person is a body corporate—\$16,500; or
  - (b) if the person is not a body corporate—\$3,300.
- (2) Subsection (1) does not apply if:
- (a) the person is an individual; and
  - (b) the person refuses or fails to give particular information or produce a particular document in compliance with a substantiation notice; and
  - (c) the information, or production of the document, might tend to incriminate the individual or to expose the individual to a penalty.
- (3) Subsection (1) is an offence of strict liability.

### **206 False or misleading information etc.**

- (1) A person commits an offence if the person, in compliance or purported compliance with a substantiation notice given by the regulator:
- (a) gives to the regulator false or misleading information; or
  - (b) produces to the regulator documents that contain false or misleading information.

Penalty:

- (a) if the person is a body corporate—\$27,500; or
  - (b) if the person is not a body corporate—\$5,500.
- (2) This section does not apply to:

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- (a) information that the person could not have known was false or misleading; or
  - (b) the production to the regulator of a document containing false or misleading information if the document is accompanied by a statement of the person that the information is false or misleading.
- (3) Subsection (1) is an offence of strict liability.

## **Part 4-6—Defences**

### **207 Reasonable mistake of fact**

- (1) In a prosecution for a contravention of a provision of this Chapter, it is a defence if the defendant proves that the contravention was caused by a reasonable mistake of fact, including a mistake of fact caused by reasonable reliance on information supplied by another person.
- (2) However, subsection (1) does not apply in relation to information relied upon by the defendant that was supplied to the defendant by another person who was, at the time when the contravention occurred:
  - (a) an employee or agent of the defendant; or
  - (b) if the defendant is a body corporate—a director, employee or agent of the defendant.
- (3) If a defence provided by subsection (1) involves an allegation that a contravention was due to reliance on information supplied by another person, the defendant is not entitled to rely on that defence unless:
  - (a) the court gives leave; or
  - (b) the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person who instituted the proceeding a written notice giving such information as the defendant then had that would identify or assist in identifying the other person.

### **208 Act or default of another person etc.**

- (1) In a prosecution for a contravention of a provision of this Chapter, it is a defence if the defendant proves that:
  - (a) the contravention was due to the act or default of another person, to an accident or to some other cause beyond the defendant's control; and
  - (b) the defendant took reasonable precautions and exercised due diligence to avoid the contravention.

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- (2) However, subsection (1) does not apply in relation to the act or default of another person who was, at the time when the contravention occurred:
  - (a) an employee or agent of the defendant; or
  - (b) if the defendant is a body corporate—a director, employee or agent of the defendant.
- (3) If a defence provided by subsection (1) involves an allegation that a contravention was due to the act or default of another person, the defendant is not entitled to rely on that defence unless:
  - (a) the court gives leave; or
  - (b) the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person who instituted the proceeding a written notice giving such information as the defendant then had that would identify or assist in identifying the other person.

**209 Publication of advertisements in the ordinary course of business**

In a prosecution for a contravention of a provision of this Chapter that was committed by publication of an advertisement, it is a defence if the defendant proves that:

- (a) the defendant is a person whose business it is to publish or arrange for the publication of advertisements; and
- (b) the defendant received the advertisement for publication in the ordinary course of business; and
- (c) the defendant did not know, and had no reason to suspect, that its publication would amount to a contravention of such a provision.

**210 Supplying goods acquired for the purpose of re-supply**

- (1) In a prosecution for a contravention of a provision of this Chapter that was committed by supplying goods in contravention of section 194 or 203, it is a defence if the defendant proves that:
  - (a) the goods were acquired by the defendant for the purpose of re-supply; and
  - (b) the goods were so acquired from a person who carried on in Australia a business of supplying such goods otherwise than as the agent of a person outside Australia; and
  - (c) in the case of a contravention of section 194—the defendant:

- (i) did not know, and could not with reasonable diligence have ascertained, that the goods did not comply with the safety standard to which the contravention relates; or
- (ii) relied in good faith on a representation by the person from whom the defendant acquired the goods that there was no safety standard for such goods; and
- (d) in the case of a contravention of section 203—the defendant:
  - (i) did not know, and could not with reasonable diligence have ascertained, that the defendant had not complied with the information standard to which the contravention relates; or
  - (ii) relied in good faith on a representation by the person from whom the defendant acquired the goods that there was no information standard for such goods.

Note: Section 194 is about supply of consumer goods that do not comply with safety standards, and section 203 is about supply of goods that do not comply with information standards.

- (2) A defendant is not entitled to rely on the defence provided by subsection (1) unless:
  - (a) the court gives leave; or
  - (b) the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person who instituted the proceeding a written notice identifying the person from whom the defendant acquired the goods.

## **211 Supplying services acquired for the purpose of re-supply**

- (1) In a prosecution for a contravention of a provision of this Chapter that was committed by supplying services in contravention of section 195 or 204, it is a defence if the defendant proves that:
  - (a) the services were acquired by the defendant for the purpose of re-supply; and
  - (b) the services were so acquired from a person who carried on in Australia a business of supplying such services otherwise than as the agent of a person outside Australia; and
  - (c) in the case of a contravention of section 195—the defendant:
    - (i) did not know, and could not with reasonable diligence have ascertained, that the services did not comply with the safety standard to which the contravention relates; or

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- (ii) relied in good faith on a representation by the person from whom the defendant acquired the services that there was no safety standard for such services; and
- (d) in the case of a contravention of section 204—the defendant:
  - (i) did not know, and could not with reasonable diligence have ascertained, that the defendant had not complied with the information standard to which the contravention relates; or
  - (ii) relied in good faith on a representation by the person from whom the defendant acquired the services that there was no information standard for such services.

Note: Section 195 is about supply of product related services that do not comply with safety standards, and section 204 is about supply of services that do not comply with information standards.

- (2) A defendant is not entitled to rely on the defence provided by subsection (1) unless:
  - (a) the court gives leave; or
  - (b) the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person who instituted the proceeding a written notice identifying the person from whom the defendant acquired the services.

## **Part 4-7—Miscellaneous**

### **212 Prosecutions to be commenced within 3 years**

A prosecution for an offence against a provision of this Chapter may be commenced at any time within 3 years after the commission of the offence.

### **213 Preference must be given to compensation for victims**

If a court considers that:

- (a) it is appropriate to impose a fine on a person (the *defendant*) under this Chapter in relation to:
  - (i) a contravention of a provision of this Schedule; or
  - (ii) an attempt to contravene such a provision; or
  - (iii) aiding, abetting, counselling or procuring a person to contravene such a provision; or
  - (iv) inducing, or attempting to induce, a person, whether by threats or promises or otherwise, to contravene such a provision; or
  - (v) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
  - (vi) conspiring with others to contravene such a provision; and
- (b) it is appropriate to order the defendant to pay compensation to a person who has suffered loss or damage as result of that contravention or conduct; and
- (c) the defendant does not have sufficient financial resources to pay both the fine and the compensation;

the court must give preference to making an order for compensation.

### **214 Penalties for contraventions of the same nature etc.**

- (1) If:

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- (a) a person is convicted of 2 or more offences constituted by, or relating to, contraventions of the same provision of this Chapter; and
  - (b) the contraventions appear to the court:
    - (i) to have been of the same nature or a substantially similar nature; and
    - (ii) to have occurred at or about the same time;the court must not, in respect of the offences, impose on the person fines that, in the aggregate, exceed the maximum fine that would be applicable in respect of one offence by that person against that provision.
- (2) This section applies whether or not the person is also convicted of an offence or offences constituted by, or relating to, another contravention or other contraventions of that provision that were of a different nature or occurred at a different time.

**215 Penalties for previous contraventions of the same nature etc.**

- (1) If:
- (a) a person is convicted of an offence constituted by, or relating to, a contravention of a provision of this Chapter; and
  - (b) a fine has, or fines have, previously been imposed on the person by the court for an offence or offences constituted by, or relating to, another contravention or other contraventions of the same provision; and
  - (c) the contravention, or each of the contraventions, mentioned in paragraph (b) appear to the court:
    - (i) to have been of the same nature as, or a substantially similar nature to, the contravention mentioned in paragraph (a); and
    - (ii) to have occurred at or about the same time as the contravention mentioned in paragraph (a);the court must not, in respect of the offence mentioned in paragraph (a), impose on the person a fine that exceeds the amount (if any) by which the maximum fine applicable in respect of that offence is greater than the amount of the fine, or the sum of the amounts of the fines, referred to in paragraph (b).
- (2) This section applies whether or not a fine has, or fines have, also previously been imposed on the person for an offence or offences

constituted by, or relating to, a contravention or contraventions of that provision that were of a different nature or occurred at a different time.

### **216 Granting of injunctions etc.**

In proceedings against a person for a contravention of a provision of this Chapter, the court may:

- (a) grant an injunction under Division 2 of Part 5-2 against the person in relation to:
  - (i) the conduct that constitutes, or is alleged to constitute, the contravention; or
  - (ii) other conduct of that kind; or
- (b) make an order under section 246, 247 or 248 in relation to the contravention.

### **217 Criminal proceedings not to be brought for contraventions of Chapter 2 or 3**

Criminal proceedings do not lie against a person only because the person:

- (a) has contravened a provision of Chapter 2 or 3; or
- (b) has attempted to contravene such a provision; or
- (c) has aided, abetted, counselled or procured a person to contravene such a provision; or
- (d) has induced, or attempted to induce, a person, whether by threats or promises or otherwise, to contravene such a provision; or
- (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
- (f) has conspired with others to contravene such a provision.

## Chapter 5—Enforcement and remedies

### Part 5-1—Enforcement

#### Division 1—Undertakings

##### 218 Regulator may accept undertakings

- (1) The regulator may accept a written undertaking given by a person for the purposes of this section in connection with a matter in relation to which the regulator has a power or function under this Schedule.
- (2) The person may, with the consent of the regulator, withdraw or vary the undertaking at any time.
- (3) If the regulator considers that the person who gave the undertaking has breached any of its terms, the regulator may apply to a court for an order under subsection (4).
- (4) If the court is satisfied that the person has breached a term of the undertaking, the court may make all or any of the following orders:
  - (a) an order directing the person to comply with that term of the undertaking;
  - (b) an order directing the person to pay to the Commonwealth, or to a State or Territory, an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
  - (c) any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
  - (d) any other order that the court considers appropriate.

## **Division 2—Substantiation notices**

### **219 Regulator may require claims to be substantiated etc.**

- (1) This section applies if a person has, in trade or commerce, made a claim or representation promoting, or apparently intended to promote:
  - (a) a supply, or possible supply, of goods or services by the person or another person; or
  - (b) a sale or grant, or possible sale or grant, of an interest in land by the person or another person; or
  - (c) employment that is to be, or may be, offered by the person or another person.
  
- (2) The regulator may give the person who made the claim or representation a written notice that requires the person to do one or more of the following:
  - (a) give information and/or produce documents to the regulator that could be capable of substantiating or supporting the claim or representation;
  - (b) if the claim or representation relates to a supply, or possible supply, of goods or services by the person or another person—give information and/or produce documents to the regulator that could be capable of substantiating:
    - (i) the quantities in which; and
    - (ii) the period for which;the person or other person is or will be able to make such a supply (whether or not the claim or representation relates to those quantities or that period);
  - (c) give information and/or produce documents to the regulator that are of a kind specified in the notice;within 21 days after the notice is given to the person who made the claim or representation.
  
- (3) Any kind of information or documents that the regulator specifies under subsection (2)(c) must be a kind that the regulator is satisfied is relevant to:
  - (a) substantiating or supporting the claim or representation; or

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- (b) if the claim or representation relates to a supply, or possible supply, of goods or services by the person or another person—substantiating the quantities in which, or the period for which, the person or other person is or will be able to make such a supply.
- (4) The notice must:
  - (a) name the person to whom it is given; and
  - (b) specify the claim or representation to which it relates; and
  - (c) explain the effect of sections 220, 221 and 222.
- (5) The notice may relate to more than one claim or representation that the person has made.
- (6) This section does not apply to a person who made the claim or representation if the person:
  - (a) is an information provider; and
  - (b) made the claim or representation by publishing it on behalf of another person in the course of carrying on a business of providing information; and
  - (c) does not have a commercial relationship with the other person other than for the purpose of:
    - (i) publishing claims or representations promoting, or apparently intended to promote, the other person's business or other activities; or
    - (ii) the other person supplying goods or services, or selling or granting interests in land to the person.

**220 Extending periods for complying with substantiation notices**

- (1) A person who has been given a substantiation notice may, at any time within 21 days after the notice was given to the person by the regulator, apply in writing to the regulator for an extension of the period for complying with the notice.
- (2) The regulator may, by written notice given to the person, extend the period within which the person must comply with the notice.

**221 Compliance with substantiation notices**

- (1) A person who is given a substantiation notice must comply with it within the substantiation notice compliance period for the notice.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) The *substantiation notice compliance period* for a substantiation notice is:
- (a) the period of 21 days specified in the notice; or
  - (b) if the period for complying with the notice has been extended under section 220—the period as so extended;
- and includes (if an application has been made under section 220(1) for an extension of the period for complying with the notice) the period up until the time when the applicant is given notice of the regulator's decision on the application.
- (3) Despite subsection (1), an individual may refuse or fail to give particular information or produce a particular document in compliance with a substantiation notice on the ground that the information or production of the document might tend to incriminate the individual or to expose the individual to a penalty.

## **222 False or misleading information etc.**

- (1) A person must not, in compliance or purported compliance with a substantiation notice given by the regulator:
- (a) give to the regulator false or misleading information; or
  - (b) produce to the regulator documents that contain false or misleading information.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) This section does not apply to:
- (a) information that the person could not have known was false or misleading; or
  - (b) the production to the regulator of a document containing false or misleading information if the document is accompanied by a statement of the person that the information is false or misleading.

### **Division 3—Public warning notices**

#### **223 Regulator may issue a public warning notice**

- (1) The regulator may issue to the public a written notice containing a warning about the conduct of a person if:
  - (a) the regulator has reasonable grounds to suspect that the conduct may constitute a contravention of a provision of Chapter 2, 3 or 4; and
  - (b) the regulator is satisfied that one or more other persons has suffered, or is likely to suffer, detriment as a result of the conduct; and
  - (c) the regulator is satisfied that it is in the public interest to issue the notice.
- (2) Without limiting subsection (1), if:
  - (a) a person refuses to respond to a substantiation notice given by the regulator to the person, or fails to respond to the notice before the end of the substantiation notice compliance period for the notice; and
  - (b) the regulator is satisfied that it is in the public interest to issue a notice under this subsection;the regulator may issue to the public a written notice containing a warning that the person has refused or failed to respond to the substantiation notice within that period, and specifying the matter to which the substantiation notice related.

## **Part 5-2—Remedies**

### **Division 1—Pecuniary penalties**

#### **224 Pecuniary penalties**

- (1) If a court is satisfied that a person:
  - (a) has contravened any of the following provisions:
    - (i) a provision of Part 2-2 (which is about unconscionable conduct);
    - (ii) a provision of Part 3-1 (which is about unfair practices);
    - (iii) section 66(2) (which is about display notices);
    - (iv) a provision (other than section 85) of Division 2 of Part 3-2 (which is about unsolicited consumer agreements);
    - (v) a provision (other than section 96(2)) of Division 3 of Part 3-2 (which is about lay-by agreements);
    - (vi) section 100(1) or (3) or 101(3) or (4) (which are about proof of transactions and itemised bills);
    - (vii) section 102(2) or 103(2) (which are about prescribed requirements for warranties and repairers);
    - (viii) section 106(1), (2), (3) or (5), 107(1) or (2), 118(1), (2), (3) or (5), 119(1) or (2), 125(4), 127(1) or (2), 128(2) or (6), 131(1) or 132(1) (which are about safety of consumer goods and product related services);
    - (ix) section 136(1), (2) or (3) or 137(1) or (2) (which are about information standards);
    - (x) section 221(1) or 222(1) (which are about substantiation notices); or
  - (b) has attempted to contravene such a provision; or
  - (c) has aided, abetted, counselled or procured a person to contravene such a provision; or
  - (d) has induced, or attempted to induce, a person, whether by threats or promises or otherwise, to contravene such a provision; or
  - (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or

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- (f) has conspired with others to contravene such a provision;  
the court may order the person to pay to the Commonwealth, State or Territory, as the case may be, such pecuniary penalty, in respect of each act or omission by the person to which this section applies, as the court determines to be appropriate.
- (2) In determining the appropriate pecuniary penalty, the court must have regard to all relevant matters including:
- (a) the nature and extent of the act or omission and of any loss or damage suffered as a result of the act or omission; and
  - (b) the circumstances in which the act or omission took place; and
  - (c) whether the person has previously been found by a court in proceedings under Chapter 4 or this Part to have engaged in any similar conduct.
- (3) The pecuniary penalty payable under subsection (1) is not to exceed the amount worked out using the following table:

<b>Amount of pecuniary penalty</b>		
<b>Item</b>	<b>For each act or omission to which this section applies that relates to ...</b>	<b>the pecuniary penalty is not to exceed ...</b>
1	a provision of Part 2-2	(a) if the person is a body corporate—\$1.1 million; or (b) if the person is not a body corporate—\$220,000.
2	a provision of Part 3-1 (other than section 47(1))	(a) if the person is a body corporate—\$1.1 million; or (b) if the person is not a body corporate—\$220,000.
3	section 47(1)	(a) if the person is a body corporate—\$5,000; or (b) if the person is not a body corporate—\$1,000.

<b>Amount of pecuniary penalty</b>		
<b>Item</b>	<b>For each act or omission to which this section applies that relates to ...</b>	<b>the pecuniary penalty is not to exceed ...</b>
4	section 66(2)	(a) if the person is a body corporate—\$50,000; or (b) if the person is not a body corporate—\$10,000.
5	a provision of Division 2 of Part 3-2 (other than section 85)	(a) if the person is a body corporate—\$50,000; or (b) if the person is not a body corporate—\$10,000.
6	a provision of Division 3 of Part 3-2 (other than section 96(2))	(a) if the person is a body corporate—\$30,000; or (b) if the person is not a body corporate—\$6,000.
7	section 100(1) or (3) or 101(3) or (4)	(a) if the person is a body corporate—\$15,000; or (b) if the person is not a body corporate—\$3,000.
8	section 102(2) or 103(2)	(a) if the person is a body corporate—\$50,000; or (b) if the person is not a body corporate—\$10,000.
9	section 106(1), (2), (3) or (5), 107(1) or (2), 118(1), (2), (3) or (5) or 119(1) or (2)	(a) if the person is a body corporate—\$1.1 million; or (b) if the person is not a body corporate—\$220,000.
10	section 125(4)	(a) if the person is a body corporate—\$16,500; or (b) if the person is not a body corporate—\$3,300.

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<b>Amount of pecuniary penalty</b>		
<b>Item</b>	<b>For each act or omission to which this section applies that relates to ...</b>	<b>the pecuniary penalty is not to exceed ...</b>
11	section 127(1) or (2)	(a) if the person is a body corporate—\$1.1 million; or (b) if the person is not a body corporate—\$220,000.
12	section 128(2) or (6), 131(1) or 132(1)	(a) if the person is a body corporate—\$16,500; or (b) if the person is not a body corporate—\$3,300.
13	section 136(1), (2) or (3) or 137(1) or (2)	(a) if the person is a body corporate—\$1.1 million; or (b) if the person is not a body corporate—\$220,000.
14	section 221(1)	(a) if the person is a body corporate—\$16,500; or (b) if the person is not a body corporate—\$3,300.
15	section 222(1)	(a) if the person is a body corporate—\$27,500; or (b) if the person is not a body corporate—\$5,500.

- (4) If conduct constitutes a contravention of 2 or more provisions referred to in subsection (1)(a):
- (a) a proceeding may be instituted under this Schedule against a person in relation to the contravention of any one or more of the provisions; but
  - (b) a person is not liable to more than one pecuniary penalty under this section in respect of the same conduct.

## 225 Pecuniary penalties and offences

- (1) A court must not make an order under section 224 against a person in relation to either of the following matters (a *consumer protection breach*):

- (a) a contravention of a provision referred to in section 224(1)(a);
- (b) conduct referred to in section 224(1)(b), (c), (d), (e) or (f) that relates to a contravention of such a provision;

if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the consumer protection breach.

- (2) Proceedings for an order under section 224 against a person in relation to a consumer protection breach are stayed if:
- (a) criminal proceedings are started or have already been started against the person for an offence; and
  - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the consumer protection breach.

The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings are dismissed.

- (3) Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a consumer protection breach regardless of whether an order under section 224 has been made against the person in respect of the breach.
- (4) Evidence of information given, or evidence of the production of documents, by an individual is not admissible in criminal proceedings against the individual if:
- (a) the individual previously gave the evidence or produced the documents in proceedings for an order under section 224 against the individual in relation to a consumer protection breach (whether or not the order was made); and
  - (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the consumer protection breach.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the order.

## 226 Defence

If, in proceedings under section 224 against a person other than a body corporate, it appears to a court that the person has, or may have:

- (a) engaged in conduct in contravention of a provision referred to in subsection (1)(a) of that section; or
- (b) engaged in conduct referred to in subsection (1)(b), (c), (d), (e) or (f) of that section that relates to a contravention of such a provision;

but that the person acted honestly and reasonably and, having regard to all the circumstances of the case, ought fairly to be excused, the court may relieve the person either wholly or partly from liability to a pecuniary penalty under that section.

## 227 Preference must be given to compensation for victims

If a court considers that:

- (a) it is appropriate to order a person (the *defendant*) to pay a pecuniary penalty under section 224 in relation to:
  - (i) a contravention of a provision referred to in subsection (1)(a) of that section; or
  - (ii) conduct referred to in subsection (1)(b), (c), (d), (e) or (f) of that section that relates to a contravention such a provision; and
- (b) it is appropriate to order the defendant to pay compensation to a person who has suffered loss or damage as result of that contravention or conduct; and
- (c) the defendant does not have sufficient financial resources to pay both the pecuniary penalty and the compensation;

the court must give preference to making an order for compensation.

## 228 Civil action for recovery of pecuniary penalties

- (1) The regulator may institute a proceeding in a court for the recovery on behalf of the Commonwealth, a State or a Territory, as the case may be, of a pecuniary penalty referred to in section 224.
- (2) A proceeding under subsection (1) may be commenced at any time within 6 years after the contravention or conduct.

### **229 Indemnification of officers**

- (1) A body corporate (the *first body*), or a body corporate related to the first body, commits an offence if it indemnifies a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against either of the following liabilities incurred as an officer (within the meaning of the *Corporations Act 2001*) of the first body:
  - (a) a liability to pay a pecuniary penalty under section 224;
  - (b) legal costs incurred in defending or resisting proceedings in which the person is found to have such a liability.

Penalty: \$2,750.

- (2) For the purposes of subsection (1), the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

### **230 Certain indemnities not authorised and certain documents void**

- (1) Section 229 does not authorise anything that would otherwise be unlawful.
- (2) Anything that purports to indemnify a person against a liability is void to the extent that it contravenes section 229.

## Division 2—Injunctions

### 232 Injunctions

- (1) A court may grant an injunction, in such terms as the court considers appropriate, if the court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute:
  - (a) a contravention of a provision of Chapter 2, 3 or 4; or
  - (b) attempting to contravene such a provision; or
  - (c) aiding, abetting, counselling or procuring a person to contravene such a provision; or
  - (d) inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene such a provision; or
  - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
  - (f) conspiring with others to contravene such a provision.
- (2) The court may grant the injunction on application by the regulator or any other person.
- (3) Subsection (1) applies in relation to conduct constituted by applying or relying on, or purporting to apply or rely on, a term of a consumer contract that has been declared under section 250 to be an unfair term as if the conduct were a contravention of a provision of Chapter 2.
- (4) The power of the court to grant an injunction under subsection (1) restraining a person from engaging in conduct may be exercised:
  - (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of a kind referred to in that subsection; and
  - (b) whether or not the person has previously engaged in conduct of that kind; and
  - (c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.

- (5) Without limiting subsection (1), the court may grant an injunction under that subsection restraining a person from carrying on a business or supplying goods or services (whether or not as part of, or incidental to, the carrying on of another business):
  - (a) for a specified period; or
  - (b) except on specified terms and conditions.
- (6) Without limiting subsection (1), the court may grant an injunction under that subsection requiring a person to do any of the following:
  - (a) refund money;
  - (b) transfer property;
  - (c) honour a promise;
  - (d) destroy or dispose of goods.
- (7) The power of the court to grant an injunction under subsection (1) requiring a person to do an act or thing may be exercised:
  - (a) whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
  - (b) whether or not the person has previously refused or failed to do that act or thing; and
  - (c) whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that act or thing.

### **233 Consent injunctions**

If an application is made under section 232, the court may, if it considers that it is appropriate to do so, grant an injunction under this section by consent of all the parties to the proceedings, whether or not the court is satisfied as required by section 232(1).

### **234 Interim injunctions**

- (1) If an application is made under section 232, the court may, if it considers it is desirable to do so, grant an interim injunction under this subsection pending the determination of the application.
- (2) If a responsible Minister or the regulator made the application under section 232, the court must not require the applicant or any other person to give any undertakings as to damages as a condition of granting the interim injunction.

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- (3) If:
- (a) in a case to which subsection (2) does not apply the court would, but for this subsection, require a person to give an undertaking as to damages or costs; and
  - (b) a responsible Minister gives the undertaking;
- the court must accept the undertaking by the responsible Minister and must not require a further undertaking from any other person.

**235 Variation and discharge of injunctions**

A court may vary or discharge an injunction (including an interim injunction) that it has granted under this Division.

### **Division 3—Damages**

#### **236 Actions for damages**

- (1) If:
  - (a) a person (the *claimant*) suffers loss or damage because of the conduct of another person; and
  - (b) the conduct contravened a provision of Chapter 2 or 3;the claimant may recover the amount of the loss or damage by action against that other person, or against any person involved in the contravention.
- (2) An action under subsection (1) may be commenced at any time within 6 years after the day on which the cause of action that relates to the conduct accrued.

**Division 4—Compensation orders etc. for injured persons and orders for non-party consumers**

**Subdivision A—Compensation orders etc. for injured persons**

**237 Compensation orders etc. on application by an injured person or the regulator**

- (1) A court may:
- (a) on application of a person (the *injured person*) who has suffered, or is likely to suffer, loss or damage because of the conduct of another person that:
    - (i) was engaged in a contravention of a provision of Chapter 2, 3 or 4; or
    - (ii) constitutes applying or relying on, or purporting to apply or rely on, a term of a consumer contract that has been declared under section 250 to be an unfair term; or
  - (b) on the application of the regulator made on behalf of one or more such injured persons;

make such order or orders as the court thinks appropriate against the person who engaged in the conduct, or a person involved in that conduct.

Note 1: For applications for an order or orders under this subsection, see section 242.

Note 2: The orders that the court may make include all or any of the orders set out in section 243.

- (2) The order must be an order that the court considers will:
- (a) compensate the injured person, or any such injured persons, in whole or in part for the loss or damage; or
  - (b) prevent or reduce the loss or damage suffered, or likely to be suffered, by the injured person or any such injured persons.
- (3) An application under subsection (1) may be made at any time within 6 years after the day on which:
- (a) if subsection (1)(a)(i) applies—the cause of action that relates to the conduct referred to in that subsection accrued; or
  - (b) if subsection (1)(a)(ii) applies—the declaration referred to in that subsection is made.

### **238 Compensation orders etc. arising out of other proceedings**

- (1) If a court finds, in a proceeding instituted under a provision of Chapter 4 or this Chapter (other than this section), that a person (the *injured person*) who is a party to the proceeding has suffered, or is likely to suffer, loss or damage because of the conduct of another person that:
- (a) was engaged in a contravention of a provision of Chapter 2, 3 or 4; or
  - (b) constitutes applying or relying on, or purporting to apply or rely on, a term of a consumer contract that has been declared under section 250 to be an unfair term;

the court may make such order or orders as it thinks appropriate against the person who engaged in the conduct, or a person involved in that conduct.

Note: The orders that the court may make include all or any of the orders set out in section 243.

- (2) The order must be an order that the court considers will:
- (a) compensate the injured person in whole or in part for the loss or damage; or
  - (b) prevent or reduce the loss or damage.

### **Subdivision B—Orders for non-party consumers**

#### **239 Orders to redress etc. loss or damage suffered by non-party consumers**

- (1) If:
- (a) a person:
    - (i) engaged in conduct (the *contravening conduct*) in contravention of a provision of Chapter 2, Part 3-1, Division 2, 3 or 4 of Part 3-2 or Chapter 4; or
    - (ii) is a party to a consumer contract who is advantaged by a term (the *declared term*) of the contract in relation to which a court has made a declaration under section 250; and
  - (b) the contravening conduct or declared term caused, or is likely to cause, a class of persons to suffer loss or damage; and
  - (c) the class includes persons who are non-party consumers in relation to the contravening conduct or declared term;

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a court may, on the application of the regulator, make such order or orders (other than an award of damages) as the court thinks appropriate against a person referred to in subsection (2) of this section.

Note 1: For applications for an order or orders under this subsection, see section 242.

Note 2: The orders that the court may make include all or any of the orders set out in section 243.

- (2) An order under subsection (1) may be made against:
  - (a) if subsection (1)(a)(i) applies—the person who engaged in the contravening conduct, or a person involved in that conduct; or
  - (b) if subsection (1)(a)(ii) applies—a party to the contract who is advantaged by the declared term.
- (3) The order must be an order that the court considers will:
  - (a) redress, in whole or in part, the loss or damage suffered by the non-party consumers in relation to the contravening conduct or declared term; or
  - (b) prevent or reduce the loss or damage suffered, or likely to be suffered, by the non-party consumers in relation to the contravening conduct or declared term.
- (4) An application under subsection (1) may be made at any time within 6 years after the day on which:
  - (a) if subsection (1)(a)(i) applies—the cause of action that relates to the contravening conduct accrued; or
  - (b) if subsection (1)(a)(ii) applies—the declaration is made.

**240 Determining whether to make a redress order etc. for non-party consumers**

- (1) In determining whether to make an order under section 239(1) against a person referred to in section 239(2)(a), the court may have regard to the conduct of the person, and of the non-party consumers in relation to the contravening conduct, since the contravention occurred.
- (2) In determining whether to make an order under section 239(1) against a person referred to in section 239(2)(b), the court may have regard to the conduct of the person, and of the non-party

consumers in relation to the declared term, since the declaration was made.

- (3) In determining whether to make an order under section 239(1), the court need not make a finding about either of the following matters:
- (a) which persons are non-party consumers in relation to the contravening conduct or declared term;
  - (b) the nature of the loss or damage suffered, or likely to be suffered, by such persons.

#### **241 When a non-party consumer is bound by a redress order etc.**

- (1) A non-party consumer is bound by an order made under section 239(1) against a person if:
- (a) the loss or damage suffered, or likely to be suffered, by the non-party consumer in relation to the contravening conduct, or the declared term, to which the order relates has been redressed, prevented or reduced in accordance with the order; and
  - (b) the non-party consumer has accepted the redress, prevention or reduction.
- (2) Any other order made under section 239(1) that relates to that loss or damage has no effect in relation to the non-party consumer.
- (3) Despite any other provision of:
- (a) this Schedule; or
  - (b) any other law of the Commonwealth, or a State or a Territory;
- no claim, action or demand may be made or taken against the person by the non-party consumer in relation to that loss or damage.

#### **Subdivision C—Miscellaneous**

##### **242 Applications for orders**

- (1) An application may be made under section 237(1) or 239(1) even if an enforcement proceeding in relation to the conduct, or the term of a consumer contract, referred to in that subsection has not been instituted.

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- (2) The regulator must not make an application under section 237(1)(b) on behalf of one or more persons unless those persons have consented in writing to the making of the application.

**243 Kinds of orders that may be made**

Without limiting section 237(1), 238(1) or 239(1), the orders that a court may make under any of those sections against a person (the *respondent*) include all or any of the following:

- (a) an order declaring the whole or any part of a contract made between the respondent and a person (the *injured person*) who suffered, or is likely to suffer, the loss or damage referred to in that section, or of a collateral arrangement relating to such a contract:
  - (i) to be void; and
  - (ii) if the court thinks fit—to have been void ab initio or void at all times on and after such date as is specified in the order (which may be a date that is before the date on which the order is made);
- (b) an order:
  - (i) varying such a contract or arrangement in such manner as is specified in the order; and
  - (ii) if the court thinks fit—declaring the contract or arrangement to have had effect as so varied on and after such date as is specified in the order (which may be a date that is before the date on which the order is made);
- (c) an order refusing to enforce any or all of the provisions of such a contract or arrangement;
- (d) an order directing the respondent to refund money or return property to the injured person;
- (e) except if the order is to be made under section 239(1)—an order directing the respondent to pay the injured person the amount of the loss or damage;
- (f) an order directing the respondent, at his or her own expense, to repair, or provide parts for, goods that had been supplied by the respondent to the injured person;
- (g) an order directing the respondent, at his or her own expense, to supply specified services to the injured person;

- (h) an order, in relation to an instrument creating or transferring an interest in land, directing the respondent to execute an instrument that:
  - (i) varies, or has the effect of varying, the first mentioned instrument; or
  - (ii) terminates or otherwise affects, or has the effect of terminating or otherwise affecting, the operation or effect of the first mentioned instrument.

#### **244 Power of a court to make orders**

A court may make an order under Subdivision A or B of this Division whether or not the court:

- (a) grants an injunction under Division 2 of this Part; or
- (b) makes an order under section 236, 246, 247 or 248.

#### **245 Interaction with other provisions**

Subdivisions A and B of this Division do not limit the generality of Division 2 of this Part.

## Division 5—Other remedies

### 246 Non-punitive orders

- (1) A court may, on application of the regulator, make one or more of the orders mentioned in subsection (2) in relation to a person who has engaged in conduct that:
  - (a) contravenes a provision of Chapter 2, 3 or 4; or
  - (b) constitutes an involvement in a contravention of such a provision.
- (2) The court may make the following orders in relation to the person who has engaged in the conduct:
  - (a) an order directing the person to perform a service that is specified in the order, and that relates to the conduct, for the benefit of the community or a section of the community;
  - (b) an order for the purpose of ensuring that the person does not engage in the conduct, similar conduct, or related conduct, during the period of the order (which must not be longer than 3 years) including:
    - (i) an order directing the person to establish a compliance program for employees or other persons involved in the person's business, being a program designed to ensure their awareness of the responsibilities and obligations in relation to such conduct; and
    - (ii) an order directing the person to establish an education and training program for employees or other persons involved in the person's business, being a program designed to ensure their awareness of the responsibilities and obligations in relation to such conduct; and
    - (iii) an order directing the person to revise the internal operations of the person's business which led to the person engaging in such conduct;
  - (c) an order requiring the person to disclose, in the way and to the persons specified in the order, such information as is so specified, being information that the person has possession of or access to;

- (d) an order requiring the person to publish, at the person's expense and in the way specified in the order, an advertisement in the terms specified in, or determined in accordance with, the order.

Note: The following are examples of orders that the court may make under subsection (2)(a):

- (a) an order requiring a person who has made false representations to make available a training video which explains advertising obligations under this Schedule;
  - (b) an order requiring a person who has engaged in misleading or deceptive conduct in relation to a product to carry out a community awareness program to address the needs of consumers when purchasing the product.
- (3) This section does not limit a court's powers under any other provision of this Schedule.

### **247 Adverse publicity orders**

- (1) A court may, on application of the regulator, make an adverse publicity order in relation to a person who:
  - (a) has contravened a provision of Part 2-2 or Chapter 3; or
  - (b) has committed an offence against Chapter 4.
- (2) An *adverse publicity order* in relation to a person is an order that requires the person:
  - (a) to disclose, in the way and to the persons specified in the order, such information as is so specified, being information that the person has possession of or access to; and
  - (b) to publish, at the person's expense and in the way specified in the order, an advertisement in the terms specified in, or determined in accordance with, the order.
- (3) This section does not limit a court's powers under any other provision of this Schedule.

### **248 Order disqualifying a person from managing corporations**

- (1) A court may, on application of the regulator, make an order disqualifying a person from managing corporations for a period that the court considers appropriate if:

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- (a) the court is satisfied that the person has contravened, has attempted to contravene or has been involved in a contravention of any of the following provisions:
  - (i) a provision of Part 2-2 (which is about unconscionable conduct);
  - (ii) a provision of Part 3-1 (which is about unfair practices);
  - (iii) a provision (other than section 85) of Division 2 of Part 3-2 (which is about unsolicited consumer agreements);
  - (iv) section 106(1), (2), (3) or (5), 107(1) or (2), 118(1), (2), (3) or (5), 119(1) or (2), 125(4), 127(1) or (2), 128(2) or (6), 131(1) or 132(1) (which are about safety of consumer goods and product related services);
  - (v) section 136(1), (2) or (3) or 137(1) or (2) (which are about information standards);
  - (vi) a provision of Chapter 4 (which is about offences); and
- (b) the court is satisfied that the disqualification is justified.

Note: Section 206EA of the *Corporations Act 2001* provides that a person is disqualified from managing corporations if a court order is in force under this section. That Act contains various consequences for persons so disqualified.

- (2) In determining under subsection (1) whether the disqualification is justified, the court may have regard to:
  - (a) the person's conduct in relation to the management, business or property of any corporation; and
  - (b) any other matters that the court considers appropriate.
- (3) If the court makes an order under subsection (1), the regulator must:
  - (a) notify ASIC; and
  - (b) give ASIC a copy of any such order.

Note: ASIC must keep a register of persons who have been disqualified from managing corporations: see section 1274AA of the *Corporations Act 2001*.

- (4) For the purposes of this Schedule (other than this section or section 249), an order under this section is not a penalty.

**249 Privilege against exposure to penalty or forfeiture—  
disqualification from managing corporations**

- (1) In a civil or criminal proceeding under, or arising out of, this Schedule, a person is not entitled to refuse or fail to comply with a requirement:
  - (a) to answer a question or give information; or
  - (b) to produce a document or any other thing; or
  - (c) to do any other act;on the ground that the answer or information, production of the document or other thing, or doing that other act, as the case may be, might tend to expose the person to a penalty (including forfeiture) by way of an order under section 248.
- (2) Subsection (1) applies whether or not the person is a defendant in the proceeding or in any other proceeding.
- (3) A person is not entitled to refuse or fail to comply with a requirement under this Schedule:
  - (a) to answer a question or give information; or
  - (b) to produce a document or any other thing; or
  - (c) to do any other act;on the ground that the answer or information, production of the document or other thing, or doing that other act, as the case may be, might tend to expose the person to a penalty (including forfeiture) by way of an order under section 248.

**250 Declarations relating to consumer contracts**

- (1) A court may, on the application of a party to a consumer contract or on the application of the regulator, declare that a term of such a contract is an unfair term.
- (2) Subsection (1) does not apply unless the consumer contract is a standard form contract.
- (3) Subsection (1) does not limit any other power of the court to make declarations.

## **Division 6—Defences**

### **251 Publication of advertisement in the ordinary course of business**

- (1) This section applies to a proceeding under this Part in relation to a contravention of a provision of Part 2-1 or 2-2 or Chapter 3 if the contravention was committed by the publication of an advertisement.
- (2) In the proceeding, it is a defence if the defendant proves that:
  - (a) the defendant is a person whose business it is to publish or arrange for the publication of advertisements; and
  - (b) the defendant received the advertisement for publication in the ordinary course of business; and
  - (c) the defendant did not know, and had no reason to suspect, that its publication would amount to a contravention of such a provision.

### **252 Supplying consumer goods for the purpose of re-supply**

- (1) This section applies to a proceeding under this Part in relation to a contravention of a provision of Part 2-1 or 2-2 or Chapter 3 committed by:
  - (a) the supplying of consumer goods that did not comply with a safety standard for such goods; or
  - (b) the supplying of consumer goods by a supplier who did not comply with an information standard for such goods.
- (2) In the proceeding, it is a defence if the defendant proves that:
  - (a) the consumer goods were acquired by the defendant for the purpose of re-supply; and
  - (b) the consumer goods were so acquired from a person who carried on in Australia a business of supplying such goods otherwise than as the agent of a person outside Australia; and
  - (c) either:
    - (i) the defendant did not know, and could not with reasonable diligence have ascertained, that the consumer goods did not comply with that safety standard, or that the defendant had not complied with that information standard, as the case may be; or

- (ii) the defendant relied in good faith on a representation by the person from whom the defendant acquired the goods that there was no safety standard or information standard, as the case may be, for such consumer goods.
- (3) A defendant is not entitled to rely on the defence provided by subsection (2) unless:
- (a) the court gives leave; or
  - (b) the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person who instituted the proceeding a written notice identifying the person from whom the defendant acquired the consumer goods.

### **253 Supplying product related services for the purpose of re-supply**

- (1) This section applies to a proceeding under this Part in relation to a contravention of a provision of Part 2-1 or 2-2 or Chapter 3 committed by:
- (a) the supplying of product related services that did not comply with a safety standard for such services; or
  - (b) the supplying of product related services by a supplier who did not comply with an information standard for such services.
- (2) In the proceeding, it is a defence if the defendant proves that:
- (a) the product related services were acquired by the defendant for the purpose of re-supply; and
  - (b) the product related services were so acquired from a person who carried on in Australia a business of supplying such services otherwise than as the agent of a person outside Australia; and
  - (c) either:
    - (i) the defendant did not know, and could not with reasonable diligence have ascertained, that the product related services did not comply with that safety standard, or that the defendant had not complied with that information standard, as the case may be; or
    - (ii) the defendant relied in good faith on a representation by the person from whom the defendant acquired the goods that there was no safety standard or information

standard, as the case may be, for such product related services.

- (3) A defendant is not entitled to rely on the defence provided by subsection (2) unless:
- (a) the court gives leave; or
  - (b) the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person who instituted the proceeding a written notice identifying the person from whom the defendant acquired the product related services.

## Part 5-3—Country of origin representations

### 254 Overview

This Part provides that certain country of origin representations made about goods do not contravene:

- (a) section 18 (which deals with misleading or deceptive conduct); or
- (b) section 29(1)(a) or (k) or 151(1)(a) or (k) (which deal with false or misleading representations).

### 255 Country of origin representations do not contravene certain provisions

- (1) A person does not contravene section 18, 29(1)(a) or (k) or 151(1)(a) or (k) only by making a representation of a kind referred to in an item in the first column of this table, if the requirements of the corresponding item in the second column are met.

Country of origin representations		
Item	Representation	Requirements to be met
1	A representation as to the country of origin of goods	(a) the goods have been substantially transformed in that country; and (b) 50% or more of the total cost of producing or manufacturing the goods as worked out under section 256 is attributable to production or manufacturing processes that occurred in that country; and (c) the representation is not a representation to which item 2 or 3 of this table applies.
2	A representation that goods are the produce of a particular country	(a) the country was the country of origin of each significant ingredient or significant component of the goods; and (b) all, or virtually all, processes involved in the production or manufacture happened in that country.

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<b>Country of origin representations</b>		
<b>Item</b>	<b>Representation</b>	<b>Requirements to be met</b>
3	A representation as to the country of origin of goods by means of a logo specified in the regulations	(a) the goods have been substantially transformed in the country represented by the logo as the country of origin of the goods; and (b) the prescribed percentage of the cost of producing or manufacturing the goods as worked out under section 256 is attributable to production or manufacturing processes that happened in that country.
4	A representation that goods were grown in a particular country	(a) the country is the country that could, but for subsection (2), be represented, in accordance with this Part, as the country of origin of the goods, or the country of which the goods are the produce; and (b) each significant ingredient or significant component of the goods was grown in that country; and (c) all, or virtually all, processes involved in the production or manufacture happened in that country.
5	A representation that ingredients or components of goods were grown in a particular country	(a) the country is the country that could, but for subsection (2), be represented, in accordance with this Part, as the country of origin of the goods, or the country of which the goods are the produce; and (b) each ingredient or component that is claimed to be grown in that country was grown only in that country; and (c) each ingredient or component that is claimed to be grown in that country was processed only in that country; and (d) 50% or more of the total weight of the goods is comprised of ingredients or components that were grown and processed only in that country.

Note: The regulations may prescribe rules for determining the percentage of the total costs of production or manufacture of goods attributable to production or manufacturing processes that occurred in a particular country, see section 257.

(2) Despite subsection (1), this section does not apply to a representation of a kind referred to in item 4 or 5 in the first

column of the table in that subsection if the representation is made together with another representation of a kind referred to in item 1 or 2 in that first column.

- (3) Goods are *substantially transformed* in a country if they undergo a fundamental change in that country in form, appearance or nature such that the goods existing after the change are new and different goods from those existing before the change.
- (4) Without limiting subsection (3), the regulations:
  - (a) may prescribe changes (whether in relation to particular classes of goods or otherwise) that are not fundamental changes for the purposes of that subsection; and
  - (b) may include examples (in relation to particular classes of goods or otherwise) of changes which are fundamental changes for the purposes of that subsection.
- (5) Item 2 of the table in subsection (1) applies to a representation that goods are the produce of a particular country whether the representation uses the words “product of”, “produce of” or any other grammatical variation of the word “produce”.
- (6) The regulations made for the purposes of item 3 of the table in subsection (1) may, in relation to a specified logo, prescribe a percentage in the range of 51% to 100% as the percentage applicable to goods for the purposes of paragraph (b) in the second column of that item.
- (7) Goods, or ingredients or components of goods, are *grown* in a country if they:
  - (a) are materially increased in size or materially altered in substance in that country by natural development; or
  - (b) germinated or otherwise arose in, or issued in, that country; or
  - (c) are harvested, extracted or otherwise derived from an organism that has been materially increased in size, or materially altered in substance, in that country by natural development.
- (8) For the purposes of items 4 and 5 in the table in subsection (1) in relation to particular goods:
  - (a) packaging materials are not treated as ingredients or components of the goods; and

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- (b) disregard the weight of packaging materials in working out the weight of the goods.
- (9) For the purposes of items 4 and 5 in the table in subsection (1) in relation to an ingredient or component that has been dried or concentrated by the evaporation of water, and to which water has been added to return the water content of the ingredient or component to no more than its natural level:
  - (a) the weight of the water so added is included in the weight of the ingredient or component; and
  - (b) the water so added is treated as having the same origin as the ingredient or component, regardless of its actual origin.

**256 Cost of producing or manufacturing goods**

- (1) The cost of producing or manufacturing goods is worked out, for the purposes of section 255, by adding up the following amounts:
  - (a) the amount of expenditure on materials in respect of the goods;
  - (b) the amount of expenditure on labour in respect of the goods;
  - (c) the amount of expenditure on overheads in respect of the goods;each worked out in accordance with this table:

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<b>Cost of producing or manufacturing goods</b>		
<b>Item</b>	<b>This amount of expenditure:</b>	<b>is worked out as follows:</b>
1	Expenditure on materials in respect of the goods	The cost of materials used in the production or manufacture of the goods: <ul style="list-style-type: none"><li>(a) that is incurred by the manufacturer of the goods; and</li><li>(b) that has not been prescribed by regulations made for the purposes of subsection (2)(a).</li></ul>

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**Cost of producing or manufacturing goods**

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<b>Item</b>	<b>This amount of expenditure:</b>	<b>is worked out as follows:</b>
2	Expenditure on labour in respect of the goods	The sum of each labour cost: <ul style="list-style-type: none"> <li>(a) that is incurred by the manufacturer of the goods; and</li> <li>(b) that relates to the production or manufacture of the goods; and</li> <li>(c) that can reasonably be allocated to the production or manufacture of the goods; and</li> <li>(d) that has not been prescribed by regulations made for the purposes of subsection (2)(b).</li> </ul>
3	Expenditure on overheads in respect of the goods	The sum of each overhead cost: <ul style="list-style-type: none"> <li>(a) that is incurred by the manufacturer of the goods; and</li> <li>(b) that relates to the production or manufacture of the goods; and</li> <li>(c) that can reasonably be allocated to the production or manufacture of the goods; and</li> <li>(d) that has not been prescribed by regulations made for the purposes of subsection (2)(c).</li> </ul>

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- (2) The regulations may, for the purposes of subsection (1), prescribe that:
  - (a) the cost of a particular material, or a part of such a cost; or
  - (b) a particular labour cost, or a part of a labour cost; or
  - (c) a particular overhead cost, or a part of an overhead cost;
 is not allowable in respect of goods, or classes of goods.
- (3) The regulations may, for the purposes of subsection (1), prescribe the manner of working out:
  - (a) the cost of a material, or part of the cost; or
  - (b) a labour cost, or part of the cost; or
  - (c) an overhead cost, or part of the cost.

**257 Rules for determining the percentage of costs of production or manufacture attributable to a country**

- (1) Subject to subsection (2), the regulations may prescribe rules for determining, for the purposes of section 255, the percentage of the

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total cost of production or manufacture of goods attributable to production or manufacturing processes that occurred in a particular country.

- (2) Rules prescribed under subsection (1) must not discriminate (whether favourably or unfavourably) between countries or classes of countries.

**258 Proceedings relating to false, misleading or deceptive conduct or representations**

If:

- (a) proceedings are brought against a person in respect of section 18, 29(1)(a) or (k) or 151(1)(a) or (k); and
- (b) the person seeks to rely on a provision of this Part, or of a regulation made for the purposes of a provision of this Part, in the proceedings;

the person bears an evidential burden in relation to the matters set out in the provision on which the person seeks to rely.

## **Part 5-4—Remedies relating to guarantees**

### **Division 1—Action against suppliers**

#### **Subdivision A—Action against suppliers of goods**

##### **259 Action against suppliers of goods**

- (1) A consumer may take action under this section if:
  - (a) a person (the *supplier*) supplies, in trade or commerce, goods to the consumer; and
  - (b) a guarantee that applies to the supply under Subdivision A of Division 1 of Part 3-2 (other than sections 58 and 59(1)) is not complied with.
- (2) If the failure to comply with the guarantee can be remedied and is not a major failure:
  - (a) the consumer may require the supplier to remedy the failure within a reasonable time; or
  - (b) if such a requirement is made of the supplier but the supplier refuses or fails to comply with the requirement, or fails to comply with the requirement within a reasonable time—the consumer may:
    - (i) otherwise have the failure remedied and, by action against the supplier, recover all reasonable costs incurred by the consumer in having the failure so remedied; or
    - (ii) subject to section 262, notify the supplier that the consumer rejects the goods and of the ground or grounds for the rejection.
- (3) If the failure to comply with the guarantee cannot be remedied or is a major failure, the consumer may:
  - (a) subject to section 262, notify the supplier that the consumer rejects the goods and of the ground or grounds for the rejection; or
  - (b) by action against the supplier, recover compensation for any reduction in the value of the goods below the price paid or payable by the consumer for the goods.

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- (4) The consumer may, by action against the supplier, recover damages for any loss or damage suffered by the consumer because of the failure to comply with the guarantee if it was reasonably foreseeable that the consumer would suffer such loss or damage as a result of such a failure.
- (5) Subsection (4) does not apply if the failure to comply with the guarantee occurred only because of a cause independent of human control that occurred after the goods left the control of the supplier.
- (6) To avoid doubt, subsection (4) applies in addition to subsections (2) and (3).
- (7) The consumer may take action under this section whether or not the goods are in their original packaging.

**260 When a failure to comply with a guarantee is a major failure**

A failure to comply with a guarantee referred to in section 259(1)(b) that applies to a supply of goods is a *major failure* if:

- (a) the goods would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure; or
- (b) the goods depart in one or more significant respects:
  - (i) if they were supplied by description—from that description; or
  - (ii) if they were supplied by reference to a sample or demonstration model—from that sample or demonstration model; or
- (c) the goods are substantially unfit for a purpose for which goods of the same kind are commonly supplied and they cannot, easily and within a reasonable time, be remedied to make them fit for such a purpose; or
- (d) the goods are unfit for a disclosed purpose that was made known to:
  - (i) the supplier of the goods; or
  - (ii) a person by whom any prior negotiations or arrangements in relation to the acquisition of the goods were conducted or made;

- and they cannot, easily and within a reasonable time, be remedied to make them fit for such a purpose; or
- (e) the goods are not of acceptable quality because they are unsafe.

### **261 How suppliers may remedy a failure to comply with a guarantee**

If, under section 259(2)(a), a consumer requires a supplier of goods to remedy a failure to comply with a guarantee referred to in section 259(1)(b), the supplier may comply with the requirement:

- (a) if the failure relates to title—by curing any defect in title; or
- (b) if the failure does not relate to title—by repairing the goods; or
- (c) by replacing the goods with goods of an identical type; or
- (d) by refunding:
- (i) any money paid by the consumer for the goods; and
  - (ii) an amount that is equal to the value of any other consideration provided by the consumer for the goods.

### **262 When consumers are not entitled to reject goods**

- (1) A consumer is not entitled, under section 259, to notify a supplier of goods that the consumer rejects the goods if:
- (a) the rejection period for the goods has ended; or
  - (b) the goods have been lost, destroyed or disposed of by the consumer; or
  - (c) the goods were damaged after being delivered to the consumer for reasons not related to their state or condition at the time of supply; or
  - (d) the goods have been attached to, or incorporated in, any real or personal property and they cannot be detached or isolated without damaging them.
- (2) The *rejection period* for goods is the period from the time of the supply of the goods to the consumer within which it would be reasonable to expect the relevant failure to comply with a guarantee referred to in section 259(1)(b) to become apparent having regard to:
- (a) the type of goods; and
  - (b) the use to which a consumer is likely to put them; and

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- (c) the length of time for which it is reasonable for them to be used; and
- (d) the amount of use to which it is reasonable for them to be put before such a failure becomes apparent.

**263 Consequences of rejecting goods**

- (1) This section applies if, under section 259, a consumer notifies a supplier of goods that the consumer rejects the goods.
- (2) The consumer must return the goods to the supplier unless:
  - (a) the goods have already been returned to, or retrieved by, the supplier; or
  - (b) the goods cannot be returned, removed or transported without significant cost to the consumer because of:
    - (i) the nature of the failure to comply with the guarantee to which the rejection relates; or
    - (ii) the size or height, or method of attachment, of the goods.
- (3) If subsection (2)(b) applies, the supplier must, within a reasonable time, collect the goods at the supplier's expense.
- (4) The supplier must, in accordance with an election made by the consumer:
  - (a) refund:
    - (i) any money paid by the consumer for the goods; and
    - (ii) an amount that is equal to the value of any other consideration provided by the consumer for the goods; or
  - (b) replace the rejected goods with goods of the same type, and of similar value, if such goods are reasonably available to the supplier.
- (5) The supplier cannot satisfy subsection (4)(a) by permitting the consumer to acquire goods from the supplier.
- (6) If the property in the rejected goods had passed to the consumer before the rejection was notified, the property in those goods reverts in the supplier on the notification of the rejection.

## **264 Replaced goods**

If the goods are replaced under section 261(c) or 263(4)(b):

- (a) the replacement goods are taken, for the purposes of Division 1 of Part 3-2 and this Part, to be supplied by the supplier; and
- (b) the provisions of Division 1 of Part 3-2 and this Part apply in relation to the replacement goods.

## **265 Termination of contracts for the supply of services that are connected with rejected goods**

- (1) If:
  - (a) under section 259, a consumer notifies a supplier of goods that the consumer rejects the goods; and
  - (b) the supplier is required under section 263(4)(a) to give the consumer a refund; and
  - (c) a person supplies, in trade or commerce, services to the consumer that are connected with the rejected goods;the consumer may terminate the contract for the supply of the services.
- (2) The termination takes effect:
  - (a) at the time the termination is made known to the supplier of the services (whether by words or by conduct indicating the consumer's intention to terminate the contract); or
  - (b) if it is not reasonably practicable to communicate with the supplier of the services—at the time the consumer indicates, by means which are reasonable in the circumstances, his or her intention to terminate the contract.
- (3) The consumer is entitled to recover, by action against the supplier of the services, a refund of:
  - (a) any money paid by the consumer for the services; and
  - (b) an amount that is equal to the value of any other consideration provided by the consumer for the services;to the extent that the consumer has not already consumed the services at the time the termination takes effect.

## 266 Rights of gift recipients

If a consumer acquires goods from a supplier and gives them to another person as a gift, the other person may, subject to any defence which would be available to the supplier against the consumer:

- (a) exercise any rights or remedies under this Subdivision which would be available to the other person if he or she had acquired the goods from the supplier; and
- (b) any reference in this Subdivision to a consumer includes a reference to the other person accordingly.

## Subdivision B—Action against suppliers of services

### 267 Action against suppliers of services

- (1) A consumer may take action under this section if:
  - (a) a person (the *supplier*) supplies, in trade or commerce, services to the consumer; and
  - (b) a guarantee that applies to the supply under Subdivision B of Division 1 of Part 3-2 is not complied with; and
  - (c) unless the guarantee is the guarantee under section 60—the failure to comply with the guarantee did not occur only because of:
    - (i) an act, default or omission of, or a representation made by, any person other than the supplier, or an agent or employee of the supplier; or
    - (ii) a cause independent of human control that occurred after the services were supplied.
- (2) If the failure to comply with the guarantee can be remedied and is not a major failure:
  - (a) the consumer may require the supplier to remedy the failure within a reasonable time; or
  - (b) if such a requirement is made of the supplier but the supplier refuses or fails to comply with the requirement, or fails to comply with the requirement within a reasonable time—the consumer may:
    - (i) otherwise have the failure remedied and, by action against the supplier, recover all reasonable costs

incurred by the consumer in having the failure so remedied; or

- (ii) terminate the contract for the supply of the services.
- (3) If the failure to comply with the guarantee cannot be remedied or is a major failure, the consumer may:
- (a) terminate the contract for the supply of the services; or
  - (b) by action against the supplier, recover compensation for any reduction in the value of the services below the price paid or payable by the consumer for the services.
- (4) The consumer may, by action against the supplier, recover damages for any loss or damage suffered by the consumer because of the failure to comply with the guarantee if it was reasonably foreseeable that the consumer would suffer such loss or damage as a result of such a failure.
- (5) To avoid doubt, subsection (4) applies in addition to subsections (2) and (3).

### **268 When a failure to comply with a guarantee is a major failure**

A failure to comply with a guarantee referred to in section 267(1)(b) that applies to a supply of services is a *major failure* if:

- (a) the services would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure; or
- (b) the services are substantially unfit for a purpose for which services of the same kind are commonly supplied and they cannot, easily and within a reasonable time, be remedied to make them fit for such a purpose; or
- (c) both of the following apply:
  - (i) the services, and any product resulting from the services, are unfit for a particular purpose for which the services were acquired by the consumer that was made known to the supplier of the services;
  - (ii) the services, and any of those products, cannot, easily and within a reasonable time, be remedied to make them fit for such a purpose; or
- (d) both of the following apply:

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- (i) the services, and any product resulting from the services, are not of such a nature, or quality, state or condition, that they might reasonably be expected to achieve a result desired by the consumer that was made known to the supplier;
  - (ii) the services, and any of those products, cannot, easily and within a reasonable time, be remedied to achieve such a result; or
- (e) the supply of the services creates an unsafe situation.

**269 Termination of contracts for the supply of services**

- (1) This section applies if, under section 267, a consumer terminates a contract for the supply of services.
- (2) The termination takes effect:
  - (a) at the time the termination is made known to the supplier of the services (whether by words or by conduct indicating the consumer's intention to terminate the contract); or
  - (b) if it is not reasonably practicable to communicate with the supplier of the services—at the time the consumer indicates, by means which are reasonable in the circumstances, his or her intention to terminate the contract.
- (3) The consumer is entitled to recover, by action against the supplier of the services, a refund of:
  - (a) any money paid by the consumer for the services; and
  - (b) an amount that is equal to the value of any other consideration provided by the consumer for the services;to the extent that the consumer has not already consumed the services at the time the termination takes effect.

**270 Termination of contracts for the supply of goods that are connected with terminated services**

- (1) If:
  - (a) under section 267, a consumer terminates a contract for the supply of services; and
  - (b) a person (the *supplier*) has supplied, in trade or commerce, goods to the consumer that are connected with the services;then:

- (c) the consumer is taken to have rejected the goods at the time the termination of the contract takes effect; and
  - (d) the consumer must return the goods to the supplier of the goods unless:
    - (i) the goods have already been returned to, or retrieved by, the supplier; or
    - (ii) the goods cannot be returned, removed or transported without significant cost to the consumer because of the nature of the failure to comply with the guarantee to which the rejection relates, or because of the size or height, or method of attachment, of the goods; and
  - (e) the supplier must refund:
    - (i) any money paid by the consumer for the goods; and
    - (ii) an amount that is equal to the value of any other consideration provided by the consumer for the goods.
- (2) If subsection (1)(d)(ii) applies, the supplier must collect the goods at the supplier's expense.

## **Division 2—Action for damages against manufacturers of goods**

### **271 Action for damages against manufacturers of goods**

(1) If:

- (a) the guarantee under section 54 applies to a supply of goods to a consumer; and
  - (b) the guarantee is not complied with;
- an affected person in relation to the goods may, by action against the manufacturer of the goods, recover damages from the manufacturer.

(2) Subsection (1) does not apply if the guarantee under section 54 is not complied with only because of:

- (a) an act, default or omission of, or any representation made by, any person other than the manufacturer or an employee or agent of the manufacturer; or
- (b) a cause independent of human control that occurred after the goods left the control of the manufacturer; or
- (c) the fact that the price charged by the supplier was higher than the manufacturer's recommended retail price, or the average retail price, for the goods.

(3) If:

- (a) a person supplies, in trade or commerce, goods by description to a consumer; and
- (b) the description was applied to the goods by or on behalf of the manufacturer of the goods, or with express or implied consent of the manufacturer; and
- (c) the guarantee under section 56 applies to the supply and it is not complied with;

an affected person in relation to the goods may, by action against the manufacturer of the goods, recover damages from the manufacturer.

(4) Subsection (3) does not apply if the guarantee under section 56 is not complied with only because of:

- (a) an act, default or omission of any person other than the manufacturer or an employee or agent of the manufacturer; or

- (b) a cause independent of human control that occurred after the goods left the control of the manufacturer.
- (5) If:
- (a) the guarantee under section 58 or 59(1) applies to a supply of goods to a consumer; and
  - (b) the guarantee is not complied with;
- an affected person in relation to the goods may, by action against the manufacturer of the goods, recover damages from the manufacturer.
- (6) If an affected person in relation to goods has, in accordance with an express warranty given or made by the manufacturer of the goods, required the manufacturer to remedy a failure to comply with a guarantee referred to in subsection (1), (3) or (5):
- (a) by repairing the goods; or
  - (b) by replacing the goods with goods of an identical type;
- then, despite that subsection, the affected person is not entitled to commence an action under that subsection to recover damages of a kind referred to in section 272(1)(a) unless the manufacturer has refused or failed to remedy the failure, or has failed to remedy the failure within a reasonable time.
- (7) The affected person in relation to the goods may commence an action under this section whether or not the goods are in their original packaging.

### **272 Damages that may be recovered by action against manufacturers of goods**

- (1) In an action for damages under this Division, an affected person in relation to goods is entitled to recover damages for:
- (a) any reduction in the value of the goods, resulting from the failure to comply with the guarantee to which the action relates, below whichever of the following prices is lower:
    - (i) the price paid or payable by the consumer for the goods;
    - (ii) the average retail price of the goods at the time of supply; and
  - (b) any loss or damage suffered by the affected person because of the failure to comply with the guarantee to which the action relates if it was reasonably foreseeable that the

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affected person would suffer such loss or damage as a result of such a failure.

- (2) Without limiting subsection (1)(b), the cost of inspecting and returning the goods to the manufacturer is taken to be a reasonably foreseeable loss suffered by the affected person as a result of the failure to comply with the guarantee.
- (3) Subsection (1)(b) does not apply to loss or damage suffered through a reduction in the value of the goods.

**273 Time limit for actions against manufacturers of goods**

An affected person may commence an action for damages under this Division at any time within 3 years after the day on which the affected person first became aware, or ought reasonably to have become aware, that the guarantee to which the action relates has not been complied with.

### **Division 3—Miscellaneous**

#### **274 Indemnification of suppliers by manufacturers**

- (1) A manufacturer of goods is liable to indemnify a person (the *supplier*) who supplies the goods to a consumer if:
  - (a) the supplier is liable to pay damages under section 259(4) to the consumer for loss or damage suffered by the consumer; and
  - (b) the manufacturer is or would be liable under section 271 to pay damages to the consumer for the same loss or damage.
- (2) Without limiting subsection (1), a manufacturer of goods is liable to indemnify a person (the *supplier*) who supplies the goods to a consumer if:
  - (a) the supplier incurs costs because the supplier is liable under this Part for a failure to comply with a guarantee that applies to the supply under Subdivision A of Division 1 of Part 3-2; and
  - (b) the failure is:
    - (i) a failure to comply with the guarantee under section 54; or
    - (ii) a failure to comply with the guarantee under section 55 in relation to a disclosed purpose that the consumer made known to the manufacturer either directly or through the supplier or the person referred to in section 55(2)(a)(ii); or
    - (iii) a failure to comply with the guarantee under section 56 in relation to a description that was applied to the goods by or on behalf of the manufacturer of the goods, or with the express or implied consent of the manufacturer.
- (3) The supplier may, with respect to the manufacturer's liability to indemnify the supplier, commence an action against the manufacturer in a court of competent jurisdiction for such legal or equitable relief as the supplier could have obtained if that liability had arisen under a contract of indemnity made between them.
- (4) The supplier may commence the action at any time within 3 years after the earliest of the following days:

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- (a) the day, or the first day, as the case may be, on which the supplier made a payment with respect to, or otherwise discharged in whole or in part, the liability of the supplier to the consumer;
- (b) the day on which a proceeding was commenced by the consumer against the supplier with respect to that liability or, if more than one such proceeding was commenced, the day on which the first such proceeding was commenced.

**275 Limitation of liability etc.**

If:

- (a) there is a failure to comply with a guarantee that applies to a supply of services under Subdivision B of Division 1 of Part 3-2; and
- (b) the law of a State or a Territory is the proper law of the contract;

that law applies to limit or preclude liability for the failure, and recovery of that liability (if any), in the same way as it applies to limit or preclude liability, and recovery of any liability, for a breach of a term of the contract for the supply of the services.

**276 This Part not to be excluded etc. by contract**

- (1) A term of a contract (including a term that is not set out in the contract but is incorporated in the contract by another term of the contract) is void to the extent that the term purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying:
  - (a) the application of all or any of the provisions of this Part; or
  - (b) the exercise of a right conferred by such a provision; or
  - (c) any liability of a person in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 to a supply of goods or services.
- (2) A term of a contract is not taken, for the purposes of this section, to exclude, restrict or modify the application of a provision of this Part unless the term does so expressly or is inconsistent with the provision.
- (3) This section does not apply to a term of a contract that is a term referred to in section 276A(4).

**276A Limitation in certain circumstances of liability of manufacturer to seller**

- (1) Despite section 274, if goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the liability under that section of the manufacturer of the goods to a person (the *supplier*) who supplied the goods to a consumer is limited to a liability to pay to the supplier an amount equal to:
  - (a) the cost of replacing the goods; or
  - (b) the cost of obtaining equivalent goods; or
  - (c) the cost of having the goods repaired;whichever is the lowest amount.
- (2) Subsection (1) does not apply in relation to particular goods if the supplier establishes that it is not fair or reasonable for the liability of the manufacturer of the goods to be limited as mentioned in subsection (1).
- (3) In determining for the purposes of subsection (2) whether or not it is fair or reasonable for the liability of a manufacturer to a supplier in relation to goods to be limited as mentioned in subsection (1), a court is to have regard to all the circumstances of the case, and in particular to the following matters:
  - (a) the availability of suitable alternative sources of supply of the goods;
  - (b) the availability of equivalent goods;
  - (c) whether the goods were manufactured, processed or adapted to the special order of the supplier.
- (4) This section is subject to any term of a contract between the manufacturer and the supplier imposing on the manufacturer a greater liability than the liability mentioned in subsection (1).

**277 Representative actions by the regulator**

- (1) The regulator may, by application, commence an action under this Part on behalf of one or more persons identified in the application who are entitled under this Part to take the action.
- (2) The regulator may only make the application if it has obtained the written consent of the person, or each of the persons, on whose behalf the application is being made.

## Part 5-5—Liability of suppliers and credit providers

### Division 1—Linked credit contracts

#### 278 Liability of suppliers and linked credit providers relating to linked credit contracts

- (1) If a consumer who is a party to a linked credit contract suffers loss or damage as a result of:
  - (a) a misrepresentation relating to the credit provided under that linked credit contract, or to a supply of goods or services (a *related supply*) to which that contract relates; or
  - (b) a breach of the linked credit contract, or of a contract for a related supply; or
  - (c) the failure of consideration in relation to the linked credit contract, or to a contract for a related supply; or
  - (d) a failure to comply with a guarantee that applies, under section 54, 55, 56, 57, 60, 61 or 62, in relation to a related supply; or
  - (e) a breach of a warranty that is implied in the linked credit contract by section 12ED of the *Australian Securities and Investments Commission Act 2001*;the linked credit provider who is a party to the contract, and the supplier of a related supply, are jointly and severally liable to the consumer for the amount of the loss or damage.
- (2) A *linked credit contract* is a contract that a consumer enters into with a linked credit provider of a person (the *supplier*) for the provision of credit in relation to:
  - (a) the supply by way of sale, lease, hire or hire-purchase of goods to the consumer by the linked credit provider where the supplier supplies the goods, or causes the goods to be supplied, to the linked credit provider; or
  - (b) the supply by the supplier of goods or services, or goods and services, to the consumer.

### **279 Action by consumer to recover amount of loss or damage**

- (1) If a linked credit provider, and a supplier of the goods or services, are liable under section 278 to a consumer for an amount of loss or damage, the consumer may recover the amount by action in a court of competent jurisdiction.
- (2) The consumer must bring the action against the linked credit provider and the supplier jointly.
- (3) Subsection (2) does not apply if:
  - (a) the supplier has been dissolved or the winding up of the supplier has commenced; or
  - (b) both of the following apply:
    - (i) in the opinion of the court in which the action is taken, it is not reasonably likely that a judgment obtained against the supplier would be satisfied;
    - (ii) that court has, on the application of the consumer, declared that that subsection does not apply in relation to the proceedings.

### **280 Cases where a linked credit provider is not liable**

- (1) In joint liability proceedings, a linked credit provider is not liable to a consumer under section 278 if the linked credit provider establishes that:
  - (a) the credit provided by the credit provider to the consumer was the result of an approach made to the credit provider by the consumer; and
  - (b) the approach was not induced by the supplier of the goods or services to which the linked credit contract relates.
- (2) In joint liability proceedings, a linked credit provider is not liable to a consumer under section 278 if the proceedings relate to the supply by way of lease, hire or hire-purchase of goods to the consumer by the linked credit provider, and the credit provider establishes that:
  - (a) after due inquiry before becoming a linked credit provider of the supplier of the goods, the credit provider was satisfied that the reputation of the supplier in respect of the supplier's financial standing and business conduct was good; and

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- (b) after becoming a linked credit provider of the supplier, the credit provider had not had cause to suspect that:
  - (i) the consumer might be entitled to recover an amount of loss or damage suffered as a result of a misrepresentation, breach, failure of consideration, failure to comply with a guarantee, or breach of a warranty, referred to in section 278(1); and
  - (ii) the supplier might be unable to meet the supplier's liabilities as and when they fall due.
- (3) In joint liability proceedings, a linked credit provider is not liable to a consumer under section 278 if the proceedings relate to a contract of sale in relation to which a tied loan contract applies and the linked credit provider establishes that:
  - (a) after due inquiry before becoming a linked credit provider of the supplier of goods to which the contract relates, the credit provider was satisfied that the reputation of the supplier in respect of the supplier's financial standing and business conduct was good; and
  - (b) after becoming a linked credit provider of the supplier, but before the tied loan contract was entered into, the linked credit provider had not had cause to suspect that:
    - (i) the consumer might, if the tied loan contract was entered into, be entitled to recover an amount of loss or damage suffered as a result of a misrepresentation, breach, failure of consideration, failure to comply with a guarantee, or breach of a warranty, referred to in section 278(1); and
    - (ii) the supplier might be unable to meet the supplier's liabilities as and when they fall due.
- (4) In joint liability proceedings, a linked credit provider is not liable to a consumer under section 278 if:
  - (a) the proceedings relate to a contract of sale in relation to which a tied continuing credit contract entered into by the linked credit provider applies; and
  - (b) the credit provider establishes the matter referred to in subsection (5), having regard to:
    - (i) the nature and volume of business carried on by the credit provider; and

- (ii) such other matters as appear to be relevant in the circumstances of the case.
- (5) The matter for the purposes of subsection (4) is that the linked credit provider, before first becoming aware of:
- (a) the contract of sale referred to in paragraph (a) of that subsection; or
  - (b) proposals for the making of such a contract;
- had not had cause to suspect that a person entering into such a contract with the supplier might be entitled to claim damages against, or recover a sum of money from, the supplier for a misrepresentation, breach, failure of consideration, failure to comply with a guarantee, or a breach of a warranty, referred to in section 278(1).
- (6) This section has effect despite section 278(1).

### **281 Amount of liability of linked credit providers**

The liability of a linked credit provider to a consumer under section 278(1) in relation to a contract referred to in section 278(1) is limited to an amount that does not exceed the sum of:

- (a) the amount financed under the tied loan contract, tied continuing credit contract, lease contract, contract of hire or contract of hire-purchase; and
- (b) the amount of interest (if any), or damages in the nature of interest, allowed or awarded against the credit provider by the court in which the action in relation to the liability is taken; and
- (c) the amount of costs (if any) awarded by that court against the credit provider or supplier, or both.

### **282 Counter-claims and offsets**

- (1) If proceedings in relation to a linked credit contract are brought against a consumer who is party to the contract by the linked credit provider who is a party to the contract, the consumer is not entitled to:
- (a) make a counter-claim in relation to the credit provider's liability under section 278(1); or

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- (b) exercise a right conferred by subsection (3) of this section in relation to that liability;  
unless the consumer claims in the proceedings against the supplier in respect of the liability, by third-party proceedings or otherwise.
- (2) Subsection (1) does not apply if:
  - (a) the supplier has been dissolved or the winding up of the supplier has commenced; or
  - (b) both of the following apply:
    - (i) in the opinion of the court in which the proceedings are taken, it is not reasonably likely that a judgment obtained against the supplier would be satisfied;
    - (ii) that court has, on the application of the consumer, declared that that subsection does not apply in relation to the proceedings.
- (3) In any proceedings in relation to a linked credit contract in which the linked credit provider who is a party to the contract claims damages or an amount of money from a consumer, the consumer may offset, in whole or in part, the consumer's liability against any liability of the credit provider under section 278(1).

**283 Enforcement of judgments etc.**

- (1) If, in joint liability proceedings, judgment is given against a supplier and a linked credit provider, the judgment must not be enforced against the credit provider unless a written demand made on the supplier for satisfaction of the judgment has remained unsatisfied for at least 30 days.
- (2) If the judgment can be enforced against the linked credit provider, it may only be enforced to the extent of the lesser of the following amounts:
  - (a) the amount calculated in accordance with section 281;
  - (b) so much of the judgment debt as has not been satisfied by the supplier.
- (3) If, in joint liability proceedings, a right conferred by section 282(3) is established by a consumer against a linked credit provider, the consumer must not receive the benefit of the right unless:
  - (a) judgment has been given against the supplier and credit provider; and

- (b) a written demand has been made on the supplier for satisfaction of the judgment; and
  - (c) the demand has remained unsatisfied for at least 30 days.
- (4) If the consumer can receive the benefit of a right conferred by section 282(3), the consumer may only receive the benefit to the extent of the lesser of the following amounts:
- (a) the amount calculated in accordance with section 281;
  - (b) so much of the judgment debt as has not been satisfied by the supplier.
- (5) Subsections (1) and (3) do not apply if:
- (a) the supplier has been dissolved or the winding up of the supplier has commenced; or
  - (b) both of the following apply:
    - (i) in the opinion of the court in which the proceedings are taken, it is not reasonably likely that a judgment obtained against the supplier would be satisfied;
    - (ii) that court has, on the application of the consumer, declared that those subsections do not apply in relation to the proceedings.
- (6) If a judgment given in joint liability proceedings is enforced against a linked credit provider of a supplier, the credit provider is subrogated to the extent of the enforced judgment to any rights that the consumer would have had but for the judgment against the supplier or any other person.

#### **284 Award of interest to consumers**

- (1) If, in joint liability proceedings, judgment is given against the following (the *defendant*) for an amount of loss or damage:
- (a) a supplier and a linked credit provider;
  - (b) a linked credit provider;
- the court must, on the application of the consumer who suffered the loss or damage, award interest to the consumer against the defendant upon the whole or a part of the amount, unless good cause is shown to the contrary.
- (2) The interest must be awarded from the time when the consumer became entitled to recover the amount until the date on which the judgment is given, at the greater of the following rates:

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- (a) if the amount payable by the consumer to the linked credit provider for obtaining credit in connection with the goods or services to which the proceedings relate may be calculated at a percentage rate per annum—that rate or, if more than one such rate may be calculated, the lower or lowest of those rates;
  - (b) 8%, or such other rate as is prescribed by the regulations.
- (3) In determining whether good cause is shown against the awarding of interest under subsection (1), the court must take into account any payment made into court by the supplier or the linked credit provider.
- (4) This section applies despite any other law.

**285 Liability of suppliers to linked credit providers, and of linked credit providers to suppliers**

- (1) If a linked credit provider and supplier are liable, under section 278, to a consumer who is a party to a linked credit contract:
- (a) if the liability relates to a supply of goods or services to which the linked credit contract relates—the supplier is liable to the credit provider for the amount of loss suffered by the credit provider, unless the supplier and credit provider otherwise agree; or
  - (b) if the liability relates to the linked credit contract—the credit provider is liable to the supplier for the amount of loss suffered by the supplier, unless the supplier and credit provider otherwise agree.
- (2) The amount for which the supplier is liable under subsection (1)(a) of this section is an amount not exceeding the sum of the following amounts:
- (a) the maximum amount of the linked credit provider's liability under section 281;
  - (b) unless the court otherwise determines, the amount of costs (if any) reasonably incurred by the linked credit provider in defending the joint liability proceedings.

**286 Joint liability proceedings and recovery under section 135 of the National Credit Code**

(1) If:

- (a) a consumer is seeking, in joint liability proceedings, to recover an amount under section 279 in relation to a contract for the supply of goods or services; and
- (b) the contract has been rescinded or discharged (whether under this Schedule or any other law); and
- (c) as a result of the contract being rescinded or discharged, the consumer is entitled under section 135 of the National Credit Code to terminate a linked credit contract; and
- (d) the consumer terminates the linked credit contract under that section;

the following amounts may be recovered in the joint liability proceedings (to the extent that they have not been recovered under section 135 of the National Credit Code):

- (e) any amount that the consumer is entitled under section 135 of the National Credit Code to recover from the credit provider under the linked credit contract;
  - (f) any amount that the credit provider is entitled under section 135 of the National Credit Code to recover from:
    - (i) the consumer; or
    - (ii) if the supplier under the contract for the supply of goods or services is a party to the joint liability proceedings—the supplier.
- (2) An amount that is recovered under subsection (1) ceases to be recoverable under section 135 of the National Credit Code.

## Division 2—Non-linked credit contracts

### 287 Liability of suppliers and credit providers relating to non-linked credit contracts

- (1) If a consumer who is a party to a non-linked credit contract suffers loss or damage as a result of a failure to comply with a guarantee that applies, under section 54, 55, 56, 57, 60, 61 or 62, in relation to a supply to which the contract relates, the credit provider who is a party to the contract is not under any liability to the consumer for the amount of the loss or damage.
- (2) Subsection (1) does not prevent the consumer from recovering that amount by action against the supplier of the goods or services to which the contract relates.
- (3) If a consumer who is a party to a non-linked credit contract suffers loss or damage as a result of a breach of a warranty that is implied in the contract by section 12ED of the *Australian Securities and Investments Commission Act 2001*, the supplier of the goods or services to which the contract relates is not under any liability to the consumer for the amount of the loss or damage.
- (4) Subsection (3) does not prevent the consumer from recovering that amount by action against the credit provider who is a party to the contract.
- (5) A ***non-linked credit contract*** is a contract that a consumer enters into with a credit provider for the provision of credit in relation to:
  - (a) the supply by way of sale, lease, hire or hire-purchase of goods to the consumer where:
    - (i) a person (the ***supplier***) supplies the goods, or the causes the goods to be supplied, to the credit provider; and
    - (ii) the credit provider is not a linked credit provider of the supplier; and
    - (iii) prior negotiations or arrangements in relation to the acquisition of the goods were conducted or made with the consumer by or on behalf of the supplier; and
    - (iv) the credit provider did not take physical possession of the goods before they were delivered to the consumer; or

- (b) the supply of services to the consumer by a person in relation to whom the credit provider is not a linked credit provider.



**Table of Acts****Notes to the *Competition and Consumer Act 2010*****Note 1**

The *Competition and Consumer Act 2010* as shown in this compilation comprises Act No. 51, 1974 amended as indicated in the Tables below.

The *Competition and Consumer Act 2010* was amended by the *Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 1)* (SLI 2006 No. 50). The amendments are incorporated in this compilation.

For application, saving or transitional provisions made by the *Corporations (Repeals, Consequentials and Transitionals) Act 2001*, see Act No. 55, 2001.

For application, saving or transitional provisions made by the *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005*, see Act No. 45, 2005.

All relevant information pertaining to application, saving or transitional provisions prior to 25 November 1996 is not included in this compilation. For subsequent information see Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Trade Practices Act 1974</i>	51, 1974	24 Aug 1974	Ss. 1 and 2: Royal Assent S. 55: 27 Sept 1975 (see <i>Gazette</i> 1975, No. S178) Remainder: 1 Oct 1974 (see <i>Gazette</i> 1974, No. 75B)	
<i>Postal and Telecommunications Commissions (Transitional Provisions) Act 1975</i>	56, 1975	12 June 1975	Ss. 4 and 38: 1 July 1975 (see s. 2(1) and <i>Gazette</i> 1975, No. S122) Remainder: Royal Assent	—
<i>Trade Practices Act 1975</i>	63, 1975	19 June 1975	19 June 1975	—
<i>Trade Practices Amendment Act 1976</i>	88, 1976	31 Aug 1976	31 Aug 1976	Ss. 2 and 6(2)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Federal Court of Australia (Consequential Provisions) Act 1976</i>	157, 1976	9 Dec 1976	1 Feb 1977 (see s. 2 and <i>Gazette</i> 1977, No. S3)	—
<i>Trade Practices Amendment Act 1977</i>	81, 1977	16 June 1977	1 July 1977	Ss. 8(2)–(6), 22(2), 40(2), 41(2), 42(2), 47(2), 52(2), 54(2)–(7), 58(2), 62(2), 63(2) and 82
<i>Remuneration and Allowances Amendment Act 1977</i>	111, 1977	28 Oct 1977	Ss. 1, 2, 5, 9(2), 13, 16, 18 and 19(2): Royal Assent Remainder: 1 June 1977	S. 19(2)
<i>Trade Practices Amendment Act (No. 2) 1977</i>	151, 1977	10 Nov 1977	10 Nov 1977	S. 6
<i>Trade Practices Amendment Act 1978</i>	206, 1978	6 Dec 1978	6 Dec 1978	Ss. 8(2) and 20
<i>Trade Practices Amendment Act (No. 2) 1978</i>	207, 1978	6 Dec 1978	6 Dec 1978	—
<i>Trade Practices (Boycotts) Amendment Act 1980</i>	73, 1980	29 May 1980	29 May 1980	—
<i>Statute Law Revision Act 1981</i>	61, 1981	12 June 1981	S. 115: Royal Assent (a)	—
<i>Statute Law (Miscellaneous Amendments) Act 1981</i>	176, 1981	2 Dec 1981	Part XIX (s. 68): 30 Dec 1981 (b)	—
<i>Statute Law (Miscellaneous Amendments) Act (No. 2) 1982</i>	80, 1982	22 Sept 1982	Part LXXVI (ss. 278, 279): 20 Oct 1982 (c)	S. 280(2) and (3)
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1983</i>	39, 1983	20 June 1983	S. 3: 18 July 1983 (d)	S. 7(1), (3) and (4)
<i>Public Service Reform Act 1984</i>	63, 1984	25 June 1984	S. 151(1): 1 July 1984 (see <i>Gazette</i> 1984, No. S245) (e)	S. 151(9)
<i>Remuneration and Allowances Amendment Act 1984</i>	73, 1984	25 June 1984	25 June 1984	—
<i>Statute Law (Miscellaneous Provisions) Act (No. 2) 1984</i>	165, 1984	25 Oct 1984	S. 3: (f)	S. 2(32) S. 2(28) (am. by 17, 1986, s. 75)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<b>as amended by</b>				
<i>Trade Practices Revision Act 1986</i>	17, 1986	13 May 1986	(see 17, 1986 below)	—
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1985</i>	65, 1985	5 June 1985	S. 3: 3 July 1985 (g)	—
<i>Trade Practices (Transfer of Market Dominance) Amendment Act 1986</i>	8, 1986	1 May 1986	1 June 1986 (see <i>Gazette</i> 1986, No. S251)	—
<i>Trade Practices Revision Act 1986</i>	17, 1986	13 May 1986	Ss. 1, 2, 49(1), 51(1) and 64(1): Royal Assent Part III (ss. 74–76): 25 Oct 1984 Ss. 31 and 35: 1 July 1986 Remainder: 1 June 1986 (see <i>Gazette</i> 1986, No. S251)	Ss. 27(2), 31(2), 33(2), 34(2), 47(2), 50(2), 59(3) and 65(2)
<i>Statute Law (Miscellaneous Provisions) Act (No. 2) 1986</i>	168, 1986	18 Dec 1986	S. 3: Royal Assent (h)	S. 5(1)
<i>Jurisdiction of Courts (Miscellaneous Amendments) Act 1987</i>	23, 1987	26 May 1987	S. 3: (j)	S. 4
<i>Statute Law (Miscellaneous Provisions) Act 1987</i>	141, 1987	18 Dec 1987	S. 3: 1 Apr 1989 (see <i>Gazette</i> 1989, No. S88) (k)	S. 5(1)
<i>Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988</i>	8, 1988	5 Apr 1988	Ss. 1–11, 12(b), (c), (e), (f), 13–21, 27, 29 and 30: Royal Assent S. 12(a) and (d): 1 Jan 1990 Remainder: 1 July 1988 (see <i>Gazette</i> 1988, No. S191)	—
<b>as amended by</b>				
<i>Law and Justice Legislation Amendment Act 1988</i>	120, 1988	14 Dec 1988	Part XI (ss. 34, 35): 5 Apr 1988 (l)	—
<i>Trade Practices Amendment Act 1988</i>	20, 1988	11 May 1988	S. 4: 1 July 1988 Remainder: Royal Assent	—
<i>Industrial Relations (Consequential Provisions) Act 1988</i>	87, 1988	8 Nov 1988	Ss. 1 and 2: Royal Assent Remainder: 1 Mar 1989 (see s. 2(2) and <i>Gazette</i> 1989, No. S53)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<b>as amended by</b>				
<i>Industrial Relations Legislation Amendment Act (No. 2) 1990</i>	108, 1990	18 Dec 1990	Ss. 8, 13 and 21: 1 Feb 1991 (see s. 2(4) and <i>Gazette</i> 1991, No. S18) Ss. 22, 23 and 24: 1 Mar 1989 S. 26: 1 Jan 1990 S. 33: 25 Mar 1991 (see <i>Gazette</i> 1991, No. S73) Remainder: Royal Assent	—
<i>Circuit Layouts Act 1989</i>	28, 1989	22 May 1989	Ss. 1 and 2: Royal Assent Remainder: 1 Oct 1990 (see <i>Gazette</i> 1990, No. S261)	—
<i>Trade Practices (International Liner Cargo Shipping) Amendment Act 1989</i>	34, 1989	30 May 1989	1 Aug 1989 (see <i>Gazette</i> 1989, No. S260)	S. 6
<i>Law and Justice Legislation Amendment Act 1989</i>	11, 1990	17 Jan 1990	Part 1 (ss. 1, 2) and Part 3 (ss. 6, 7): Royal Assent Ss. 8–10: 17 July 1990 Ss. 12, 13, 51(1)(b) and 51(2): 17 Jan 1990 (see s. 2(5)) Remainder: 14 Feb 1990	—
<i>Trade Practices (Misuse of Trans-Tasman Market Power) Act 1990</i>	70, 1990	16 June 1990	1 July 1990 (see <i>Gazette</i> 1990, No. S172)	—
<i>Trade Practices Amendment Act 1991</i>	49, 1991	24 Apr 1991	21 Dec 1990	—
<i>Industrial Relations Legislation Amendment Act 1991</i>	122, 1991	27 June 1991	Ss. 4(1), 10(b) and 15–20: 1 Dec 1988 Ss. 28(b)–(e), 30 and 31: 10 Dec 1991 (see <i>Gazette</i> 1991, No. S332) Remainder: Royal Assent	S. 31(2)
<i>Law and Justice Legislation Amendment Act 1991</i>	136, 1991	12 Sept 1991	Ss. 22–25: 10 Oct 1991 ( <i>m</i> )	S. 25
<i>Transport and Communications Legislation Amendment Act 1991</i>	173, 1991	25 Nov 1991	Ss. 48–56: Royal Assent ( <i>n</i> )	—
<i>Special Broadcasting Service Act 1991</i>	180, 1991	25 Nov 1991	S. 116: 23 Dec 1991 ( <i>o</i> )	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Law and Justice Legislation Amendment Act 1992</i>	22, 1992	13 Apr 1992	13 Apr 1992	—
<i>Territories Law Reform Act 1992</i>	104, 1992	30 June 1992	S. 24: 1 July 1992 (p)	—
<i>Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992</i>	105, 1992	9 July 1992	5 Oct 1992 (see s. 2 and <i>Gazette</i> 1992, No. GN38)	—
<i>Trade Practices Amendment Act 1992</i>	106, 1992	9 July 1992	9 July 1992	S. 3
<i>Trade Practices Legislation Amendment Act 1992</i>	222, 1992	24 Dec 1992	21 Jan 1993	Ss. 10(2), 16(2), 18(2) and 21
<i>Industrial Relations Reform Act 1993</i>	98, 1993	22 Dec 1993	Ss. 42–48 and 54: 30 Mar 1994 (see <i>Gazette</i> 1994, No. S104) (q)	S. 54
<i>Insurance Laws Amendment Act (No. 2) 1994</i>	49, 1994	7 Apr 1994	Schedule (item 19): Royal Assent (r)	—
<i>Law and Justice Legislation Amendment Act (No. 2) 1994</i>	141, 1994	28 Nov 1994	S. 3 (items 21–26): Royal Assent (s)	—
<i>Competition Policy Reform Act 1995</i>	88, 1995	20 July 1995	Parts 1, 2 (ss. 1–34), Div. 2 of Part 5 (ss. 88–90) and Part 7 (s. 92): 17 Aug 1995 (t) Ss. 35–76 and 78: 6 Nov 1995 (see <i>Gazette</i> 1995, No. S423) (t) Div. 1 of Part 5 (ss. 80–87): 20 July 1996 (t) Part 6 (s. 91): (t)	Ss. 33, 34, 78, 88–90 and 92
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 4 (item 147): Royal Assent (u)	—
<i>Workplace Relations and Other Legislation Amendment Act 1996</i>	60, 1996	25 Nov 1996	Schedule 17 (items 1–11, 14–24): 17 Jan 1997 (see <i>Gazette</i> 1997, No. S18) (v)	Sch. 17 (items 29–37) [see Table A] S. 2(2) and (6) (am. by 77, 1996, Sch. 3 [items 1, 2])

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<b>as amended by</b>				
<i>Workplace Relations and Other Legislation Amendment Act (No. 2) 1996</i>	77, 1996	19 Dec 1996	Schedule 3 (items 1, 2): (w)	—
<i>Trade Practices Amendment (Industry Access Codes) Act 1997</i>	28, 1997	10 Apr 1997	10 Apr 1997	—
<i>Trade Practices Amendment (Telecommunications) Act 1997</i>	58, 1997	30 Apr 1997	30 Apr 1997	Sch. 1 (item 15) [see Table A]
<i>Audit (Transitional and Miscellaneous) Amendment Act 1997</i>	152, 1997	24 Oct 1997	Schedule 2 (item 1260): 1 Jan 1998 (see <i>Gazette</i> 1997, No. GN49) (x)	—
<i>Telecommunications Legislation Amendment Act 1997</i>	200, 1997	16 Dec 1997	Schedule 2 (items 30–34): (y)	—
<i>Trade Practices Amendment (Fair Trading) Act 1998</i>	36, 1998	22 Apr 1998	Schedule 2: 1 July 1998 (see <i>Gazette</i> 1998, No. S301) Remainder: Royal Assent	—
<i>Financial Sector Reform (Consequential Amendments) Act 1998</i>	48, 1998	29 June 1998	Schedule 1 (item 194) and Schedule 2 (items 24–29): 1 July 1998 (see <i>Gazette</i> 1998, No. S316) (z)	—
<i>Gas Pipelines Access (Commonwealth) Act 1998</i>	101, 1998	30 July 1998	Schedule 1 (items 11–26): 30 July 1998 (za) Schedule 1 (items 27–56): Royal Assent (zb)	Sch. 1 (items 36, 47, 50) [see Table A]
<i>Trade Practices Amendment (Country of Origin Representations) Act 1998</i>	106, 1998	30 July 1998	Schedule 1: 13 Aug 1998 (see <i>Gazette</i> 1998, No. S398) Remainder: Royal Assent	—
<i>Telecommunications Legislation Amendment Act 1999</i>	52, 1999	5 July 1999	Schedule 1 (items 6–77): Royal Assent (zb) Schedule 3 (items 69–76, 81): 2 Aug 1999 (zb) Schedule 4 (items 17–20, 28): 1 July 1999 (zb)	Sch. 1 (items 72–77), Sch. 3 (item 81) and Sch. 4 (item 28) [see Table A]

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>A New Tax System (Trade Practices Amendment) Act 1999</i>	61, 1999	8 July 1999	9 July 1999 (see s. 2)	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 944–955): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (zc)	—
<i>A New Tax System (Indirect Tax and Consequential Amendments) Act 1999</i>	176, 1999	22 Dec 1999	Schedule 4: Royal Assent (zd)	—
<i>Federal Magistrates (Consequential Amendments) Act 1999</i>	194, 1999	23 Dec 1999	Schedule 25: 23 Dec 1999 (ze)	—
<i>Jurisdiction of Courts Legislation Amendment Act 2000</i>	57, 2000	30 May 2000	Schedule 1 (items 77–90): Royal Assent (zf)	—
<i>A New Tax System (Trade Practices Amendment) Act 2000</i>	69, 2000	22 June 2000	Schedule 2 (item 1): 6 Nov 1995 (see s. 2(2) and <i>Gazette</i> 1995, No. S423) Schedule 2 (item 2): 10 Apr 1997 (see s. 2(3)) Remainder: Royal Assent	—
<i>Trade Practices Amendment (International Liner Cargo Shipping) Act 2000</i>	123, 2000	5 Oct 2000	Schedule 1 (items 154–170, 180): 2 Mar 2001 Remainder: 2 Nov 2000	Sch. 1 (items 171–180) [see Table A]
<i>Jurisdiction of Courts (Miscellaneous Amendments) Act 2000</i>	161, 2000	21 Dec 2000	21 Dec 2000	—
<i>Treasury Legislation Amendment (Application of Criminal Code) Act (No. 1) 2001</i>	31, 2001	28 Apr 2001	Schedule 1 (items 240–290): 15 Dec 2001 (zg)	—
<b>as amended by</b>				
<i>Statute Law Revision Act 2002</i>	63, 2002	3 July 2002	Schedule 2 (item 35): (zga)	—
<i>Communications and the Arts Legislation Amendment Act 2001</i>	46, 2001	5 June 2001	5 June 2001	S. 6 [see Table A]
<i>Corporations (Repeals, Consequentials and Transitionals) Act 2001</i>	55, 2001	28 June 2001	Ss. 4–14 and Schedule 3 (items 550–557): 15 July 2001 (see <i>Gazette</i> 2001, No. S285) (zh)	Ss. 4–14 [see Note 1]

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Trade Practices Amendment Act (No. 1) 2001</i>	63, 2001	28 June 2001	Schedule 2 (items 1–3, 6–8): (zi) Schedule 2 (items 4, 5): (zi) Remainder: 26 July 2001	Sch. 1 (items 5, 8, 10, 13, 15, 17, 19, 21, 23, 25, 27, 29, 32, 34, 36, 38) and Sch. 2 (items 3, 5, 8) [see Table A]
<b>as amended by</b>				
<i>Statute Law Revision Act 2002</i>	63, 2002	3 July 2002	Schedule 2 (item 32): (zia)	—
<i>Treasury Legislation Amendment (Application of Criminal Code) Act (No. 3) 2001</i>	117, 2001	18 Sept 2001	S. 4: 15 Dec 2001 (zj) Schedule 3 (items 16–56): (zj)	S. 4 [see Table A]
<i>Financial Services Reform (Consequential Provisions) Act 2001</i>	123, 2001	27 Sept 2001	Schedule 1 (items 364–364D, 365–365B): 11 Mar 2002 (see <i>Gazette</i> 2001, No. GN42) (zk)	—
<i>Trade Practices Amendment (Telecommunications) Act 2001</i>	124, 2001	27 Sept 2001	27 Sept 2001	Sch. 1 (items 23, 24) [see Table A]
<i>Treasury Legislation Amendment (Application of Criminal Code) Act (No. 2) 2001</i>	146, 2001	1 Oct 2001	S. 4 and Schedule 2 (items 1, 2, 4–39): 15 Dec 2001 (zl) Schedule 2 (item 3): (zl)	S. 4 [see Table A]
<i>Statute Law Revision Act 2002</i>	63, 2002	3 July 2002	Schedule 1 (items 34, 35, 38): 1 July 1999 Schedule 1 (items 36, 37): Royal Assent	—
<i>Trade Practices Amendment Act (No. 1) 2002</i>	128, 2002	11 Dec 2002	11 Dec 2002	Sch. 1 (items 4, 7, 9) [see Table A]
<i>Telecommunications Competition Act 2002</i>	140, 2002	19 Dec 2002	19 Dec 2002	Sch. 2 (items 9, 15, 19, 21, 69, 110, 111, 113, 115) [see Table A]

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Trade Practices Amendment (Liability for Recreational Services) Act 2002</i>	146, 2002	19 Dec 2002	19 Dec 2002	—
<i>Maritime Legislation Amendment Act 2003</i>	7, 2003	19 Mar 2003	Schedule 1 (items 1–6): 1 Nov 2003 Schedule 1 (items 7–9): 20 Mar 2003 Remainder: Royal Assent	—
<i>Industry, Tourism and Resources Legislation Amendment Act 2003</i>	21, 2003	11 Apr 2003	Schedule 1 (items 25–29): 12 Apr 2003	Sch. 1 (item 29) [see Table A]
<i>Trade Practices Legislation Amendment Act 2003</i>	134, 2003	17 Dec 2003	Schedules 1 and 2: 1 Mar 2004 (see <i>Gazette</i> 2004, No. GN8) Remainder: Royal Assent	Sch. 2 (items 44–53, 56) [see Table A]
<i>Postal Services Legislation Amendment Act 2004</i>	69, 2004	22 June 2004	22 June 2004	—
<i>Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004</i>	103, 2004	30 June 2004	Schedule 3 (items 5, 6): 26 July 2004 (see <i>Gazette</i> 2004, No. GN28)	—
<i>Trade Practices Amendment (Australian Energy Market) Act 2004</i>	108, 2004	30 June 2004	Schedules 1 and 2: 23 May 2005 (see F2005L01121) Remainder: Royal Assent	—
<i>Trade Practices Amendment (Personal Injuries and Death) Act (No. 2) 2004</i>	113, 2004	13 July 2004	13 July 2004	Sch. 1 (item 11) [see Table A]
<i>Treasury Legislation Amendment (Professional Standards) Act 2004</i>	118, 2004	13 July 2004	13 July 2004	—
<i>Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005</i>	45, 2005	1 Apr 2005	Schedule 1 (items 168–171) and Schedule 4: 1 July 2005 ( <i>zm</i> ) Schedule 2: ( <i>zm</i> )	Sch. 4 [see Note 1]

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Telecommunications Legislation Amendment (Competition and Consumer Issues) Act 2005</i>	119, 2005	23 Sept 2005	Schedules 4–6, Schedule 7 (items 1–3, 5–12, 14–19, 21–28), Schedule 9 and Schedule 12: 24 Sept 2005 Schedule 7 (items 4, 13, 20): 23 Mar 2006 Schedule 11 (items 8, 9): 1 Jan 2006 (see F2005L04117)	Sch. 4 (item 2) [see Table A]
<i>Trade Practices Amendment (Personal Injuries and Death) Act 2006</i>	11, 2006	23 Mar 2006	Schedule 1: 20 April 2006 Remainder: Royal Assent	Sch. 1 (item 8) [see Table A]
<i>Offshore Petroleum (Repeals and Consequential Amendments) Act 2006</i>	17, 2006	29 Mar 2006	Schedule 2 (items 113–116): 1 July 2008 (see s. 2(1) and F2008L02273)	—
<i>Jurisdiction of the Federal Magistrates Court Legislation Amendment Act 2006</i>	23, 2006	6 Apr 2006	Schedule 1: 4 May 2006	Sch. 1 (items 2, 5) [see Table A]
<i>Energy Legislation Amendment Act 2006</i>	60, 2006	22 June 2006	Schedule 1 (items 2–13) and Schedule 2 (item 14): Royal Assent Schedule 2 (items 12, 13, 15, 16): (zn)	—
<i>Trade Practices Amendment (National Access Regime) Act 2006</i>	92, 2006	18 Aug 2006	Schedule 1: 1 Oct 2006 (see F2006L02999) Remainder: Royal Assent	Sch. 1 (items 114–136) [see Table A]
<i>Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006</i>	101, 2006	14 Sept 2006	Schedule 5 (items 164, 165): Royal Assent	—
<i>Maritime Transport and Offshore Facilities Security Amendment (Security Plans and Other Measures) Act 2006</i>	109, 2006	27 Sept 2006	Schedule 2 (items 97–103): Royal Assent	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Trade Practices Legislation Amendment Act (No. 1) 2006</i>	131, 2006	6 Nov 2006	Schedule 1: 1 Jan 2007 (see F2006L04026) Schedules 2–8 and Schedule 9 (items 1–15, 20–24): 1 Jan 2007 Schedule 10: 7 Nov 2006 Schedule 11: Royal Assent	Sch. 1 (items 52, 53), Sch. 2 (items 13, 14), Sch. 3 (items 28, 29), Sch. 4 (item 2), Sch. 5 (item 4), Sch. 6 (item 20), Sch. 7 (items 18, 33, 35), Sch. 8 (items 28, 29) and Sch. 9 (items 15, 21, 24) [see Table A]
<i>Australian Energy Market Amendment (Gas Legislation) Act 2007</i>	45, 2007	10 Apr 2007	Schedule 1 (items 58–81): 1 July 2008 (see F2008L02164)	—
<i>Broadcasting Legislation Amendment (Digital Radio) Act 2007</i>	68, 2007	28 May 2007	Schedule 1: 29 May 2007 Schedule 2: (zo) Remainder: Royal Assent	—
<i>Corporations (NZ Closer Economic Relations) and Other Legislation Amendment Act 2007</i>	85, 2007	21 June 2007	Schedule 3 (items 3–9): 19 July 2007	—
<i>Water (Consequential Amendments) Act 2007</i>	138, 2007	3 Sept 2007	Schedule 1: 3 Mar 2008 (see s. 2(1)) Remainder: Royal Assent	—
<i>Trade Practices Legislation Amendment Act (No. 1) 2007</i>	159, 2007	24 Sept 2007	25 Sept 2007	Sch. 1 (item 4), Sch. 2 (item 12) and Sch. 3 (item 9) [see Table A]
<i>Trade Practices Amendment (Access Declarations) Act 2008</i>	7, 2008	20 Mar 2008	20 Mar 2008	—
<i>Australian Energy Market Amendment (Minor Amendments) Act 2008</i>	60, 2008	30 June 2008	Schedule 4: (zp)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Trade Practices Legislation Amendment Act 2008</i>	116, 2008	21 Nov 2008	22 Nov 2008	Sch. 3 (items 13, 15) [see Table A]
<i>Offshore Petroleum Amendment (Greenhouse Gas Storage) Act 2008</i>	117, 2008	21 Nov 2008	Schedule 3 (item 60): 22 Nov 2008	—
<i>Trade Practices Amendment (Clarity in Pricing) Act 2008</i>	126, 2008	25 Nov 2008	Schedule 1: 25 May 2009 Schedule 2: 26 Nov 2008 Remainder: Royal Assent	Sch. 1 (item 5) [see Table A]
<i>Water Amendment Act 2008</i>	139, 2008	8 Dec 2008	Schedule 2 (items 3–5): 15 Dec 2008 (see F2008L04656)	—
<i>Australian Energy Market Amendment (AEMO and Other Measures) Act 2009</i>	17, 2009	26 Mar 2009	Schedule 1 (items 12, 14): 27 Mar 2009 Schedule 1 (item 13): 1 July 2009 (see F2009L02489 and South Australia Gazette 25 June 2009 No. 44, p3000)	—
<i>Fair Work (State Referral and Consequential and Other Amendments) Act 2009</i>	54, 2009	25 June 2009	Schedule 18 (items 24–31): (zq)	—
<i>Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009</i>	59, 2009	26 June 2009	Schedule 1 (items 3–128) and Schedule 2 (items 1–49, 52, 53): 24 July 2009 Schedule 2 (items 50, 51): 27 June 2009	Sch. 1 (item 118) and Sch. 2 (items 52, 53) [see Table A]
<i>Statute Stocktake (Regulatory and Other Laws) Act 2009</i>	111, 2009	16 Nov 2009	Schedule 1 (items 26–50, 107–109): 17 Nov 2009	Sch. 1 (items 49, 50) [see Table A]
<i>Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010</i>	4, 2010	19 Feb 2010	Schedule 11 (item 23): 20 Feb 2010	—
<i>Statute Law Revision Act 2010</i>	8, 2010	1 Mar 2010	Schedule 5 (items 125, 126): Royal Assent Schedule 5 (item 137): (zr)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Trade Practices Amendment (Australian Consumer Law) Act (No. 1) 2010</i>	44, 2010	14 Apr 2010	Schedule 1, Schedule 2 (items 27, 29, 31, 32, 41–43, 46–50, 56–70, 72–74) and Schedule 4 (items 4, 5): 1 July 2010 (see F2010L01315) Schedule 2 (items 1–26) and Schedule 4 (item 3): 15 Apr 2010 Schedule 2 (item 40): (zs)	Sch. 1 (item 2) [see Table A]
<i>Trade Practices Amendment (Infrastructure Access) Act 2010</i>	102, 2010	13 July 2010	Schedules 1–4 and Schedule 5 (items 1–11, 13–25): 14 July 2010 Schedule 5 (item 12): (zt) Remainder: Royal Assent	Sch. 1 (item 72), Sch. 3 (item 11), Sch. 4 (item 5) and Sch. 5 (items 20–25) [see Table A]
<i>Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010</i>	103, 2010	13 July 2010	Schedule 1, Schedule 2, Schedule 4, Schedule 5 and Schedule 7: 1 Jan 2011	Sch. 4 (item 5) and Sch. 7 [see Table A]
<i>Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010</i>	140, 2010	15 Dec 2010	Schedule 1 (items 32–40, 114–195, 195A, 196–198, 202–213): (zu) Schedule 1 (items 57–59): [see (zu) and Note 3] Schedule 1 (items 66, 67): [see (zu) and Note 3]	Sch. 1 (items 40, 198, 202–210, 213) [see Table A]
<i>Financial Framework Legislation Amendment Act 2010</i>	148, 2010	17 Dec 2010	Schedule 6: 18 Dec 2010	Sch. 6 (items 2, 3) [see Table A]

## Act Notes

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- (a) The *Competition and Consumer Act 2010* was amended by section 115 only of the *Statute Law Revision Act 1981*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (b) The *Competition and Consumer Act 2010* was amended by Part XIX (section 68) only of the *Statute Law (Miscellaneous Amendments) Act 1981*, subsection 2(12) of which provides as follows:
- (12) The remaining provisions of this Act shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.
- (c) The *Competition and Consumer Act 2010* was amended by Part LXXVI (sections 278 and 279) only of the *Statute Law (Miscellaneous Amendments) Act (No. 2) 1982*, subsection 2(16) of which provides as follows:
- (16) The remaining provisions of this Act shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.
- (d) The *Competition and Consumer Act 2010* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1983*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.
- (e) The *Competition and Consumer Act 2010* was amended by subsection 151(1) only of the *Public Service Reform Act 1984*, subsection 2(4) of which provides as follows:
- (4) The remaining provisions of this Act shall come into operation on such day as is, or on such respective days as are, fixed by Proclamation.
- (f) The *Competition and Consumer Act 2010* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1984*, subsection 2(28) of which provides as follows:
- (28) The amendment of the *Trade Practices Act 1974* made by this Act shall come into operation on the day on which this Act receives the Royal Assent.
- (g) The *Competition and Consumer Act 2010* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.
- (h) The *Competition and Consumer Act 2010* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1986*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (j) The *Competition and Consumer Act 2010* was amended by section 3 only of the *Jurisdiction of Courts (Miscellaneous Amendments) Act 1987*, subsection 2(2) of which provides as follows:
- (2) The amendments made by this Act to an Act specified in the Schedule shall come into operation on such day as is fixed by Proclamation in relation to those amendments.
- The date fixed in pursuance of subsection 2(2) was 1 September 1987 (see *Gazette* 1987, No. S217).
- (k) The *Competition and Consumer Act 2010* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act 1987*, subsection 2(32) of which provides as follows:
- (32) The amendment of the *Trade Practices Act 1974* made by this Act shall come into operation on a day to be fixed by Proclamation for the purposes of this subsection, being a day not earlier than the day on which the United Nations Convention on Contracts for the International Sale of Goods, adopted at Vienna, Austria, on 10 April 1980, enters into force in respect of Australia.

**Act Notes**

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- (l) The *Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988* was amended by Part XI (sections 34 and 35) only of the *Law and Justice Legislation Amendment Act 1988*, subsection 2(6) of which provides as follows:
- (6) Part XI shall be taken to have commenced on 5 April 1988.
- (m) The *Competition and Consumer Act 2010* was amended by sections 22–24 only of the *Law and Justice Legislation Amendment Act 1991*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the 28th day after the day on which it receives the Royal Assent.
- (n) The *Competition and Consumer Act 2010* was amended by sections 48–56 only of the *Transport and Communications Legislation Amendment Act 1991*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (o) The *Competition and Consumer Act 2010* was amended by section 116 only of the *Special Broadcasting Service Act 1991*, subsection 2(1) of which provides as follows:
- (1) Subject to subsection (2), this Act commences 28 days after the day on which it receives the Royal Assent.
- (p) The *Competition and Consumer Act 2010* was amended by section 24 only of the *Territories Law Reform Act 1992*, subsection 2(3) of which provides as follows:
- (3) The remaining provisions of this Act commence on 1 July 1992.
- (q) The *Competition and Consumer Act 2010* was amended by sections 42–48 only of the *Industrial Relations Reform Act 1993*, subsection 2(6) of which provides as follows:
- (6) Subject to subsection (7), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.
- (r) The *Competition and Consumer Act 2010* was amended by the Schedule (item 19) only of the *Insurance Laws Amendment Act (No. 2) 1994*, subsection 2(1) of which provides as follows:
- (1) Sections 1, 2 and 3 and the amendments contained in items 1, 2, 4, 5, 7, 17, 18 and 19 of the Schedule commence on the day on which this Act receives the Royal Assent.
- (s) The *Competition and Consumer Act 2010* was amended by section 3 (items 21–26) only of the *Law and Justice Legislation Amendment Act (No. 2) 1994*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (t) The *Competition and Consumer Act 2010* was amended by sections 1–32, 35–76, 80–87 and 91 only of the *Competition Policy Reform Act 1995*, subsections 2(1), (2), (4) and (5) of which provide as follows:
- (1) The following provisions commence on the 28th day after the day on which this Act receives the Royal Assent:
- (a) Parts 1, 2 and 7;
- (b) Division 2 of Part 5.
- (2) Part 3 commences on a day to be fixed by Proclamation. However, if Part 3 does not commence by Proclamation within the period of 6 months beginning on the day on which this Act receives the Royal Assent, then it commences on the first day after the end of that period.
- (4) Division 1 of Part 5 commences on the first day after the end of the period of 12 months after the day on which this Act receives the Royal Assent.
- (5) Part 6 commences immediately after the commencement of Division 1 of Part 5.
- (u) The *Competition and Consumer Act 2010* was amended by Schedule 4 (item 147) only of the *Statute Law Revision Act 1996*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
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## Act Notes

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- (v) The *Competition and Consumer Act 2010* was amended by Schedule 17 (items 1–11 and 14–24) only of the *Workplace Relations and Other Legislation Amendment Act 1996*, subsection 2(2) of which provides as follows:
- (2) Subject to subsection (3), the items of the Schedules, other than Schedule 5, item 1 of Schedule 9, items 2 and 3 of Schedule 12, item 90 of Schedule 16 and the items of Schedule 19, commence on a day or days to be fixed by Proclamation.
- (w) The *Workplace Relations and Other Legislation Amendment Act 1996* was amended by Schedule 3 (items 1 and 2) only of the *Workplace Relations and Other Legislation Amendment Act (No. 2) 1996*, subsection 2(4) of which provides as follows:
- (4) The items of Schedule 3 are taken to have commenced immediately after the *Workplace Relations and Other Legislation Amendment Act 1996* received the Royal Assent.
- The *Workplace Relations and Other Legislation Amendment Act 1996* received the Royal Assent on 25 November 1996.
- (x) The *Competition and Consumer Act 2010* was amended by Schedule 2 (item 1260) only of the *Audit (Transitional and Miscellaneous) Amendment Act 1997*, subsection 2(2) of which provides as follows:
- (2) Schedules 1, 2 and 4 commence on the same day as the *Financial Management and Accountability Act 1997*.
- (y) The *Competition and Consumer Act 2010* was amended by Schedule 2 (items 30–34) only of the *Telecommunications Legislation Amendment Act 1997*, subsection 2(4) of which provides as follows:
- (4) Items 30, 31, 32, 33 and 34 of Schedule 2 are taken to have commenced on 30 April 1997, immediately after the commencement of Schedule 1 to the *Trade Practices Amendment (Telecommunications) Act 1997*.
- (z) The *Competition and Consumer Act 2010* was amended by Schedule 1 (item 194) and Schedule 2 (items 24–29) only of the *Financial Sector Reform (Consequential Amendments) Act 1998*, subsection 2(2) of which provides as follows:
- (2) Subject to subsections (3) to (14), Schedules 1, 2 and 3 commence on the commencement of the *Australian Prudential Regulation Authority Act 1998*.
- (za) The *Competition and Consumer Act 2010* was amended by Schedule 1 (items 11–35, 37–46, 48, 49, 51–56) only of the *Gas Pipelines Access (Commonwealth) Act 1998*, subsections 2(1) and (3) of which provide as follows:
- (1) Subject to subsections (2) and (3), this Act commences at the commencement of sections 13 and 14 of the *Gas Pipelines Access (South Australia) Act 1997* of South Australia.
  - (3) Items 27 to 56 of Schedule 1 commence on the day on which this Act receives the Royal Assent.
- The *Gas Pipelines Access (South Australia) Act 1997* of South Australia came into operation on 30 July 1998 (see South Australian Government Gazette 2 April 1998, p. 1606).
- (zb) The *Competition and Consumer Act 2010* was amended by Schedule 1 (items 6–71), Schedule 3 (items 69–76) and Schedule 4 (items 17–20) only of the *Telecommunications Legislation Amendment Act 1999*, subsections 2(1), (4) and (6) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
  - (4) Subject to subsection (5), Schedule 3 commences on the commencement of section 1 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.
  - (6) Schedule 4 commences on 1 July 1999.

**Act Notes**

- (zc) The *Competition and Consumer Act 2010* was amended by Schedule 1 (items 944–955) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
  - (2) Subject to this section, this Act commences at the commencing time.
- (zd) The *Competition and Consumer Act 2010* was amended by Schedule 4 only of the *A New Tax System (Indirect Tax and Consequential Amendments) Act 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (ze) The *Competition and Consumer Act 2010* was amended by Schedule 25 only of the *Federal Magistrates (Consequential Amendments) Act 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the commencement of the *Federal Magistrates Act 1999*.
- (zf) The *Competition and Consumer Act 2010* was amended by Schedule 1 (items 77–90) only of the *Jurisdiction of Courts Legislation Amendment Act 2000*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (zg) The *Competition and Consumer Act 2010* was amended by Schedule 1 (items 240–290) only of the *Treasury Legislation Amendment (Application of Criminal Code) Act (No. 1) 2001*, subsection 2(4) of which provides as follows:
- (4) The remaining items of Schedule 1 to this Act commence on the day specified in subsection 2.2(2) of the *Criminal Code*.
- (zga) Subsection 2(1) (item 64) of the *Statute Law Revision Act 2002* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

**Commencement information**

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
64. Schedule 2, item 35	Immediately after the time specified in the <i>Treasury Legislation Amendment (Application of Criminal Code) Act (No. 1) 2001</i> for the commencement of item 242 of Schedule 1 to that Act	15 December 2001

- (zh) The *Competition and Consumer Act 2010* was amended by Schedule 3 (items 550–557) only of the *Corporations (Repeals, Consequential and Transitionals) Act 2001*, subsection 2(3) of which provides as follows:
- (3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.

## Act Notes

(zi) Subsections 2(2)(a) and (3) of the *Trade Practices Amendment Act (No. 1) 2001* provide as follows:

- (2) Items 4 and 5 of Schedule 2 commence immediately after the later of:
  - (a) the commencement of section 1;
- (3) The items of Schedule 2 (other than items 4 and 5) commence immediately after the commencement of item 260 of Schedule 1 to the *Treasury Legislation Amendment (Application of Criminal Code) Act (No. 1) 2001*.

Schedule 1 (item 260) commenced on 15 December 2001.

(zia) Subsection 2(1) (item 61) of the *Statute Law Revision Act 2002* provides as follows:

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

Provision(s)	Commencement	Date/Details
61. Schedule 2, item 32	Immediately after the time specified in the <i>Trade Practices Amendment Act (No. 1) 2001</i> for the commencement of item 1 of Schedule 2 to that Act	15 December 2001

(zj) The *Competition and Consumer Act 2010* was amended by Schedule 3 (items 16–56) only of the *Treasury Legislation Amendment (Application of Criminal Code) Act (No. 3) 2001*, subsections 2(1) and (4) of which provide as follows:

- (1) Subject to this section, this Act commences on the day mentioned in subsection 2.2(2) of the *Criminal Code*.
- (4) Schedule 2 and Part 4 of Schedule 3 are taken to have commenced immediately after the commencement of item 14 of Schedule 1 to the *Treasury Legislation Amendment (Application of Criminal Code) Act (No. 1) 2001*.

Schedule 1 (item 14) commenced on 15 December 2001.

(zk) The *Competition and Consumer Act 2010* was amended by Schedule 1 (items 364–365B) only of the *Financial Services Reform (Consequential Provisions) Act 2001*, subsections 2(1), (6) and (15)(a) of which provide as follows:

- (1) In this section:
 

**FSR commencement** means the commencement of item 1 of Schedule 1 to the *Financial Services Reform Act 2001*.
- (6) Subject to subsections (7) to (17), the other items of Schedule 1 commence on the FSR commencement.
- (15) Subject to subsection (17), item 365 of Schedule 1 commences on the later of:
  - (a) the FSR commencement; and

(zl) The *Competition and Consumer Act 2010* was amended by Schedule 2 only of the *Treasury Legislation Amendment (Application of Criminal Code) Act (No. 2) 2001*, subsections 2(1) and (2)(b) of which provide as follows:

- (1) Subject to this section, this Act commences on the day mentioned in subsection 2.2(2) of the *Criminal Code*.
- (2) Item 3 of Schedule 2 commences immediately after the later of:
  - (b) the commencement of item 274 of Schedule 1 to the *Treasury Legislation Amendment (Application of Criminal Code) Act (No. 1) 2001*.

Schedule 1 (item 274) commenced on 15 December 2001.

**Act Notes**

(zm) Subsection 2(1) (items 2, 3 and 10) of the *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005* provide as follows:

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

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
2. Schedule 1	At the same time as section 6 of the <i>Australian Communications and Media Authority Act 2005</i> commences.	1 July 2005
3. Schedule 2	Immediately after the commencement of the provision(s) covered by table item 2.	1 July 2005
10. Schedule 4	At the same time as section 6 of the <i>Australian Communications and Media Authority Act 2005</i> commences.	1 July 2005

(zn) Subsection 2(1) (items 5 and 7) of the *Energy Legislation Amendment Act 2006* provides as follows:

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

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
5. Schedule 2, items 12 and 13	Immediately after the commencement of Schedules 1 and 2 to the <i>Trade Practices Amendment (Australian Energy Market) Act 2004</i> .	23 May 2005
7. Schedule 2, items 15 and 16	Immediately after the commencement of Schedules 1 and 2 to the <i>Trade Practices Amendment (Australian Energy Market) Act 2004</i> .	23 May 2005

(zo) Subsection 2(1) (item 3) of the *Broadcasting Legislation Amendment (Digital Radio) Act 2007* provides as follows:

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

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
3. Schedule 2	The later of: (a) immediately after the commencement of Schedule 1 to this Act; and (b) immediately after the commencement of section 155AAA of the <i>Trade Practices Act 1974</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	19 July 2007  (paragraph (b) applies)

**Act Notes**

(zp) Subsection 2(1) (item 4) of the *Australian Energy Market Amendment (Minor Amendments) Act 2008* provides as follows:

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

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
4. Schedule 4	Immediately after the commencement of Schedule 1 to the <i>Australian Energy Market Amendment (Gas Legislation) Act 2007</i> .	1 July 2008 (see F2008L02164)

(zq) Subsection 2(1) (item 41) of the *Fair Work (State Referral and Consequential and Other Amendments) Act 2009* provides as follows:

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

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
41. Schedule 18	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	1 July 2009 (see F2009L02563)

(zr) Subsection 2(1) (items 31 and 38) of the *Statute Law Revision Act 2010* provides as follows:

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

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
31. Schedule 5, items 1 to 51	The day this Act receives the Royal Assent.	1 March 2010
38. Schedule 5, Parts 2 and 3	Immediately after the provision(s) covered by table item 31.	1 March 2010

(zs) Subsection 2(1) (item 5) of the *Trade Practices Amendment (Australian Consumer Law) Act (No. 1) 2010* provides as follows:

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

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
5. Schedule 2, item 40	At the same time as the provision(s) covered by table item 2.  However, if Schedule 1 to the <i>Statute Stocktake (Regulatory and Other Laws) Act 2009</i> commences before that time, the provision(s) do not commence at all.	Does not commence at all

**Act Notes**

(zt) Subsection 2(1) (items 3 and 4) of the *Trade Practices Amendment (Infrastructure Access) Act 2010* provides as follows:

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

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
3. Schedule 5, items 1 to 11	The day after this Act receives the Royal Assent.	14 July 2010
4. Schedule 5, item 12	Immediately after the commencement of the provision(s) covered by table item 3.	14 July 2010

(zu) Subsection 2(1) (items 2–5) of the *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010* provides as follows:

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

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
2. Schedule 1, Part 1, Division 1	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 2 of Schedule 5 to the <i>Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010</i> .	1 January 2011 (paragraph (b) applies)
3. Schedule 1, Part 1, Division 2	Immediately after a final functional separation undertaking comes into force under Part 9 of Schedule 1 to the <i>Telecommunications Act 1997</i> . The Minister must announce by notice in the <i>Gazette</i> the time when a final functional separation undertaking comes into force under Part 9 of Schedule 1 to the <i>Telecommunications Act 1997</i> .	[see Note 3]
4. Schedule 1, Part 1, Division 3	Immediately after an undertaking comes into force under section 577A of the <i>Telecommunications Act 1997</i> . The Minister must announce by notice in the <i>Gazette</i> the time when an undertaking comes into force under section 577A of the <i>Telecommunications Act 1997</i> .	[see Note 3]

## Act Notes

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<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
5. Schedule 1, Parts 2 and 3	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 2 of Schedule 5 to the <i>Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010</i> .	1 January 2011 (paragraph (b) applies)

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**Table of Amendments****Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted	
Provision affected	How affected
Title.....	am. No. 103, 2010
<b>Part I</b>	
S. 1 .....	am. No. 103, 2010
S. 2 .....	rep. No. 81, 1977 ad. No. 88, 1995
S. 2A .....	ad. No. 81, 1977 am. No. 34, 1989; No. 88, 1995; No. 134, 2003; No. 108, 2004
S. 2B .....	ad. No. 88, 1995 am. No. 58, 1997; No. 61, 1999; No. 111, 2009
S. 2BA .....	ad. No. 131, 2006
S. 2C .....	ad. No. 88, 1995 am. No. 131, 2006
S. 2D .....	ad. No. 88, 1995 rep. No. 131, 2006
S. 4 .....	am. Nos. 88 and 157, 1976; No. 81, 1977; No. 206, 1978; No. 17, 1986; No. 8, 1988; No. 70, 1990; Nos. 104 and 222, 1992; No. 88, 1995; No. 60, 1996; No. 48, 1998; No. 55, 2001; Nos. 108 and 113, 2004; No. 131, 2006; Nos. 45 and 159, 2007; No. 60, 2008; Nos. 17 and 59, 2009; Nos. 44, 103 and 140, 2010
S. 4A .....	ad. No. 81, 1977 am. No. 88, 1995; No. 131, 2006
S. 4B .....	ad. No. 81, 1977 am. No. 151, 1977; No. 17, 1986; No. 88, 1995
S. 4C .....	ad. No. 81, 1977 am. No. 88, 1995
S. 4D .....	ad. No. 81, 1977 am. No. 206, 1978; No. 17, 1986
S. 4E .....	ad. No. 81, 1977 am. No. 70, 1990
S. 4F.....	ad. No. 81, 1977 am. No. 60, 1996
Ss. 4G, 4H .....	ad. No. 81, 1977
Ss. 4J, 4K .....	ad. No. 81, 1977
S. 4KA .....	ad. No. 113, 2004 rs. No. 103, 2010
Ss. 4KB, 4KC .....	ad. No. 44, 2010 rep. No. 103, 2010
S. 4L .....	ad. No. 81, 1977 am. No. 17, 1986; Nos. 44 and 103, 2010
S. 4M .....	ad. No. 81, 1977
S. 4N .....	ad. No. 101, 1998 am. Nos. 17 and 92, 2006; No. 117, 2008

**Table of Amendments**


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ad. = added or inserted	am. = amended	rep. = repealed	rs. = repealed and substituted
Provision affected	How affected		
Heading to s. 5 .....	am. No. 61, 1999; No. 31, 2001; Nos. 59 and 111, 2009 rs. No. 44, 2010		
S. 5 .....	am. No. 17, 1986; No. 70, 1990; No. 222, 1992; No. 106, 1998; No. 61, 1999; No. 31, 2001; Nos. 59 and 111, 2009; Nos. 44 and 103, 2010		
Heading to s. 6 .....	am. No. 61, 1999; No. 31, 2001; No. 111, 2009 rs. No. 44, 2010		
S. 6 .....	am. No. 88, 1976; No. 81, 1977; Nos. 206 and 207, 1978; No. 73, 1980; No. 17, 1986; No. 70, 1990; Nos. 106 and 222, 1992; No. 98, 1993; No. 88, 1995; No. 60, 1996; No. 58, 1997; No. 106, 1998; No. 61, 1999; No. 69, 2000; No. 31, 2001 (as am. by No. 63, 2002); No. 117, 2001; No. 134, 2003; No. 131, 2006; No. 126, 2008; Nos. 59 and 111, 2009; Nos. 44 and 103, 2010		
S. 6AA .....	ad. No. 146, 2001 am. No. 59, 2009; No. 103, 2010		
<b>Part II</b>			
Heading to Part II .....	rs. No. 88, 1995		
S. 6A .....	ad. No. 81, 1977 am. No. 88, 1995; No. 148, 2010		
S. 7 .....	rs. No. 81, 1977 am. No. 88, 1995; No. 106, 1998		
Note to s. 7(2) .....	ad. No. 108, 2004		
S. 8 .....	am. No. 81, 1977; No. 88, 1995		
S. 8A .....	ad. No. 81, 1977 am. No. 88, 1995; No. 131, 2006		
S. 8AB .....	ad. No. 108, 2004		
S. 9 .....	am. No. 81, 1977; No. 88, 1995		
Heading to s. 10 .....	rs. No. 159, 2007		
S. 10 .....	am. No. 81, 1977; No. 88, 1995; No. 159, 2007; No. 116, 2008		
S. 11 .....	am. No. 88, 1976; No. 17, 1986; No. 88, 1995; No. 159, 2007		
S. 12 .....	am. No. 88, 1976; No. 81, 1977 rs. No. 122, 1991 am. No. 146, 1999		
S. 13 .....	am. No. 88, 1976 rs. No. 81, 1977 am. No. 206, 1978; No. 88, 1995		
S. 14 .....	rs. No. 81, 1977 am. No. 88, 1995		
S. 15 .....	am. No. 81, 1977; No. 88, 1995		
S. 16 .....	am. No. 88, 1995		
S. 17 .....	am. No. 88, 1976; No. 81, 1977 rs. No. 17, 1986 am. No. 88, 1995		
S. 18 .....	am. No. 17, 1986; No. 88, 1995; No. 159, 2007		
S. 19 .....	am. No. 88, 1995; No. 159, 2007		

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**Table of Amendments**


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ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted	
Provision affected	How affected
S. 20 .....	rep. No. 81, 1977 ad. No. 88, 1995 rep. No. 152, 1997
Ss. 21–23 .....	rep. No. 81, 1977
S. 24 .....	am. No. 88, 1976 rep. No. 81, 1977
S. 25 .....	am. No. 58, 1997; No. 52, 1999; No. 134, 2003; No. 69, 2004; No. 119, 2005; No. 131, 2006; No. 138, 2007
Note to s. 25(1) .....	ad. No. 134, 2003
Heading to s. 26 .....	am. No. 103, 2010
S. 26 .....	am. No. 81, 1977 rep. No. 65, 1985 ad. No. 48, 1998 am. Nos. 31 and 55, 2001; No. 103, 2010
S. 27 .....	am. No. 63, 1984; No. 88, 1995; No. 146, 1999
S. 27A .....	ad. No. 88, 1995
S. 28 .....	am. No. 88, 1976; No. 81, 1977; No. 88, 1995
S. 29 .....	am. No. 88, 1976; No. 81, 1977; No. 17, 1986; No. 88, 1995; No. 58, 1997; No. 123, 2000; No. 134, 2003; No. 103, 2010
<b>Part IIA</b>	
Part IIA .....	ad. No. 88, 1995
S. 29AA .....	ad. No. 60, 2006 rep. No. 45, 2007
S. 29A .....	ad. No. 88, 1995
S. 29B .....	ad. No. 88, 1995 am. No. 101, 1998; No. 60, 2006; No. 45, 2007
Note to s. 29B(2B) .....	am. No. 45, 2007
Ss. 29BA, 29BB .....	ad. No. 60, 2006 am. No. 45, 2007
Heading to s. 29BC .....	am. No. 45, 2007
S. 29BC .....	ad. No. 60, 2006 am. No. 45, 2007
Ss. 29C–29F .....	ad. No. 88, 1995
S. 29G .....	ad. No. 88, 1995 am. No. 146, 1999
Ss. 29H, 29I .....	ad. No. 88, 1995
S. 29J .....	ad. No. 88, 1995 am. No. 134, 2003
Ss. 29K, 29L .....	ad. No. 88, 1995
S. 29LA .....	ad. No. 102, 2010
S. 29M .....	ad. No. 88, 1995 am. No. 146, 1999
S. 29N .....	ad. No. 88, 1995
S. 29O .....	ad. No. 88, 1995 am. No. 92, 2006

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**Table of Amendments**


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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted	
Provision affected	How affected
<b>Part III</b>	
Heading to Part III .....	rs. No. 88, 1995
S. 29P .....	ad. No. 131, 2006
S. 30 .....	am. No. 88, 1995
S. 31 .....	am. No. 81, 1977; No. 88, 1995
Heading to s. 31A .....	am. No. 88, 1995
S. 31A .....	ad. No. 111, 1977 am. No. 88, 1995
S. 32 .....	am. No. 88, 1995
Heading to s. 33 .....	am. No. 88, 1995
S. 33 .....	rs. No. 88, 1976 am. No. 81, 1977 rs. No. 111, 1977 am. No. 73, 1984; No. 43, 1996
S. 34 .....	am. No. 80, 1982; No. 106, 1998
S. 35 .....	am. No. 81, 1977; No. 61, 1981; No. 88, 1995
S. 36 .....	am. No. 88, 1995
Heading to s. 39 .....	rs. No. 131, 2006
S. 39 .....	am. No. 131, 2006
S. 40 .....	rs. No. 17, 1986 am. No. 123, 2000
S. 43 .....	am. No. 88, 1995
Ss. 43A, 43B .....	ad. No. 88, 1995
S. 44 .....	am. No. 81, 1977; No. 88, 1995; No. 146, 1999
S. 44A .....	ad. No. 206, 1978 am. No. 88, 1995; No. 146, 1999
<b>Part IIIAA</b>	
Part IIIAA .....	ad. No. 108, 2004
<b>Division 1</b>	
S. 44AB .....	ad. No. 108, 2004 am. No. 60, 2006; No. 45, 2007
Ss. 44AC, 44AD .....	ad. No. 108, 2004
<b>Division 2</b>	
Ss. 44AE–44AG .....	ad. No. 108, 2004
<b>Division 3</b>	
S. 44AH .....	ad. No. 108, 2004
Note to s. 44AH .....	am. No. 45, 2007
Ss. 44AI–44AL .....	ad. No. 108, 2004
<b>Division 4</b>	
<b>Subdivision A</b>	
Ss. 44AM–44AZ .....	ad. No. 108, 2004
S. 44AAB .....	ad. No. 108, 2004
<b>Subdivision B</b>	
S. 44AAC .....	ad. No. 108, 2004

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**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted	
Provision affected	How affected
<b>Subdivision C</b>	
Ss. 44AAD, 44AAE .....	ad. No. 108, 2004
S. 44AAEA .....	ad. No. 45, 2007
<b>Subdivision D</b>	
S. 44AAF .....	ad. No. 108, 2004 am. No. 17, 2009
S. 44AAG .....	ad. No. 108, 2004
S. 44AAGA .....	ad. No. 60, 2006
Ss. 44AAH–44AAK .....	ad. No. 108, 2004
<b>Part IIIA</b>	
Part IIIA .....	ad. No. 88, 1995
<b>Division 1</b>	
S. 44AA .....	ad. No. 92, 2006
S. 44B.....	ad. No. 88, 1995 am. No. 28, 1997; No. 55, 2001; No. 134, 2003; No. 92, 2006; No. 45, 2007; No. 60, 2008; No. 17, 2009; No. 102, 2010
S. 44C .....	ad. No. 88, 1995
S. 44D .....	ad. No. 88, 1995 am. No. 102, 2010
S. 44DA.....	ad. No. 101, 1998 am. No. 102, 2010
S. 44E.....	ad. No. 88, 1995
<b>Division 2</b>	
<b>Subdivision A</b>	
S. 44F.....	ad. No. 88, 1995 am. No. 92, 2006; No. 102, 2010
Note 1 to s. 44F(2) .....	ad. No. 92, 2006 am. No. 102, 2010
Note 2 to s. 44F(2) .....	ad. No. 92, 2006 rs. No. 102, 2010
Note 3 to s. 44F(2) .....	ad. No. 92, 2006
S. 44FA .....	ad. No. 102, 2010
S. 44G .....	ad. No. 88, 1995 am. No. 101, 1998; Nos. 60 and 92, 2006; No. 45, 2007; No. 102, 2010
S. 44GA.....	ad. No. 92, 2006 rs. No. 102, 2010
S. 44GB.....	ad. No. 92, 2006 am. No. 102, 2010
S. 44GC.....	ad. No. 92, 2006
<b>Subdivision B</b>	
S. 44H .....	ad. No. 88, 1995 am. No. 101, 1998; Nos. 60 and 92, 2006; No. 45, 2007; No. 102, 2010
Note to s. 44H(1).....	ad. No. 92, 2006

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 44HA .....	ad. No. 92, 2006
S. 44I .....	ad. No. 88, 1995 am. No. 102, 2010
S. 44J .....	ad. No. 88, 1995 am. No. 92, 2006; No. 102, 2010
Note to s. 44J(3).....	ad. No. 92, 2006 rep. No. 102, 2010
S. 44JA.....	ad. No. 92, 2006 rep. No. 102, 2010
S. 44K.....	ad. No. 88, 1995 am. No. 102, 2010
Note to s. 44K(4) .....	ad. No. 92, 2006 rs. No. 102, 2010
Ss. 44KA, 44KB.....	ad. No. 102, 2010
S. 44L .....	ad. No. 88, 1995 am. No. 102, 2010
Note to s. 44L(3).....	ad. No. 92, 2006 rs. No. 102, 2010
Heading to Subdiv. C of Div. 2 of Part IIIA .....	rep. No. 92, 2006
<b>Division 2AA</b>	
Div. 2AA of Part IIIA .....	ad. No. 102, 2010
<b>Subdivision A</b>	
S. 44LA.....	ad. No. 102, 2010
<b>Subdivision B</b>	
Ss. 44LB–44LF.....	ad. No. 102, 2010
<b>Subdivision C</b>	
Ss. 44LG, 44LH.....	ad. No. 102, 2010
<b>Subdivision D</b>	
S. 44LI.....	ad. No. 102, 2010
<b>Subdivision E</b>	
Ss. 44LJ, 44LK.....	ad. No. 102, 2010
<b>Subdivision F</b>	
S. 44LL .....	ad. No. 102, 2010
<b>Division 2A</b>	
Heading to Div. 2A of Part IIIA .....	ad. No. 92, 2006
<b>Subdivision A</b>	
Heading to Subdiv. A of Div. 2A of Part IIIA .....	ad. No. 92, 2006
S. 44M .....	ad. No. 88, 1995 am. No. 101, 1998; Nos. 60 and 92, 2006; No. 45, 2007
Note 1 to s. 44M(3).....	ad. No. 92, 2006 am. No. 102, 2010

**Table of Amendments**


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 ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted
 

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Provision affected	How affected
Note 2 to s. 44M(3).....	ad. No. 92, 2006 rs. No. 102, 2010
Note 3 to s. 44M(3).....	ad. No. 92, 2006
S. 44MA.....	ad. No. 102, 2010
<b>Subdivision B</b>	
Heading to Subdiv. B of ..... Div. 2A of Part IIIA	ad. No. 92, 2006
S. 44N .....	ad. No. 88, 1995 am. No. 101, 1998; Nos. 60 and 92, 2006; No. 45, 2007; No. 102, 2010
Note 1 to s. 44N(1) .....	ad. No. 92, 2006 rep. No. 102, 2010
Note 2 to s. 44N(1) .....	ad. No. 92, 2006
Renumbered Note .....	No. 102, 2010
Note to s. 44N(3) .....	ad. No. 92, 2006
<b>Subdivision C</b>	
Subdiv. C of Div. 2A of ..... Part IIIA	ad. No. 92, 2006
S. 44NA .....	ad. No. 92, 2006 am. No. 102, 2010
Note 1 to s. 44NA(6).....	am. No. 102, 2010
Note 2 to s. 44NA(6).....	rs. No. 102, 2010
S. 44NAA.....	ad. No. 102, 2010
S. 44NB .....	ad. No. 92, 2006 am. No. 102, 2010
Note 1 to s. 44NB(1).....	rep. No. 102, 2010
Note 2 to s. 44NB(1) Renumbered Note .....	No. 102, 2010
<b>Subdivision D</b>	
Subdiv. D of Div. 2A of ..... Part IIIA	ad. No. 92, 2006
S. 44NC.....	ad. No. 92, 2006 rs. No. 102, 2010
S. 44ND.....	ad. No. 92, 2006 rep. No. 102, 2010
S. 44NE .....	ad. No. 92, 2006 am. No. 102, 2010
Ss. 44NF, 44NG.....	ad. No. 92, 2006
<b>Subdivision E</b>	
Heading to Subdiv. E of ..... Div. 2A of Part IIIA	ad. No. 92, 2006
S. 44O .....	ad. No. 88, 1995 am. No. 92, 2006; No. 102, 2010
Note to s. 44O(3).....	ad. No. 92, 2006 rs. No. 102, 2010

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**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision F</b>	
Heading to Subdiv. F of ..... Div. 2A of Part IIIA	ad. No. 92, 2006
S. 44P .....	ad. No. 88, 1995 am. No. 101, 1998
<b>Division 2B</b>	
Div. 2B of Part IIIA.....	ad. No. 92, 2006
S. 44PA .....	ad. No. 92, 2006 am. No. 102, 2010
Note 2 to s. 44PA(3).....	am. No. 102, 2010
Note 3 to s. 44PA(3).....	rs. No. 102, 2010
S. 44PAA.....	ad. No. 102, 2010
Ss. 44PB, 44PC .....	ad. No. 92, 2006
S. 44PD .....	ad. No. 92, 2006 rs. No. 102, 2010
S. 44PE .....	ad. No. 92, 2006 am. No. 102, 2010
S. 44PF .....	ad. No. 92, 2006
S. 44PG .....	ad. No. 92, 2006 am. No. 102, 2010
Note to s. 44PG(3) .....	rs. No. 102, 2010
S. 44PH.....	ad. No. 92, 2006 am. No. 102, 2010
Note to s. 44PH(3).....	rs. No. 102, 2010
<b>Division 2C</b>	
Heading to Div. 2C of ..... Part IIIA	ad. No. 92, 2006
Heading to s. 44Q .....	am. No. 102, 2010
S. 44Q .....	ad. No. 88, 1995 am. No. 101, 1998; No. 92, 2006; No. 102, 2010
<b>Division 3</b>	
<b>Subdivision A</b>	
S. 44R .....	ad. No. 88, 1995
<b>Subdivision B</b>	
Ss. 44S, 44T.....	ad. No. 88, 1995 am. No. 92, 2006
<b>Subdivision C</b>	
S. 44U .....	ad. No. 88, 1995
S. 44V.....	ad. No. 88, 1995 am. No. 92, 2006; No. 102, 2010
Note 1 to s. 44V(1) .....	am. No. 102, 2010
S. 44W.....	ad. No. 88, 1995 am. No. 92, 2006; No. 102, 2010

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted	
Provision affected	How affected
Subhead. to s. 44X(1) .....	ad. No. 92, 2006
S. 44X.....	ad. No. 88, 1995 am. No. 92, 2006
S. 44XA .....	ad. No. 92, 2006 rs. No. 102, 2010
S. 44Y.....	ad. No. 88, 1995 am. No. 92, 2006
S. 44YA .....	ad. No. 102, 2010
<b>Subdivision D</b>	
S. 44Z.....	ad. No. 88, 1995
Ss. 44ZA–44ZN.....	ad. No. 88, 1995
S. 44ZNA.....	ad. No. 92, 2006
<b>Subdivision DA</b>	
Subdiv. DA of Div. 3 of Part IIIA .....	ad. No. 92, 2006
S. 44ZNB.....	ad. No. 92, 2006
<b>Subdivision E</b>	
Heading to s. 44ZO .....	am. No. 92, 2006
S. 44ZO .....	ad. No. 88, 1995 am. No. 92, 2006
S. 44ZOA.....	ad. No. 92, 2006
<b>Subdivision F</b>	
Heading to Subdiv. F of Div. 3 of Part IIIA .....	rs. No. 92, 2006
S. 44ZP .....	ad. No. 88, 1995 am. No. 92, 2006; No. 102, 2010
Note to s. 44ZP(3) .....	ad. No. 92, 2006 am. No. 102, 2010
S. 44ZQ .....	ad. No. 88, 1995 am. No. 92, 2006
Ss. 44ZR–44ZT .....	ad. No. 88, 1995
<b>Subdivision G</b>	
Heading to Subdiv. G of Div. 3 of Part IIIA .....	rs. No. 92, 2006
Heading to s. 44ZU .....	am. No. 92, 2006
S. 44ZU .....	ad. No. 88, 1995 am. No. 92, 2006
S. 44ZUA.....	ad. No. 92, 2006
<b>Division 4</b>	
S. 44ZV .....	ad. No. 88, 1995
S. 44ZW .....	ad. No. 88, 1995 am. No. 92, 2006
S. 44ZX .....	ad. No. 88, 1995 am. No. 102, 2010

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted	
Provision affected	How affected
Note to s. 44ZX(3).....	ad. No. 92, 2006 rs. No. 102, 2010
S. 44ZY .....	ad. No. 88, 1995
<b>Division 5</b>	
S. 44ZZ.....	ad. No. 88, 1995
<b>Division 6</b>	
Heading to Div. 6 of ..... Part IIIA	rs. No. 92, 2006
Heading to Subdiv. A of ..... Div. 6 of Part IIIA	ad. No. 92, 2006
S. 44ZZA .....	ad. No. 88, 1995 am. No. 28, 1997; No. 69, 2000; No. 92, 2006; No. 102, 2010
Note to s. 44ZZA(3).....	ad. No. 92, 2006 rep. No. 102, 2010
Notes 1, 2 to s. 44ZZA(3).....	ad. No. 102, 2010
Note 1 to s. 44ZZA(7).....	ad. No. 92, 2006 am. No. 102, 2010
Note 2 to s. 44ZZA(7).....	ad. No. 92, 2006 rs. No. 102, 2010
Note 3 to s. 44ZZA(7).....	ad. No. 92, 2006
Ss. 44ZZAAA, 44ZZAAB.....	ad. No. 102, 2010
S. 44ZZAA.....	ad. No. 28, 1997 am. No. 108, 2004; No. 92, 2006; No. 102, 2010
Note to s. 44ZZAA(4) .....	ad. No. 108, 2004 rep. No. 92, 2006
Note to s. 44ZZAA(6) .....	ad. No. 108, 2004
Note 1 to s. 44ZZAA(8) .....	ad. No. 92, 2006 am. No. 102, 2010
Note 2 to s. 44ZZAA(8) .....	ad. No. 92, 2006 rs. No. 102, 2010
Note 3 to s. 44ZZAA(8) .....	ad. No. 92, 2006
S. 44ZZAB.....	ad. No. 108, 2004 am. No. 102, 2010
S. 44ZZB .....	ad. No. 88, 1995 rep. No. 92, 2006
<b>Subdivision B</b>	
Subdiv. B of Div. 6 of ..... Part IIIA	ad. No. 92, 2006
S. 44ZZBA.....	ad. No. 92, 2006 am. No. 102, 2010
<b>Subdivision C</b>	
Subdiv. C of Div. 6 of ..... Part IIIA	ad. No. 92, 2006
S. 44ZZBB.....	ad. No. 92, 2006
Note 1 to s. 44ZZBB(8) .....	am. No. 102, 2010
Note 2 to s. 44ZZBB(8) .....	rs. No. 102, 2010

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted	
Provision affected	How affected
<b>Subdivision D</b>	
Subdiv. D of Div. 6 of ..... Part IIIA	ad. No. 92, 2006
S. 44ZZBC.....	ad. No. 92, 2006 rs. No. 102, 2010
S. 44ZZBCA .....	ad. No. 102, 2010
S. 44ZZBD.....	ad. No. 92, 2006 am. No. 102, 2010
S. 44ZZBE .....	ad. No. 92, 2006
<b>Subdivision E</b>	
Subdiv. E of Div. 6 of ..... Part IIIA	ad. No. 92, 2006
S. 44ZZBF .....	ad. No. 92, 2006 am. No. 102, 2010
Note to s. 44ZZBF(3).....	rs. No. 102, 2010
<b>Subdivision F</b>	
Heading to Subdiv. F of..... Div. 6 of Part IIIA	ad. No. 92, 2006
S. 44ZZC .....	ad. No. 88, 1995 rs. No. 28, 1997 am. No. 92, 2006; No. 102, 2010
<b>Division 6A</b>	
Div. 6A of Part IIIA .....	ad. No. 92, 2006
S. 44ZZCA .....	ad. No. 92, 2006
<b>Division 6B</b>	
Heading to Div. 6B of ..... Part IIIA	rs. No. 102, 2010
Div. 6B of Part IIIA .....	ad. No. 92, 2006
S. 44ZZCB.....	ad. No. 92, 2006
S. 44ZZCBA .....	ad. No. 102, 2010
Ss. 44ZZCC, 44ZZCD.....	ad. No. 92, 2006
<b>Division 7</b>	
Ss. 44ZZD–44ZZI.....	ad. No. 88, 1995
S. 44ZZJ.....	ad. No. 88, 1995 am. No. 69, 2000; No. 92, 2006
S. 44ZZK .....	ad. No. 88, 1995
<b>Division 8</b>	
S. 44ZZL.....	ad. No. 88, 1995
S. 44ZZM.....	ad. No. 88, 1995 rs. No. 101, 1998; No. 134, 2003
Ss. 44ZZMA, 44ZZMB.....	ad. No. 134, 2003
S. 44ZZN .....	ad. No. 88, 1995
S. 44ZZNA.....	ad. No. 28, 1997
S. 44ZZO.....	ad. No. 88, 1995
S. 44ZZOAAA.....	ad. No. 102, 2010

**Table of Amendments**


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 ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted
 

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Provision affected	How affected
S. 44ZZOAA .....	ad. No. 102, 2010
S. 44ZZOA .....	ad. No. 101, 1998 rep. No. 134, 2003 ad. No. 92, 2006 rs. No. 102, 2010
S. 44ZZP .....	ad. No. 88, 1995 am. No. 45, 2007
S. 44ZZQ .....	ad. No. 88, 1995
S. 44ZZR .....	ad. No. 45, 2007
<b>Part IV</b>	
<b>Division 1</b>	
Div. 1 of Part IV .....	ad. No. 59, 2009
<b>Subdivision A</b>	
Ss. 44ZZRA–44ZZRE .....	ad. No. 59, 2009
<b>Subdivision B</b>	
Ss. 44ZZRF–44ZZRI .....	ad. No. 59, 2009
<b>Subdivision C</b>	
Ss. 44ZZRJ, 44ZZRK .....	ad. No. 59, 2009
<b>Subdivision D</b>	
Ss. 44ZZRL–44ZZRV .....	ad. No. 59, 2009
<b>Division 2</b>	
Heading to Div. 2 of Part IV .....	ad. No. 59, 2009
S. 45 .....	rs. No. 81, 1977 am. No. 17, 1986; No. 222, 1992; No. 88, 1995; No. 131, 2006; No. 59, 2009
S. 45A .....	ad. No. 81, 1977 am. No. 206, 1978; No. 88, 1995; No. 131, 2006 rep. No. 59, 2009
S. 45B .....	ad. No. 81, 1977 am. No. 88, 1995
S. 45C .....	ad. No. 81, 1977 am. No. 17, 1986; No. 88, 1995
S. 45D .....	ad. No. 81, 1977 am. No. 207, 1978; No. 73, 1980; No. 176, 1981 rs. No. 98, 1993; No. 60, 1996
Ss. 45DA–45DC .....	ad. No. 60, 1996
S. 45DD .....	ad. No. 60, 1996 am. SLI 2006 No. 50; No. 54, 2009
Note to s. 45DD(8) .....	am. No. 54, 2009
S. 45E .....	ad. No. 73, 1980 rep. No. 98, 1993 ad. No. 60, 1996
Ss. 45EA, 45EB .....	ad. No. 60, 1996
S. 46 .....	rs. No. 81, 1977 am. No. 17, 1986; No. 222, 1992; No. 131, 2006; No. 159, 2007; No. 116, 2008

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**Table of Amendments**


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<u>ad. = added or inserted</u>	<u>am. = amended</u>	<u>rep. = repealed</u>	<u>rs. = repealed and substituted</u>
<u>Provision affected</u>	<u>How affected</u>		
S. 46A .....	ad. No. 70, 1990 am. No. 222, 1992; No. 131, 2006		
S. 46B .....	ad. No. 70, 1990		
S. 47 .....	am. No. 88, 1976 rs. No. 81, 1977 am. No. 206, 1978; No. 88, 1995; No. 131, 2006		
S. 49 .....	am. No. 81, 1977 rep. No. 88, 1995 ad. No. 131, 2006		
S. 50 .....	rs. No. 81, 1977 am. Nos. 8, 17 and 168, 1986; No. 49, 1991; No. 222, 1992; No. 63, 2001; No. 131, 2006		
Notes to s. 50(1), 50(2) .....	ad. No. 131, 2006		
S. 50A .....	ad. No. 17, 1986 am. Nos. 22 and 222, 1992		
S. 51 .....	am. No. 63, 1975; No. 88, 1976; No. 81, 1977; No. 73, 1980; No. 17, 1986; No. 28, 1989; No. 70, 1990; No. 98, 1993; No. 88, 1995; No. 60, 1996; No. 63, 2002		
S. 51AAA .....	ad. No. 88, 1995		
Part IVA .....	ad. No. 222, 1992 rep. No. 103, 2010		
S. 51AAB .....	ad. No. 48, 1998 rep. No. 103, 2010		
S. 51AA .....	ad. No. 222, 1992 am. No. 36, 1998 rep. No. 103, 2010		
S. 51AB (formerly s. 52A) .....	No. 222, 1992 am. No. 116, 2008 rep. No. 103, 2010		
S. 51AC .....	ad. No. 36, 1998 am. No. 63, 2001; No. 159, 2007; No. 116, 2008 rep. No. 103, 2010		
S. 51ACAA .....	ad. No. 63, 2001 rep. No. 103, 2010		
<b>Part IVB</b>			
Part IVB .....	ad. No. 36, 1998		
<b>Division 1</b>			
Heading to Div. 1 of .....	ad. No. 103, 2010		
Part IVB			
S. 51ACA .....	ad. No. 36, 1998 am. No. 103, 2010		
<b>Division 2</b>			
Heading to Div. 2 of .....	ad. No. 103, 2010		
Part IVB			
S. 51AD .....	ad. No. 36, 1998		

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**Table of Amendments**


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ad. = added or inserted	am. = amended	rep. = repealed	rs. = repealed and substituted
Provision affected	How affected		
<b>Division 3</b>			
Div. 3 of Part IVB .....	ad. No. 103, 2010		
S. 51ADA .....	ad. No. 103, 2010		
<b>Division 4</b>			
Div. 4 of Part IVB .....	ad. No. 103, 2010		
Ss. 51ADB, 51ADC .....	ad. No. 103, 2010		
<b>Division 5</b>			
Div. 5 of Part IVB .....	ad. No. 103, 2010		
Ss. 51ADD–51ADG.....	ad. No. 103, 2010		
<b>Division 6</b>			
Heading to Div. 6 of .....	ad. No. 103, 2010		
Part IVB			
S. 51AE .....	ad. No. 36, 1998		
S. 51AEA .....	ad. No. 63, 2001		
Part V .....	rep. No. 103, 2010		
S. 51AF .....	ad. No. 48, 1998		
	am. Nos. 55 and 123, 2001		
	rep. No. 103, 2010		
S. 51A .....	ad. No. 17, 1986		
	rep. No. 103, 2010		
S. 52 .....	am. No. 81, 1977		
	rep. No. 103, 2010		
Note to s. 52 .....	ad. No. 106, 1998		
	rep. No. 103, 2010		
S. 52A .....	ad. No. 17, 1986		
	am. No. 222, 1992		
Renumbered s. 51AB .....	No. 222, 1992		
S. 53 .....	am. No. 81, 1977; No. 17, 1986; No. 20, 1988		
	rep. No. 103, 2010		
Note to s. 53 .....	ad. No. 106, 1998		
	rep. No. 103, 2010		
S. 53A .....	ad. No. 81, 1977		
	am. No. 206, 1978; No. 17, 1986		
	rep. No. 103, 2010		
S. 53B .....	ad. No. 206, 1978		
	rs. No. 17, 1986		
	rep. No. 103, 2010		
S. 53C .....	ad. No. 17, 1986		
	rs. No. 126, 2008		
	rep. No. 103, 2010		
S. 54 .....	am. No. 81, 1977		
	rep. No. 103, 2010		
S. 55 .....	rep. No. 103, 2010		
S. 55A .....	ad. No. 81, 1977		
	rep. No. 103, 2010		
S. 56 .....	am. No. 81, 1977; No. 17, 1986; No. 31, 2001		
	rep. No. 103, 2010		

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**Table of Amendments**


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ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted	
Provision affected	How affected
S. 57 .....	rep. No. 103, 2010
S. 58 .....	rs. No. 17, 1986 rep. No. 103, 2010
S. 59 .....	am. No. 81, 1977; No. 17, 1986 rep. No. 103, 2010
S. 60 .....	rs. No. 17, 1986 rep. No. 103, 2010
S. 61 .....	am. No. 17, 1986; No. 88, 1995 rep. No. 128, 2002
S. 62 .....	am. No. 63, 1975; No. 81, 1977; No. 206, 1978 rep. No. 17, 1986
S. 63 .....	am. No. 63, 1975; No. 81, 1977 rep. No. 17, 1986
S. 63AA .....	ad. No. 151, 1977 rep. No. 17, 1986
S. 63A .....	ad. No. 63, 1975 am. No. 81, 1977; Nos. 17 and 168, 1986; No. 123, 2001 rep. No. 103, 2010
S. 64 .....	am. No. 56, 1975; No. 81, 1977; No. 17, 1986; No. 88, 1995 rep. No. 103, 2010
S. 65 .....	am. No. 17, 1986; No. 88, 1995 rep. No. 103, 2010
S. 65A .....	ad. No. 165, 1984 am. No. 180, 1991; No. 105, 1992 rep. No. 103, 2010
Div. 1AAA of Part V .....	ad. No. 128, 2002 rep. No. 103, 2010
Ss. 65AAA–65AAE .....	ad. No. 128, 2002 rep. No. 103, 2010
Div. 1AA of Part V .....	ad. No. 106, 1998 rep. No. 103, 2010
Ss. 65AA–65AD .....	ad. No. 106, 1998 am. No. 31, 2001; No. 21, 2003 rep. No. 103, 2010
Ss. 65AE–65AH .....	ad. No. 106, 1998 rep. No. 103, 2010
Ss. 65AJ–65AM .....	ad. No. 106, 1998 rep. No. 103, 2010
Heading to s. 65AN .....	am. No. 31, 2001 rs. No. 21, 2003 rep. No. 103, 2010
S. 65AN .....	ad. No. 106, 1998 am. No. 31, 2001; No. 21, 2003 rep. No. 103, 2010
Div. 1A of Part V .....	ad. No. 17, 1986 rep. No. 103, 2010
Ss. 65B–65D .....	ad. No. 17, 1986 rep. No. 103, 2010

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**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted	
Provision affected	How affected
S. 65E .....	ad. No. 17, 1986 am. No. 63, 2002; No. 126, 2008 rep. No. 103, 2010
S. 65F .....	ad. No. 17, 1986 am. No. 141, 1994; Nos. 31 and 63, 2001; No. 63, 2002 rep. No. 103, 2010
Ss. 65G, 65H .....	ad. No. 17, 1986 rep. No. 103, 2010
S. 65J .....	ad. No. 17, 1986 am. No. 88, 1995 rep. No. 103, 2010
Ss. 65K–65N .....	ad. No. 17, 1986 rep. No. 103, 2010
S. 65P .....	ad. No. 17, 1986 rep. No. 103, 2010
S. 65Q .....	ad. No. 17, 1986 am. No. 168, 1986; No. 141, 1994; No. 31, 2001 rep. No. 103, 2010
S. 65R .....	ad. No. 17, 1986 am. No. 141, 1994; Nos. 31 and 63, 2001; No. 63, 2002 rep. No. 103, 2010
S. 65S .....	ad. No. 17, 1986 rep. No. 103, 2010
S. 65T .....	ad. No. 17, 1986 am. No. 146, 1999 rep. No. 103, 2010
S. 65U .....	ad. No. 17, 1986 rep. No. 20, 1988
S. 66 .....	rep. No. 103, 2010
S. 66A .....	ad. No. 141, 1987 rep. No. 103, 2010
S. 67 .....	rep. No. 103, 2010
S. 68 .....	am. No. 206, 1978; No. 17, 1986 rep. No. 103, 2010
S. 68A .....	ad. No. 151, 1977 rep. No. 103, 2010
S. 68B .....	ad. No. 146, 2002 rep. No. 103, 2010
S. 69 .....	am. No. 88, 1995 rep. No. 103, 2010
S. 70 .....	am. No. 81, 1977 rep. No. 103, 2010
S. 71 .....	am. No. 81, 1977; No. 88, 1995 rep. No. 103, 2010
S. 72 .....	am. No. 81, 1977 rep. No. 103, 2010
S. 73 .....	rs. No. 17, 1986 am. No. 48, 1998; No. 55, 2001 rep. No. 103, 2010

**Table of Amendments**


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ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted	
Provision affected	How affected
Ss. 73A, 73B .....	ad. No. 17, 1986 rep. No. 103, 2010
S. 74 .....	am. No. 81, 1977; No. 17, 1986; No. 88, 1995; No. 118, 2004 rep. No. 103, 2010
Div. 2A of Part V .....	ad. No. 206, 1978 rep. No. 103, 2010
Ss. 74A–74C .....	ad. No. 206, 1978 am. No. 17, 1986 rep. No. 103, 2010
S. 74D .....	ad. No. 206, 1978 am. Nos. 17 and 168, 1986 rep. No. 103, 2010
S. 74E .....	ad. No. 206, 1978 am. No. 17, 1986 rep. No. 103, 2010
S. 74F .....	ad. No. 206, 1978 am. No. 17, 1986; No. 88, 1995 rep. No. 103, 2010
S. 74G .....	ad. No. 206, 1978 am. No. 17, 1986 rep. No. 103, 2010
S. 74H .....	ad. No. 206, 1978 rep. No. 103, 2010
S. 74J .....	ad. No. 206, 1978 am. No. 17, 1986; No. 11, 1990 rep. No. 103, 2010
Note to s. 74J(3) .....	ad. No. 113, 2004 rep. No. 103, 2010
Ss. 74K, 74L .....	ad. No. 206, 1978 rep. No. 103, 2010
S. 74M .....	ad. No. 113, 2004 rep. No. 103, 2010
S. 75 .....	am. No. 88, 1995 rep. No. 103, 2010
S. 75A .....	ad. No. 81, 1977 am. No. 88, 1995 rep. No. 103, 2010
Part VA .....	ad. No. 106, 1992 rep. No. 103, 2010
Ss. 75AA–75AN .....	ad. No. 106, 1992 rep. No. 103, 2010
S. 75AO .....	ad. No. 106, 1992 rep. No. 103, 2010
Note to s. 75AO(2) .....	ad. No. 113, 2004 rep. No. 103, 2010
S. 75AP .....	ad. No. 106, 1992 rep. No. 103, 2010

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**Table of Amendments**


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 ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted
 

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Provision affected	How affected
Heading to s. 75AQ .....	am. No. 88, 1995 rep. No. 103, 2010
Ss. 75AQ, 75AR .....	ad. No. 106, 1992 rep. No. 103, 2010
S. 75AS .....	ad. No. 106, 1992 am. No. 106, 1998; No. 194, 1999 rep. No. 103, 2010
Part VB .....	ad. No. 61, 1999 rep. No. 111, 2009
S. 75AT .....	ad. No. 61, 1999 am. No. 176, 1999; No. 101, 2006 rep. No. 111, 2009
S. 75AU .....	ad. No. 61, 1999 am. No. 176, 1999 rep. No. 111, 2009
Ss. 75AV–75AX .....	ad. No. 61, 1999 rep. No. 111, 2009
S. 75AY .....	ad. No. 61, 1999 am. No. 146, 2001 rep. No. 111, 2009
Notes 1, 2 to s. 75AY .....	ad. No. 146, 2001 rep. No. 111, 2009
S. 75AYA .....	ad. No. 69, 2000 rep. No. 111, 2009
S. 75AZ .....	ad. No. 61, 1999 rep. No. 111, 2009
Part VC .....	ad. No. 31, 2001 rep. No. 103, 2010
S. 75AZA .....	ad. No. 31, 2001 am. Nos. 55 and 123, 2001 rep. No. 103, 2010
S. 75AZAA .....	ad. No. 126, 2008 rep. No. 103, 2010
S. 75AZB .....	ad. No. 31, 2001 rep. No. 103, 2010
Ss. 75AZC, 75AZD .....	ad. No. 31, 2001 am. No. 117, 2001 rep. No. 103, 2010
Notes 1, 2 to s. 75AZD(2), 75AZD(3) .....	ad. No. 117, 2001 rep. No. 103, 2010
S. 75AZE .....	ad. No. 31, 2001 am. No. 117, 2001 rep. No. 103, 2010
Heading to s. 75AZF .....	am. No. 126, 2008 rep. No. 103, 2010
S. 75AZF .....	ad. No. 31, 2001 am. No. 117, 2001; No. 126, 2008 rep. No. 103, 2010

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**Table of Amendments**


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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted	
Provision affected	How affected
S. 75AZG .....	ad. No. 31, 2001 am. No. 117, 2001 rep. No. 103, 2010
Notes 1, 2 to s. 75AZG(1) .....	ad. No. 117, 2001 rep. No. 103, 2010
Ss. 75AZH–75AZL .....	ad. No. 31, 2001 am. No. 117, 2001 rep. No. 103, 2010
Notes 1, 2 to s. 75AZL(1) .....	ad. No. 117, 2001 rep. No. 103, 2010
Notes 1, 2 to s. 75AZL(3) .....	ad. No. 117, 2001 rep. No. 103, 2010
Ss. 75AZM, 75AZN .....	ad. No. 31, 2001 am. No. 117, 2001 rep. No. 103, 2010
Notes 1, 2 to s. 75AZN .....	ad. No. 117, 2001 rep. No. 103, 2010
S. 75AZO .....	ad. No. 31, 2001 am. No. 117, 2001 rs. No. 128, 2002 rep. No. 103, 2010
Notes 1, 2 to s. 75AZO(1), 75AZO(2) .....	ad. No. 117, 2001 rep. No. 128, 2002
Notes 1, 2 to s. 75AZO(3) .....	ad. No. 117, 2001 rs. No. 128, 2002 rep. No. 103, 2010
Ss. 75AZP, 75AZQ .....	ad. No. 31, 2001 am. No. 117, 2001 rep. No. 103, 2010
S. 75AZR .....	ad. No. 31, 2001 rep. No. 103, 2010
S. 75AZS .....	ad. No. 31, 2001 am. No. 117, 2001 rep. No. 103, 2010
Notes 1, 2 to s. 75AZS(1) .....	ad. No. 117, 2001 rep. No. 103, 2010
Note 3 to s. 75AZS(1) .....	ad. No. 126, 2008 rep. No. 103, 2010
S. 75AZT .....	ad. No. 31, 2001 am. No. 117, 2001 rep. No. 103, 2010
Notes 1, 2 to s. 75AZT(1) .....	ad. No. 117, 2001 rep. No. 103, 2010
Note 3 to s. 75AZT(1) .....	ad. No. 126, 2008 rep. No. 103, 2010
S. 75AZU .....	ad. No. 31, 2001 am. No. 117, 2001 rep. No. 103, 2010

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**Table of Amendments**


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ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted	
Provision affected	How affected
<b>Part VI</b>	
S. 75B .....	ad. No. 81, 1977 am. No. 23, 1987; No. 222, 1992; No. 36, 1998; No. 61, 1999; No. 69, 2000; No. 31, 2001; No. 131, 2006; No. 111, 2009
Heading to s. 76 .....	am. Nos. 44 and 103, 2010
S. 76 .....	am. No. 88, 1976; No. 81, 1977; No. 207, 1978; No. 73, 1980; No. 222, 1992; No. 98, 1993; No. 60, 1996; No. 58, 1997; No. 61, 1999; No. 69, 2000; No. 131, 2006; Nos. 59 and 111, 2009
Heading to s. 76A .....	am. No. 131, 2006; No. 111, 2009
S. 76A .....	ad. No. 69, 2000 am. No. 131, 2006; No. 111, 2009
Heading to s. 76B .....	am. No. 131, 2006; Nos. 59 and 111, 2009
S. 76B .....	ad. No. 69, 2000 am. No. 131, 2006; Nos. 59 and 111, 2009
S. 76C .....	ad. No. 131, 2006
S. 76D .....	ad. No. 131, 2006 rep. No. 59, 2009
Ss. 76E, 76F.....	ad. No. 44, 2010 rep. No. 103, 2010
S. 77 .....	am. No. 88, 1976; No. 88, 1995; Nos. 44 and 103, 2010
S. 77A.....	ad. No. 131, 2006 am. Nos. 44 and 103, 2010
Ss. 77B, 77C .....	ad. No. 131, 2006
Heading to s. 78 .....	am. No. 61, 1999; No. 69, 2000; No. 31, 2001; No. 111, 2009
S. 78 .....	am. No. 61, 1999; No. 69, 2000; No. 31, 2001; Nos. 59 and 111, 2009; No. 103, 2010
Heading to s. 79 .....	am. No. 31, 2001; No. 59, 2009; No. 103, 2010
S. 79 .....	am. No. 81, 1977; No. 17, 1986; No. 222, 1992; Nos. 31 and 63, 2001; No. 59, 2009; Nos. 4 and 103, 2010
Notes 1, 2 to s. 79(1) .....	ad. No. 63, 2001
S. 79A .....	ad. No. 17, 1986 am. No. 31, 2001; No. 131, 2006; No. 59, 2009; No. 103, 2010
S. 79B .....	ad. No. 63, 2001 am. No. 63, 2001 (as am. by No. 63, 2002); No. 59, 2009; Nos. 44 and 103, 2010
S. 80 .....	am. No. 88, 1976; No. 81, 1977; No. 39, 1983; No. 17, 1986; No. 222, 1992; No. 88, 1995; No. 60, 1996; No. 36, 1998; No. 61, 1999; No. 69, 2000; No. 31, 2001; Nos. 59 and 111, 2009; Nos. 44 and 103, 2010
S. 80AA .....	ad. No. 73, 1980 am. No. 39, 1983; No. 87, 1988 (as am. by No. 108, 1990) rep. No. 98, 1993 ad. No. 60, 1996 rep. SLI 2006 No. 50

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**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted	
Provision affected	How affected
S. 80AB .....	ad. No. 60, 1996 am. SLI 2006 No. 50
S. 80AC .....	ad. No. 131, 2006
S. 80A .....	ad. No. 81, 1977 am. No. 39, 1983; No. 17, 1986; No. 222, 1992; No. 88, 1995; No. 36, 1998 rep. No. 63, 2001
S. 80B .....	ad. No. 61, 1999 rep. No. 111, 2009
Heading to s. 81 .....	am. No. 131, 2006
S. 81 .....	am. No. 88, 1976 rs. No. 81, 1977 am. No. 17, 1986; No. 222, 1992; No. 88, 1995
S. 81A .....	ad. No. 131, 2006
S. 82 .....	rs. No. 81, 1977 am. No. 17, 1986; No. 222, 1992; No. 36, 1998; No. 63, 2001; Nos. 103 and 118, 2004; No. 11, 2006; No. 103, 2010
Note to s. 82(2) .....	ad. No. 113, 2004 rep. No. 103, 2010
S. 83 .....	rs. No. 81, 1977 am. No. 222, 1992; No. 36, 1998; Nos. 31 and 63, 2001; No. 59, 2009; Nos. 44 and 103, 2010
Heading to s. 84 .....	am. No. 59, 2009
S. 84 .....	rs. No. 17, 1986 am. No. 70, 1990; No. 222, 1992; No. 36, 1998; No. 61, 1999; Nos. 31 and 146, 2001; Nos. 59 and 111, 2009; Nos. 44 and 103, 2010
S. 85 .....	am. No. 81, 1977; No. 17, 1986; No. 88, 1995; No. 31, 2001; No. 128, 2002; No. 44, 2010 rs. No. 103, 2010
Note to s. 85(1) .....	ad. No. 31, 2001 rep. No. 103, 2010
Notes to s. 85(3), 85(4) .....	ad. No. 31, 2001 rep. No. 103, 2010
S. 86 .....	rs. No. 23, 1987 am. No. 222, 1992; Nos. 36 and 106, 1998; No. 194, 1999; No. 57, 2000; No. 23, 2006; No. 116, 2008; No. 59, 2009; Nos. 44 and 103, 2010
Heading to s. 86AA .....	am. No. 23, 2006
S. 86AA .....	ad. No. 194, 1999 am. No. 161, 2000; No. 23, 2006; No. 103, 2010
Note to s. 86AA .....	am. No. 161, 2000
S. 86A .....	ad. No. 23, 1987 am. No. 222, 1992; Nos. 36 and 106, 1998; Nos. 44 and 103, 2010
S. 86B .....	ad. No. 8, 1988 am. No. 222, 1992; No. 106, 1998; No. 44, 2010 rep. No. 103, 2010

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted	
Provision affected	How affected
S. 86C .....	ad. No. 63, 2001 am. No. 63, 2001; No. 131, 2006; Nos. 59 and 111, 2009; No. 103, 2010
S. 86D .....	ad. No. 63, 2001 am. No. 63, 2001; No. 59, 2009; Nos. 44 and 103, 2010
S. 86DA .....	ad. No. 44, 2010 rep. No. 103, 2010
S. 86E .....	ad. No. 131, 2006 am. No. 59, 2009; Nos. 44 and 103, 2010
S. 86F .....	ad. No. 59, 2009
S. 87 .....	am. No. 81, 1977; No. 39, 1983; Nos. 17 and 168, 1986; No. 222, 1992; No. 49, 1994; No. 88, 1995; No. 36, 1998; Nos. 31 and 63, 2001; No. 118, 2004; No. 11, 2006; No. 59, 2009; Nos. 44 and 103, 2010
Note to s. 87(6) .....	ad. No. 113, 2004 rep. No. 103, 2010
S. 87AAA.....	ad. No. 44, 2010 am. No. 44, 2010 rep. No. 103, 2010
S. 87AAB.....	ad. No. 44, 2010 rep. No. 103, 2010
S. 87A .....	ad. No. 17, 1986 am. No. 222, 1992; Nos. 31 and 146, 2001; No. 44, 2010 rep. No. 103, 2010
S. 87AA .....	ad. No. 60, 1996 am. SLI 2006 No. 50; No. 54, 2009
S. 87AB .....	ad. No. 118, 2004 rep. No. 103, 2010
S. 87AC .....	ad. No. 44, 2010 rep. No. 103, 2010
S. 87B .....	ad. No. 222, 1992 am. No. 131, 2006
S. 87C .....	ad. No. 141, 1994
S. 87CA .....	ad. No. 63, 2001
S. 87CAA .....	ad. No. 113, 2004 rep. No. 103, 2010
<b>Part VIA</b>	
Part VIA .....	ad. No. 103, 2004
S. 87CB .....	ad. No. 103, 2004 am. No. 103, 2010
Ss. 87CC–87CI .....	ad. No. 103, 2004
<b>Part VIB</b>	
Part VIB .....	ad. No. 113, 2004
<b>Division 1</b>	
S. 87D .....	ad. No. 113, 2004 am. No. 59, 2009; No. 103, 2010

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted	
Provision affected	How affected
S. 87E .....	ad. No. 113, 2004 am. No. 103, 2010
<b>Division 2</b>	
Ss. 87F–87H .....	ad. No. 113, 2004
Ss. 87J, 87K .....	ad. No. 113, 2004
<b>Division 3</b>	
Ss. 87L–87N .....	ad. No. 113, 2004
Ss. 87P–87T .....	ad. No. 113, 2004
<b>Division 4</b>	
Ss. 87U, 87V .....	ad. No. 113, 2004
<b>Division 5</b>	
Ss. 87W, 87X .....	ad. No. 113, 2004
<b>Division 6</b>	
Ss. 87Y, 87Z .....	ad. No. 113, 2004
Ss. 87ZA, 87ZB .....	ad. No. 113, 2004
<b>Division 7</b>	
S. 87ZC .....	ad. No. 113, 2004
Part VIC .....	ad. No. 44, 2010 rep. No. 103, 2010
Ss. 87ZD–87ZK .....	ad. No. 44, 2010 rep. No. 103, 2010
Part VID .....	ad. No. 44, 2010 rep. No. 103, 2010
Ss. 87ZL–87ZO .....	ad. No. 44, 2010 rep. No. 103, 2010
<b>Part VII</b>	
Heading to Part VII .....	am. No. 81, 1977; No. 206, 1978 rs. No. 131, 2006
<b>Division 1</b>	
Heading to Div. 1 of Part VII .....	rs. No. 131, 2006
S. 87D .....	ad. No. 101, 1998
Renumbered s. 87ZD .....	No. 113, 2004
S. 87ZD .....	am. No. 131, 2006
Renumbered s. 87ZP .....	No. 44, 2010
S. 88 .....	rs. No. 81, 1977 am. Nos. 206 and 207, 1978; No. 73, 1980; No. 17, 1986; No. 222, 1992; No. 98, 1993; No. 88, 1995; No. 60, 1996; No. 101, 1998; No. 131, 2006; No. 59, 2009
Heading to s. 89 .....	am. No. 101, 1998
S. 89 .....	am. No. 88, 1976; No. 81, 1977; No. 17, 1986; No. 222, 1992; No. 88, 1995; No. 101, 1998; No. 131, 2006; No. 103, 2010

**Table of Amendments**


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 ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted
 

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Provision affected	How affected
S. 90 .....	am. No. 88, 1976; No. 81, 1977; No. 206, 1978; No. 73, 1980; No. 17, 1986; No. 11, 1990; No. 222, 1992; No. 98, 1993; No. 88, 1995; No. 60, 1996; No. 131, 2006; No. 59, 2009
Note to s. 90(2) .....	ad. No. 108, 2004
Note to s. 90(5) .....	ad. No. 108, 2004
S. 90A .....	ad. No. 81, 1977 am. No. 17, 1986; No. 88, 1995
S. 90B .....	ad. No. 108, 2004 am. No. 60, 2006
Heading to s. 91 .....	am. No. 101, 1998
S. 91 .....	am. No. 81, 1977; No. 17, 1986; No. 101, 1998
S. 91A .....	ad. No. 101, 1998 am. No. 131, 2006; No. 59, 2009
Note to s. 91A(2) .....	ad. No. 108, 2004
S. 91B .....	ad. No. 101, 1998 am. No. 131, 2006; No. 59, 2009
Note to s. 91B(2) .....	ad. No. 108, 2004
S. 91C .....	ad. No. 101, 1998 am. No. 131, 2006; No. 59, 2009
Note to s. 91C(2) .....	ad. No. 108, 2004
Note to s. 91C(5) .....	ad. No. 108, 2004
<b>Division 2</b>	
Heading to Div. 2 of Part VII .....	rs. No. 81, 1977 am. No. 206, 1978
S. 92 .....	rep. No. 81, 1977
<b>Subdivision A</b>	
Heading to Subdiv. A of Div. 2 of Part VII .....	ad. No. 131, 2006
S. 93 .....	rs. No. 81, 1977 am. No. 206, 1978; No. 17, 1986; No. 88, 1995; No. 131, 2006
<b>Subdivision B</b>	
Subdiv. B of Div. 2 of Part VII .....	ad. No. 131, 2006
S. 93AA .....	ad. No. 131, 2006 am. No. 59, 2009
Subhead. to s. 93AB(1) .....	am. No. 59, 2009
S. 93AB .....	ad. No. 131, 2006 am. Nos. 54 and 59, 2009
Subhead. to s. 93AC(1) .....	am. No. 59, 2009
S. 93AC .....	ad. No. 131, 2006 am. No. 59, 2009
Ss. 93AD, 93AE .....	ad. No. 131, 2006
S. 93AEA .....	ad. No. 59, 2009

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**Table of Amendments**


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 ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted
 

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Provision affected	How affected
Heading to s. 93AF .....	am. No. 59, 2009
S. 93AF .....	ad. No. 131, 2006 am. No. 59, 2009
<b>Subdivision C</b>	
Heading to Subdiv. C of Div. 2 of Part VII .....	ad. No. 131, 2006
Heading to s. 93A .....	am. No. 131, 2006
S. 93A .....	ad. No. 81, 1977 am. No. 88, 1995; No. 131, 2006; No. 59, 2009
S. 94 .....	rep. No. 81, 1977
<b>Subdivision D</b>	
Heading to Subdiv. D of Div. 2 of Part VII .....	ad. No. 131, 2006
S. 95 .....	rs. No. 81, 1977 am. No. 17, 1986; No. 222, 1992; No. 88, 1995; No. 36, 1998; No. 131, 2006; No. 103, 2010
<b>Division 3</b>	
Div. 3 of Part VII .....	ad. No. 131, 2006
<b>Subdivision A</b>	
Ss. 95AA, 95AB .....	ad. No. 131, 2006
<b>Subdivision B</b>	
Ss. 95AC–95AF .....	ad. No. 131, 2006
Heading to s. 95AG .....	am. No. 8, 2010
Ss. 95AG–95AQ .....	ad. No. 131, 2006
Subhead. to s. 95AR(4) .....	am. No. 8, 2010
S. 95AR .....	ad. No. 131, 2006
Subhead. to s. 95AS(4) .....	am. No. 8, 2010
S. 95AS .....	ad. No. 131, 2006
<b>Subdivision C</b>	
Ss. 95AT–95AX .....	ad. No. 131, 2006
Heading to s. 95AY .....	am. No. 8, 2010
Ss. 95AY, 95AZ .....	ad. No. 131, 2006
S. 95AZA .....	ad. No. 131, 2006
Ss. 95AZC–95AZE .....	ad. No. 131, 2006
S. 95AZE .....	ad. No. 131, 2006
S. 95AZF .....	ad. No. 131, 2006
S. 95AZFA .....	ad. No. 131, 2006
Ss. 95AZG–95AZK .....	ad. No. 131, 2006
Subhead. to s. 95AZL(5) .....	am. No. 8, 2010
S. 95AZL .....	ad. No. 131, 2006
Subhead. to s. 95AZM(5) .....	am. No. 8, 2010
S. 95AZM .....	ad. No. 131, 2006

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**Table of Amendments**


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 ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted
 

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Provision affected	How affected
<b>Subdivision D</b>	
S. 95AZN .....	ad. No. 131, 2006
<b>Part VIIA</b>	
Part VIIA .....	ad. No. 134, 2003
<b>Division 1</b>	
Ss. 95A–95F .....	ad. No. 134, 2003
<b>Division 2</b>	
S. 95G .....	ad. No. 134, 2003
<b>Division 3</b>	
<b>Subdivision A</b>	
S. 95H .....	ad. No. 134, 2003
Ss. 95J–95N .....	ad. No. 134, 2003
<b>Subdivision B</b>	
Ss. 95P, 95Q .....	ad. No. 134, 2003
<b>Subdivision C</b>	
Ss. 95R–95W .....	ad. No. 134, 2003
<b>Division 4</b>	
Ss. 95X–95Z .....	ad. No. 134, 2003
Ss. 95ZA–95ZD .....	ad. No. 134, 2003
<b>Division 5</b>	
Ss. 95ZE–95ZG .....	ad. No. 134, 2003
<b>Division 6</b>	
Ss. 95ZH–95ZQ .....	ad. No. 134, 2003
<b>Part VIII</b>	
S. 96 .....	am. No. 88, 1995
S. 96A .....	ad. No. 88, 1995
S. 97 .....	am. No. 88, 1995
S. 100 .....	am. No. 88, 1976; No. 88, 1995
<b>Part IX</b>	
<b>Division 1</b>	
Heading to Div. 1 of Part IX .....	rs. No. 131, 2006
S. 101 .....	am. No. 88, 1976; No. 81, 1977; No. 17, 1986; No. 88, 1995; No. 101, 1998; No. 131, 2006; No. 59, 2009
Heading to s. 101A .....	am. No. 131, 2006
S. 101A .....	ad. No. 81, 1977 am. No. 88, 1995; No. 131, 2006
S. 102 .....	rs. No. 81, 1977 am. No. 222, 1992; No. 88, 1995; No. 101, 1998; No. 131, 2006
<b>Division 2</b>	
S. 102A .....	ad. No. 131, 2006
S. 103 .....	am. No. 131, 2006

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**Table of Amendments**


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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted	
Provision affected	How affected
S. 104 .....	am. No. 88, 1995
S. 109 .....	am. No. 81, 1977; No. 88, 1995; No. 131, 2006
S. 110 .....	am. No. 88, 1976
<b>Division 3</b>	
Div. 3 of Part IX .....	ad. No. 131, 2006
S. 111 .....	am. No. 88, 1976 rep. No. 34, 1989 ad. No. 131, 2006
Ss. 112–119 .....	rep. No. 34, 1989 ad. No. 131, 2006
<b>Part X</b>	
Part X .....	rs. No. 34, 1989
<b>Division 1</b>	
S. 10.01 .....	ad. No. 34, 1989 am. No. 123, 2000
S. 10.01A .....	ad. No. 123, 2000 am. No. 59, 2009
S. 10.02 .....	ad. No. 34, 1989 am. No. 173, 1991; No. 123, 2000
S. 10.02A .....	ad. No. 123, 2000 am. No. 109, 2006
S. 10.03 .....	ad. No. 34, 1989 am. No. 123, 2000; No. 109, 2006
<b>Division 2</b>	
S. 10.04 .....	ad. No. 34, 1989
S. 10.05 .....	ad. No. 34, 1989 rep. No. 123, 2000
<b>Division 3</b>	
Heading to s. 10.06 .....	am. No. 123, 2000
Ss. 10.06, 10.07 .....	ad. No. 34, 1989 am. No. 123, 2000
S. 10.08 .....	ad. No. 34, 1989 am. No. 123, 2000; No. 59, 2009
S. 10.09 .....	ad. No. 34, 1989
<b>Division 4</b>	
S. 10.10 .....	ad. No. 34, 1989
S. 10.11 .....	ad. No. 34, 1989 am. No. 123, 2000
S. 10.12 .....	ad. No. 34, 1989
S. 10.13 .....	ad. No. 34, 1989 am. No. 123, 2000
<b>Division 5</b>	
<b>Subdivision A</b>	
S. 10.14 .....	ad. No. 34, 1989 rs. No. 123, 2000

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**Table of Amendments**


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 ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted
 

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Provision affected	How affected
S. 10.15 .....	ad. No. 34, 1989 am. No. 123, 2000
S. 10.15A .....	ad. No. 123, 2000 rep. No. 123, 2000
S. 10.16 .....	ad. No. 34, 1989 am. No. 123, 2000
Heading to s. 10.17 .....	am. No. 59, 2009
S. 10.17 .....	ad. No. 34, 1989 am. No. 123, 2000; No. 59, 2009
Heading to s. 10.17A .....	am. No. 59, 2009
S. 10.17A .....	ad. No. 173, 1991 rs. No. 123, 2000 am. No. 59, 2009
S. 10.18 .....	ad. No. 34, 1989 am. No. 123, 2000
S. 10.18A .....	ad. No. 173, 1991 rs. No. 123, 2000
<b>Subdivision B</b>	
Heading to s. 10.19 .....	am. No. 59, 2009
S. 10.19 .....	ad. No. 34, 1989 am. No. 123, 2000; No. 59, 2009
Heading to s. 10.20 .....	am. No. 123, 2000
S. 10.20 .....	ad. No. 34, 1989 am. No. 123, 2000
S. 10.21 .....	ad. No. 34, 1989
S. 10.21A .....	ad. No. 123, 2000 rep. No. 123, 2000
Subdiv. C of Div. 5 of Part X .....	rep. No. 123, 2000
Ss. 10.22, 10.23 .....	ad. No. 34, 1989 rep. No. 123, 2000
<b>Subdivision D</b>	
Heading to s. 10.24 .....	am. No. 59, 2009
S. 10.24 .....	ad. No. 34, 1989 am. No. 123, 2000; No. 59, 2009
Heading to s. 10.24A .....	am. No. 59, 2009
S. 10.24A .....	ad. No. 123, 2000 am. No. 7, 2003; No. 59, 2009
<b>Division 6</b>	
<b>Subdivision A</b>	
Ss. 10.25, 10.26 .....	ad. No. 34, 1989
S. 10.27 .....	ad. No. 34, 1989 am. No. 173, 1991; No. 123, 2000
S. 10.27A .....	ad. No. 123, 2000
Ss. 10.28, 10.29 .....	ad. No. 34, 1989 am. No. 123, 2000

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**Table of Amendments**


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ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted	
Provision affected	How affected
<b>Subdivision B</b>	
Ss. 10.30, 10.31 .....	ad. No. 34, 1989
S. 10.32 .....	ad. No. 34, 1989 am. No. 173, 1991
S. 10.33 .....	ad. No. 34, 1989 am. No. 123, 2000
<b>Subdivision C</b>	
Ss. 10.34–10.36 .....	ad. No. 34, 1989
S. 10.37 .....	ad. No. 34, 1989 am. No. 123, 2000
S. 10.38 .....	ad. No. 34, 1989
<b>Subdivision D</b>	
S. 10.39 .....	ad. No. 34, 1989 am. No. 173, 1991
S. 10.40 .....	ad. No. 34, 1989 am. No. 123, 2000
<b>Division 7</b>	
S. 10.41 .....	ad. No. 34, 1989 am. No. 123, 2000
S. 10.42 .....	ad. No. 34, 1989 am. No. 173, 1991
S. 10.43 .....	ad. No. 34, 1989 am. No. 123, 2000
<b>Division 8</b>	
S. 10.44 .....	ad. No. 34, 1989 am. No. 123, 2000
S. 10.45 .....	ad. No. 34, 1989 am. No. 123, 2000; No. 59, 2009
Ss. 10.46, 10.47 .....	ad. No. 34, 1989 am. No. 123, 2000
Heading to s. 10.48 .....	am. No. 123, 2000
S. 10.48 .....	ad. No. 34, 1989 am. No. 123, 2000
S. 10.49 .....	ad. No. 34, 1989
S. 10.49A .....	ad. No. 123, 2000
<b>Division 9</b>	
Heading to s. 10.50 .....	am. No. 123, 2000
S. 10.50–10.53 .....	ad. No. 34, 1989 am. No. 123, 2000
<b>Division 10</b>	
S. 10.54 .....	ad. No. 34, 1989
Ss. 10.55, 10.56 .....	ad. No. 34, 1989 am. No. 123, 2000
S. 10.57 .....	ad. No. 34, 1989
S. 10.58 .....	ad. No. 34, 1989 am. No. 123, 2000

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**Table of Amendments**


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 ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted
 

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Provision affected	How affected
Ss. 10.59, 10.60 .....	ad. No. 34, 1989
<b>Division 11</b>	
S. 10.61 .....	ad. No. 34, 1989
S. 10.62 .....	ad. No. 34, 1989 am. No. 123, 2000
Heading to s. 10.63 .....	rs. No. 123, 2000
Ss. 10.63, 10.64 .....	ad. No. 34, 1989 am. No. 123, 2000
S. 10.65 .....	ad. No. 34, 1989
Ss. 10.66, 10.67 .....	ad. No. 34, 1989 am. No. 123, 2000
<b>Division 12</b>	
Ss. 10.68–10.72 .....	ad. No. 34, 1989
<b>Division 12A</b>	
Div. 12A of Part X .....	ad. No. 123, 2000
S. 10.72A .....	ad. No. 123, 2000 am. No. 123, 2000; No. 109, 2006
Note to s. 10.72A(1) .....	am. No. 109, 2006
Ss. 10.72B–10.72D .....	ad. No. 123, 2000
<b>Division 13</b>	
Ss. 10.73–10.76 .....	ad. No. 34, 1989
<b>Division 14</b>	
Ss. 10.77–10.79 .....	ad. No. 34, 1989
S. 10.80 .....	ad. No. 34, 1989 am. No. 146, 1999
S. 10.81 .....	ad. No. 34, 1989 am. No. 123, 2000
S. 10.82 .....	ad. No. 34, 1989
<b>Division 14A</b>	
Div. 14A of Part X .....	ad. No. 123, 2000
Ss. 10.82A–10.82C .....	ad. No. 123, 2000
<b>Division 14B</b>	
Div. 14B of Part X .....	ad. No. 123, 2000
Ss. 10.82D–10.82G .....	ad. No. 123, 2000
<b>Division 15</b>	
Ss. 10.83–10.86 .....	ad. No. 34, 1989
Ss. 10.87, 10.88 .....	ad. No. 34, 1989 am. No. 123, 2000
S. 10.89 .....	ad. No. 34, 1989
S. 10.90 .....	ad. No. 34, 1989 am. No. 173, 1991; No. 123, 2000
Heading to s. 10.91 .....	am. No. 131, 2006
S. 10.91 .....	ad. No. 34, 1989 am. No. 131, 2006

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**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted	
Provision affected	How affected
Ss. 10.92, 10.93 .....	ad. No. 34, 1989 rep. No. 123, 2000
Ss. 120–129 .....	rep. No. 34, 1989
<b>Part XI</b>	
Part XI .....	rep. No. 88, 1995 ad. No. 44, 2010 rs. No. 103, 2010
<b>Division 1</b>	
S. 130 .....	rep. No. 34, 1989 ad. No. 44, 2010 rs. No. 103, 2010
S. 130A.....	ad. No. 103, 2010
<b>Division 2</b>	
<b>Subdivision A</b>	
S. 131 .....	rep. No. 34, 1989 ad. No. 44, 2010 rs. No. 103, 2010
Ss. 131A–131C .....	ad. No. 103, 2010
<b>Subdivision B</b>	
Ss. 131D–131G.....	ad. No. 103, 2010
<b>Division 3</b>	
<b>Subdivision A</b>	
S. 132 .....	rep. No. 34, 1989 ad. No. 44, 2010 rs. No. 103, 2010
Ss. 132A–132D .....	ad. No. 103, 2010
<b>Subdivision B</b>	
Ss. 132E–132G.....	ad. No. 103, 2010
<b>Subdivision C</b>	
S. 132H .....	ad. No. 103, 2010
<b>Subdivision D</b>	
Ss. 132J, 132K.....	ad. No. 103, 2010
<b>Division 4</b>	
<b>Subdivision A</b>	
S. 133 .....	rep. No. 34, 1989 ad. No. 44, 2010 rs. No. 103, 2010
S. 133A.....	ad. No. 103, 2010
<b>Subdivision B</b>	
Ss. 133B, 133C .....	ad. No. 103, 2010
<b>Subdivision C</b>	
Ss. 133D–133G.....	ad. No. 103, 2010
<b>Subdivision D</b>	
S. 133H .....	ad. No. 103, 2010
S. 133J .....	ad. No. 103, 2010

**Table of Amendments**


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 ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted
 

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Provision affected	How affected
<b>Division 5</b>	
S. 134 .....	rep. No. 34, 1989 ad. No. 44, 2010 rs. No. 103, 2010
Ss. 134A–134G .....	ad. No. 103, 2010
<b>Division 6</b>	
<b>Subdivision A</b>	
S. 135 .....	rep. No. 34, 1989 ad. No. 44, 2010 rs. No. 103, 2010
Ss. 135A–135G .....	ad. No. 103, 2010
<b>Subdivision B</b>	
S. 135H .....	ad. No. 103, 2010
S. 135J .....	ad. No. 103, 2010
<b>Subdivision C</b>	
Ss. 135K–135N .....	ad. No. 103, 2010
S. 135P .....	ad. No. 103, 2010
<b>Subdivision D</b>	
Ss. 135Q, 135R .....	ad. No. 103, 2010
<b>Subdivision E</b>	
Ss. 135S–135Y .....	ad. No. 103, 2010
<b>Subdivision F</b>	
S. 135Z .....	ad. No. 103, 2010
S. 136 .....	rep. No. 34, 1989 ad. No. 44, 2010 rs. No. 103, 2010
S. 136A .....	ad. No. 103, 2010
<b>Subdivision G</b>	
S. 136B .....	ad. No. 103, 2010
<b>Division 7</b>	
S. 137 .....	am. No. 88, 1976 rep. No. 34, 1989 ad. No. 44, 2010 rs. No. 103, 2010
Ss. 137A–137H .....	ad. No. 103, 2010
<b>Division 8</b>	
S. 138 .....	rep. No. 34, 1989 ad. No. 44, 2010 rs. No. 103, 2010
Ss. 138A–138E .....	ad. No. 103, 2010
<b>Division 9</b>	
S. 139 .....	rep. No. 34, 1989 ad. No. 44, 2010 rs. No. 103, 2010
Ss. 139A–139D .....	ad. No. 103, 2010

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**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted	
Provision affected	How affected
S. 139DA .....	ad. No. 103, 2010
Ss. 139E–139G .....	ad. No. 103, 2010
<b>Part XIAA</b>	
Part XIAA .....	ad. No. 61, 1999 rep. No. 111, 2009 ad. No. 103, 2010
S. 140 .....	am. No. 88, 1976 rep. No. 34, 1989 ad. No. 44, 2010 rs. No. 103, 2010
Ss. 140A–140H .....	ad. No. 103, 2010
Ss. 140J, 140K .....	ad. No. 103, 2010
Ss. 141–143 .....	rep. No. 34, 1989 ad. No. 44, 2010 rep. No. 103, 2010
Ss. 144–146 .....	rep. No. 34, 1989
Ss. 147, 148 .....	rep. No. 88, 1995
S. 149 .....	am. No. 88, 1976; No. 81, 1977 rep. No. 88, 1995
S. 150 .....	rep. No. 173, 1991
<b>Part XIA</b>	
Part XIA .....	ad. No. 88, 1995
S. 150A .....	ad. No. 88, 1995 am. No. 61, 1999; No. 131, 2006; No. 44, 2010
Ss. 150B, 150C .....	ad. No. 88, 1995
Heading to s. 150D .....	am. No. 57, 2000
S. 150D .....	ad. No. 88, 1995 am. No. 57, 2000
S. 150E .....	ad. No. 88, 1995
S. 150F .....	ad. No. 88, 1995 rs. No. 131, 2006
Ss. 150FA, 150FB .....	ad. No. 131, 2006
Ss. 150G–150I .....	ad. No. 88, 1995
S. 150J .....	ad. No. 88, 1995 am. No. 131, 2006
S. 150K .....	ad. No. 88, 1995
Ss. 150L–150N .....	ad. No. 61, 1999 rep. No. 111, 2009
Heading to s. 150O .....	am. No. 57, 2000 rep. No. 111, 2009
S. 150O .....	ad. No. 61, 1999 am. No. 57, 2000 rep. No. 111, 2009
Ss. 150P–150T .....	ad. No. 61, 1999 rep. No. 111, 2009
S. 151 .....	rep. No. 173, 1991

**Table of Amendments**


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 ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted
 

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Provision affected	How affected
<b>Part XIB</b>	
Part XIB .....	ad. No. 58, 1997
<b>Division 1</b>	
S. 151AA .....	ad. No. 58, 1997 am. No. 52, 1999; No. 140, 2002
S. 151AB .....	ad. No. 58, 1997 am. No. 52, 1999; No. 140, 2002; No. 45, 2005
Ss. 151AC–151AE .....	ad. No. 58, 1997
S. 151AF .....	ad. No. 58, 1997 am. No. 140, 2010
S. 151AG .....	ad. No. 58, 1997
S. 151AH .....	ad. No. 58, 1997 am. No. 159, 2007
S. 151AI .....	ad. No. 58, 1997
<b>Division 2</b>	
S. 151AJ .....	ad. No. 58, 1997 am. No. 200, 1997; No. 52, 1999; No. 131, 2006; No. 159, 2007; No. 59, 2009; No. 140, 2010
S. 151AK .....	ad. No. 58, 1997
<b>Division 3</b>	
<b>Subdivision A</b>	
S. 151AKA .....	ad. No. 52, 1999 am. No. 140, 2002; No. 140, 2010
Heading to s. 151AL .....	am. No. 52, 1999
S. 151AL .....	ad. No. 58, 1997 am. No. 200, 1997; No. 52, 1999
S. 151AM .....	ad. No. 58, 1997 am. No. 200, 1997
S. 151AN .....	ad. No. 58, 1997 am. No. 200, 1997; No. 52, 1999
Heading to s. 151AO .....	am. No. 52, 1999
S. 151AO .....	ad. No. 58, 1997 am. No. 52, 1999
Ss. 151AOA, 151AOB .....	ad. No. 52, 1999
S. 151AP .....	ad. No. 58, 1997 am. No. 140, 2002
S. 151AQ .....	ad. No. 58, 1997
S. 151AQA .....	ad. No. 52, 1999 am. No. 194, 1999
Subhead. to s. 151AQB(3) .....	ad. No. 140, 2002
Subhead. to s. 151AQB(5) .....	ad. No. 140, 2002
S. 151AQB .....	ad. No. 52, 1999 am. No. 46, 2001; No. 140, 2002
S. 151AR .....	ad. No. 58, 1997

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**Table of Amendments**


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 ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted
 

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Provision affected	How affected
<b>Subdivision B</b>	
Ss. 151AS, 151AT .....	ad. No. 58, 1997
S. 151AU .....	am. No. 140, 2002
Ss. 151AV–151AX .....	ad. No. 58, 1997
Heading to s. 151AY .....	am. No. 131, 2006
S. 151AY .....	ad. No. 58, 1997 am. No. 131, 2006; No. 59, 2009
S. 151AZ .....	ad. No. 58, 1997
Ss. 151BA–151BH .....	ad. No. 58, 1997
S. 151BI .....	ad. No. 58, 1997 rep. No. 146, 2001
<b>Subdivision C</b>	
S. 151BJ .....	ad. No. 58, 1997
<b>Division 4</b>	
Ss. 151BK–151BR .....	ad. No. 58, 1997
S. 151BS .....	ad. No. 58, 1997 rep. No. 146, 2001
S. 151BT .....	ad. No. 58, 1997
<b>Division 5</b>	
S. 151BTA .....	ad. No. 58, 1997 am. No. 146, 2001; No. 140, 2010
<b>Division 6</b>	
Heading to Div. 6 of ..... Part XIB	rs. No. 52, 1999
S. 151BU .....	ad. No. 58, 1997 am. No. 52, 1999
Note to s. 151BU(4) .....	rep. No. 52, 1999
S. 151BUAA .....	ad. No. 140, 2002
S. 151BUAAA .....	ad. No. 140, 2002 rep. No. 140, 2010
S. 151BUAB .....	ad. No. 140, 2002
Ss. 151BUA–151BUC .....	ad. No. 52, 1999 am. No. 52, 1999; No. 146, 2001
S. 151BUD .....	ad. No. 52, 1999
Ss. 151BUDA–151BUDC .....	ad. No. 140, 2002
Heading to s. 151BUE.....	am. No. 8, 2010
S. 151BUE.....	ad. No. 52, 1999 am. No. 8, 2010
S. 151BUF.....	ad. No. 52, 1999
S. 151BV .....	ad. No. 58, 1997 am. No. 146, 2001

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**Table of Amendments**


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 ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted
 

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Provision affected	How affected
<b>Division 7</b>	
Heading to Div. 7 of ..... Part XIB	rs. No. 52, 1999
Heading to s. 151BW .....	am. No. 52, 1999
S. 151BW .....	ad. No. 58, 1997 am. No. 52, 1999
Heading to s. 151BX .....	am. No. 52, 1999
S. 151BX .....	ad. No. 58, 1997 am. No. 52, 1999; No. 119, 2005
S. 151BY .....	ad. No. 58, 1997 am. No. 52, 1999
Heading to s. 151BZ .....	am. No. 52, 1999
S. 151BZ .....	ad. No. 58, 1997 am. No. 52, 1999; No. 146, 2001; No. 59, 2009
Ss. 151CA–151CC .....	ad. No. 58, 1997 am. No. 52, 1999
S. 151CD .....	ad. No. 58, 1997
S. 151CE .....	ad. No. 58, 1997 am. No. 52, 1999
S. 151CF .....	ad. No. 58, 1997
<b>Division 8</b>	
S. 151CG .....	ad. No. 58, 1997
<b>Division 9</b>	
S. 151CH .....	ad. No. 58, 1997
<b>Division 10</b>	
S. 151CI .....	ad. No. 58, 1997 am. No. 52, 1999
Subhead. to s. 151CJ(3) .....	ad. No. 140, 2002
S. 151CJ .....	ad. No. 58, 1997 am. No. 140, 2002
S. 151CK .....	ad. No. 58, 1997
<b>Division 11</b>	
S. 151CL .....	ad. No. 58, 1997
<b>Division 12</b>	
S. 151CM .....	ad. No. 58, 1997 am. No. 52, 1999; No. 46, 2001; No. 111, 2009
<b>Division 12A</b>	
Div. 12A of Part XIB .....	ad. No. 52, 1999
Ss. 151CMA–151CMC .....	ad. No. 52, 1999
<b>Division 13</b>	
S. 151CN .....	ad. No. 58, 1997
<b>Division 14</b>	
Div. 14 of Part XIB .....	ad. No. 119, 2005
S. 151CP .....	ad. No. 119, 2005

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**Table of Amendments**


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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted	
Provision affected	How affected
<b>Division 15</b>	
Div. 15 of Part XIB .....	ad. No. 140, 2010
S. 151CQ.....	ad. No. 140, 2010
S. 152 .....	rep. No. 173, 1991
<b>Part XIC</b>	
Part XIC .....	ad. No. 58, 1997
<b>Division 1</b>	
S. 152AA .....	ad. No. 58, 1997 am. No. 140, 2002; No. 140, 2010
S. 152AB .....	ad. No. 58, 1997 am. No. 119, 2005
S. 152AC .....	ad. No. 58, 1997 am. No. 52, 1999; No. 140, 2002; Nos. 45 and 119, 2005; No. 140, 2010
Ss. 152AD, 152AE .....	ad. No. 58, 1997
S. 152AF .....	ad. No. 58, 1997 am. No. 140, 2010
Ss. 152AG, 152AH.....	ad. No. 58, 1997
S. 152AI .....	ad. No. 58, 1997 rep. No. 140, 2002 ad. No. 140, 2010
Ss. 152AJ, 152AK .....	ad. No. 58, 1997
<b>Division 2</b>	
S. 152AL .....	ad. No. 58, 1997 am. No. 140, 2002; No. 7, 2008
Subhead. to s. 152ALA(7) .....	am. No. 140, 2010
S. 152ALA .....	ad. No. 140, 2002 am. No. 7, 2008; No. 140, 2010
S. 152AM .....	ad. No. 58, 1997 am. No. 140, 2002; No. 45, 2005; No. 140, 2010
S. 152AN .....	ad. No. 58, 1997 am. No. 52, 1999; No. 140, 2002
S. 152AO .....	ad. No. 58, 1997 am. No. 140, 2002; No.119, 2005
S. 152AP .....	ad. No. 58, 1997 rep. No. 140, 2002
S. 152AQ .....	ad. No. 58, 1997 am. No. 140, 2002; No. 140, 2010
S. 152AQA .....	ad. No. 124, 2001 am. No. 140, 2002 rep. No. 140, 2010
Subhead. to s. 152AQB(6) .....	am. No. 45, 2005 rep. No. 140, 2010
S. 152AQB .....	ad. No. 140, 2002 am. No. 45, 2005 rep. No. 140, 2010
S. 152AQC .....	ad. No. 7, 2008

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**Table of Amendments**


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 ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted
 

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Provision affected	How affected
<b>Division 3</b>	
S. 152AR .....	ad. No. 58, 1997 am. No. 140, 2002; No. 140, 2010
Heading to s. 152AS .....	am. No. 140, 2002 rep. No. 140, 2010
S. 152AS .....	ad. No. 58, 1997 rep. No. 140, 2010
Note to s. 152AS(2) .....	ad. No. 119, 2005 rep. No. 140, 2010
Note to s. 152AS .....	ad. No. 119, 2005 rep. No. 140, 2010
S. 152ASA .....	ad. No. 140, 2002 am. No. 140, 2010
Note to s. 152ASA(2) .....	ad. No. 119, 2005
Note to s. 152ASA(13) .....	ad. No. 119, 2005 rep. No. 140, 2010
Heading to s. 152AT .....	am. No. 140, 2002 rep. No. 140, 2010
Subhead. to s. 152AT(1) .....	ad. No. 140, 2002 rep. No. 140, 2010
Subheads. to .....	ad. No. 140, 2002
s. 152AT(3)–152AT(5)	rep. No. 140, 2010
Subheads. to s. 152AT(8), .....	ad. No. 140, 2002
152AT(9)	rep. No. 140, 2010
S. 152AT .....	ad. No. 58, 1997 am. No. 140, 2002; No. 119, 2005; No. 8, 2010 rep. No. 140, 2010
Note to s. 152AT(5) .....	ad. No. 119, 2005 rep. No. 140, 2010
S. 152ATA .....	ad. No. 140, 2002 am. No. 119, 2005; Nos. 8 and 140, 2010
Note to s. 152ATA(4) .....	ad. No. 119, 2005
Note to s. 152ATA(18) .....	rep. No. 140, 2010
S. 152AU .....	ad. No. 58, 1997 am. No. 140, 2002; No. 119, 2005; No. 140, 2010
S. 152AV .....	ad. No. 58, 1997 am. No. 140, 2002 rep. No. 140, 2010
S. 152AW .....	ad. No. 58, 1997 rs. No. 140, 2002 am. No. 8, 2010 rep. No. 140, 2010
S. 152AX .....	ad. No. 58, 1997 am. No. 140, 2002 rep. No. 140, 2010
Heading to s. 152AXA .....	am. No. 140, 2010
S. 152AXA .....	ad. No. 140, 2002 am. No. 140, 2010

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**Table of Amendments**


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ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted	
Provision affected	How affected
S. 152AY .....	ad. No. 58, 1997 rs. No. 140, 2010
S. 152AYA .....	ad. No. 52, 1999
S. 152AZ .....	ad. No. 58, 1997 am. No. 52, 1999
S. 152BA .....	ad. No. 58, 1997 am. No. 52, 1999
S. 152BB .....	ad. No. 58, 1997 am. No. 52, 1999; No. 119, 2005
S. 152BBAA .....	ad. No. 119, 2005 am. No. 140, 2010
Ss. 152BBA, 152BBB.....	ad. No. 52, 1999
S. 152BBC.....	ad. No. 52, 1999 am. No. 140, 2010
S. 152BBD .....	ad. No. 124, 2001
<b>Division 4</b>	
Div. 4 of Part XIC.....	rs. No. 140, 2010
<b>Subdivision A</b>	
Subdiv. A of Div. 4 of .....	rep. No. 140, 2002 ad. No. 140, 2010
S. 152BC .....	ad. No. 58, 1997 rep. No. 140, 2002 ad. No. 140, 2010
Ss. 152BCA–152BCC .....	ad. No. 140, 2010
S. 152BCCA .....	ad. No. 140, 2010
Ss. 152BCD–152BCG.....	ad. No. 140, 2010
S. 152BCGA.....	ad. No. 140, 2010
<b>Subdivision B</b>	
Heading to Subdiv. B of .....	rep. No. 140, 2002
Div. 4 of Part XIC	ad. No. 140, 2010
Ss. 152BCH–152BCK .....	ad. No. 140, 2010
<b>Subdivision C</b>	
Subdiv. C of Div. 4 of .....	rep. No. 140, 2002
Part XIC	ad. No. 140, 2010
S. 152BCN .....	ad. No. 140, 2010
<b>Subdivision D</b>	
Heading to Subdiv. D of .....	rep. No. 140, 2002
Div. 4 of Part XIC	ad. No. 140, 2010
Ss. 152BCO, 152BCP .....	ad. No. 140, 2010
<b>Subdivision E</b>	
Ss. 152BCQ–152BCV .....	ad. No. 140, 2010
<b>Subdivision F</b>	
S. 152BCW.....	ad. No. 140, 2010

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**Table of Amendments**


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 ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted
 

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Provision affected	How affected
<b>Division 4A</b>	
Div. 4A of Part XIC .....	ad. No. 140, 2010
<b>Subdivision A</b>	
S. 152BD .....	ad. No. 58, 1997 rep. No. 140, 2002 ad. No. 140, 2010
S. 152BDAA .....	ad. No. 140, 2010
Ss. 152BDA–152BDC .....	ad. No. 140, 2010
S. 152BDCA .....	ad. No. 140, 2010
Ss. 152BDD, 152BDE .....	ad. No. 140, 2010
S. 152BDEA .....	ad. No. 140, 2010
<b>Subdivision B</b>	
Ss. 152BDF, 152BDG .....	ad. No. 140, 2010
<b>Subdivision C</b>	
Ss. 152BDH–152BDM.....	ad. No. 140, 2010
<b>Subdivision D</b>	
S. 152BDN .....	ad. No. 140, 2010
<b>Division 4B</b>	
Div. 4B of Part XIC .....	ad. No. 140, 2010
S. 152BE .....	ad. No. 58, 1997 rep. No. 140, 2002 ad. No. 140, 2010
Ss. 152BEA–152BED.....	ad. No. 140, 2010
Ss. 152BF–152BI .....	ad. No. 58, 1997 rep. No. 140, 2002
S. 152BJ .....	ad. No. 58, 1997 rs. No. 140, 2002 rep. No. 140, 2010
Heading to s. 152BK .....	am. No. 140, 2002 rep. No. 140, 2010
S. 152BK .....	ad. No. 58, 1997 am. No. 140, 2002 rep. No. 140, 2010
Heading to s. 152BL .....	am. No. 140, 2002 rep. No. 140, 2010
S. 152BL .....	ad. No. 58, 1997 am. No. 140, 2002 rep. No. 140, 2010
Heading to s. 152BM .....	am. No. 45, 2005 rep. No. 140, 2010
S. 152BM .....	ad. No. 58, 1997 am. No. 140, 2002; No. 45, 2005 rep. No. 140, 2010

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**Table of Amendments**


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ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted	
Provision affected	How affected
Heading to s. 152BN .....	am. No. 140, 2002; No. 45, 2005 rep. No. 140, 2010
S. 152BN .....	ad. No. 58, 1997 am. No. 140, 2002; No. 45, 2005 rep. No. 140, 2010
S. 152BO .....	ad. No. 58, 1997 rep. No. 140, 2002
Ss. 152BP, 152BQ .....	ad. No. 58, 1997 rep. No. 140, 2002
S. 152BR .....	ad. No. 58, 1997 am. No. 140, 2002 rep. No. 140, 2010
<b>Division 5</b>	
Heading to Subdiv. A of ..... Div. 5 of Part XIC	ad. No. 140, 2002 rep. No. 140, 2010
Subdiv. A of Div. 5 of ..... Part XIC	rep. No. 140, 2010
Heading to s. 152BS .....	am. No. 140, 2002 rep. No. 140, 2010
S. 152BS .....	ad. No. 58, 1997 am. No. 140, 2002 rep. No. 140, 2010
Note to s. 152BS(1) .....	ad. No. 140, 2002 rep. No. 140, 2010
S. 152BT .....	ad. No. 58, 1997 am. No. 140, 2002; No. 119, 2005 rep. No. 140, 2010
Subheads. to s. 152BU(2), ..... 152BU(3)	ad. No. 140, 2002 rep. No. 140, 2010
S. 152BU .....	ad. No. 58, 1997 am. No. 140, 2002; No. 119, 2005; No. 8, 2010 rep. No. 140, 2010
Ss. 152BV–152BX.....	ad. No. 58, 1997 am. No. 140, 2002 rep. No. 140, 2010
Subhead. to s. 152BY(3) .....	ad. No. 140, 2002 rep. No. 140, 2010
Subhead. to s. 152BY(5) .....	ad. No. 140, 2002 rep. No. 140, 2010
S. 152BY .....	ad. No. 58, 1997 am. No. 140, 2002; No. 119, 2005; No. 8, 2010 rep. No. 140, 2010
S. 152BZ .....	ad. No. 58, 1997 am. No. 140, 2002; No. 119, 2005 rep. No. 140, 2010
Ss. 152CA, 152CB .....	ad. No. 58, 1997 am. No. 140, 2002 rep. No. 140, 2010

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**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted	
Provision affected	How affected
<b>Subdivision B</b>	
Subdiv. B of Div. 5 of ..... Part XIC	ad. No. 140, 2002
S. 152CBA .....	ad. No. 140, 2002 am. No. 140, 2010
S. 152CBAA .....	ad. No. 140, 2010
S. 152CBB.....	ad. No. 140, 2002 am. No. 119, 2005
S. 152CBC .....	ad. No. 140, 2002 am. No. 119, 2005; Nos. 8 and 140, 2010
S. 152CBCA .....	ad. No. 140, 2010
S. 152CBD .....	ad. No. 140, 2002 am. No. 140, 2010
S. 152CBDA.....	ad. No. 140, 2010
Ss. 152CBE, 152CBF .....	ad. No. 140, 2002
S. 152CBG .....	ad. No. 140, 2002 am. No. 119, 2005; Nos. 8 and 140, 2010
S. 152CBH .....	ad. No. 140, 2002 am. No. 119, 2005
S. 152CBI.....	ad. No. 140, 2002
Ss. 152CBIA–152CBIC .....	ad. No. 140, 2010
S. 152CBJ .....	ad. No. 140, 2002
<b>Subdivision C</b>	
Heading to Subdiv. C of ..... Div. 5 of Part XIC	ad. No. 140, 2002
S. 152CC .....	ad. No. 58, 1997 am. No. 140, 2010
S. 152CD .....	ad. No. 58, 1997 am. No. 140, 2002
S. 152CDA .....	ad. No. 119, 2005
S. 152CE .....	ad. No. 58, 1997 am. No. 140, 2002 rep. No. 140, 2010
S. 152CF .....	ad. No. 58, 1997 rs. No. 140, 2002 am. No. 8, 2010 rep. No. 140, 2010
S. 152CG .....	ad. No. 58, 1997 am. No. 140, 2002 rep. No. 140, 2010
Ss. 152CGA, 152CGB .....	ad. No. 140, 2002 rep. No. 140, 2010
<b>Division 6</b>	
S. 152CH .....	ad. No. 58, 1997
Note 1 to s. 152CH(1) .....	rep. No. 140, 2002
Notes 1A, 1B to s. 152CH(1) ....	ad. No. 140, 2002 rep. No. 140, 2010

**Table of Amendments**


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 ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted
 

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Provision affected	How affected
Notes 2, 3 to s. 152CH(1) .....	am. No. 140, 2002 rep. No. 140, 2010
Note 3A to s. 152CH(1) .....	ad. No. 140, 2002
Note 5 to s. 152CH(1) .....	am. No. 140, 2002 rs. No. 140, 2010
Note 5A to s. 152CH(1) .....	ad. No. 140, 2010
Note 6 to s. 152CH(1) .....	rep. No. 140, 2010
Heading to s. 152CI.....	am. No. 140, 2010
S. 152CI .....	ad. No. 58, 1997 am. No. 140, 2002; No. 140, 2010
S. 152CJ .....	ad. No. 58, 1997 am. No. 140, 2010
<b>Division 7</b>	
S. 152CK .....	ad. No. 58, 1997 am. No. 140, 2002
Div. 8 of Part XIC.....	rep. No. 140, 2010
S. 152CL .....	ad. No. 58, 1997 am. No. 52, 1999 rep. No. 140, 2010
S. 152CLA .....	ad. No. 124, 2001 am. No. 140, 2002; No. 119, 2005; No. 8, 2010 rep. No. 140, 2010
Note to s. 152CLA .....	am. No. 140, 2002 rep. No. 140, 2010
S. 152CM .....	ad. No. 58, 1997 rep. No. 140, 2010
Subhead. to s. 152CN(3) .....	ad. No. 124, 2001 rep. No. 140, 2010
S. 152CN .....	ad. No. 58, 1997 am. No. 52, 1999; No. 124, 2001 rep. No. 140, 2010
Ss. 152CO, 152CP .....	ad. No. 58, 1997 rep. No. 140, 2010
S. 152CPA .....	ad. No. 52, 1999 am. No. 124, 2001; No. 119, 2005 rep. No. 140, 2010
S. 152CQ .....	ad. No. 58, 1997 am. No. 140, 2002 rep. No. 140, 2010
S. 152CR .....	ad. No. 58, 1997 am. No. 52, 1999 rep. No. 140, 2010
S. 152CRA .....	ad. No. 124, 2001 rep. No. 140, 2010
S. 152CS .....	ad. No. 58, 1997 rep. No. 140, 2010

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**Table of Amendments**


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 ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted
 

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Provision affected	How affected
Heading to s. 152CT .....	am. No. 52, 1999 rep. No. 140, 2010
S. 152CT .....	ad. No. 58, 1997 am. No. 200, 1997; No. 52, 1999 rep. No. 140, 2010
S. 152CU .....	ad. No. 58, 1997 rep. No. 140, 2010
S. 152CV .....	ad. No. 58, 1997 am. No. 52, 1999; No. 124, 2001 rep. No. 140, 2010
S. 152CW .....	ad. No. 58, 1997 rs. No. 124, 2001 rep. No. 140, 2010
S. 152CWA .....	ad. No. 46, 2001 rs. No. 124, 2001 rep. No. 140, 2010
Subhead. to s. 152CX(3) .....	ad. No. 124, 2001 rep. No. 140, 2010
S. 152CX .....	ad. No. 58, 1997 am. No. 124, 2001 rep. No. 140, 2010
Ss. 152CY, 152CZ .....	ad. No. 58, 1997 rep. No. 140, 2010
Notes 1, 2 to s. 152CZ(1) .....	ad. No. 124, 2001 rep. No. 140, 2010
S. 152DA .....	ad. No. 58, 1997 rep. No. 140, 2010
S. 152DB .....	ad. No. 58, 1997 am. No. 119, 2005 rep. No. 140, 2010
Note to s. 152DB(1) .....	ad. No. 124, 2001 rep. No. 140, 2010
S. 152DBA .....	ad. No. 124, 2001 rep. No. 140, 2010
Ss. 152DC, 152DD .....	ad. No. 58, 1997 rep. No. 140, 2010
Ss. 152DE–152DG .....	ad. No. 58, 1997 am. No. 146, 2001 rep. No. 140, 2010
Ss. 152DH–152DJ .....	ad. No. 58, 1997 rep. No. 140, 2010
S. 152DK .....	ad. No. 58, 1997 am. No. 119, 2005 rep. No. 140, 2010
Ss. 152DL, 152DM .....	ad. No. 58, 1997 rep. No. 140, 2010
S. 152DMA .....	ad. No. 124, 2001 am. No. 119, 2005 rep. No. 140, 2010

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**Table of Amendments**


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ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted	
Provision affected	How affected
S. 152DN .....	ad. No. 58, 1997 rs. No. 52, 1999 am. No. 140, 2002 rep. No. 140, 2010
S. 152DNA .....	ad. No. 52, 1999 am. No. 124, 2001; No. 140, 2002; No. 8, 2010 rep. No. 140, 2010
S. 152DNB .....	ad. No. 52, 1999 am. No. 194, 1999 rep. No. 140, 2010
S. 152DNC .....	ad. No. 140, 2002 rep. No. 140, 2010
Subdiv. F of Div. 8 of Part XIC .....	rep. No. 140, 2002
S. 152DO .....	ad. No. 58, 1997 am. No. 52, 1999; No. 124, 2001 rep. No. 140, 2002
S. 152DOA .....	ad. No. 124, 2001 rep. No. 140, 2002
S. 152DP .....	ad. No. 58, 1997 rep. No. 140, 2002
S. 152DPA .....	ad. No. 124, 2001 rep. No. 140, 2002
S. 152DQ .....	ad. No. 58, 1997 rep. No. 140, 2002
S. 152DR .....	ad. No. 58, 1997 rs. No. 124, 2001 rep. No. 140, 2002
S. 152DS .....	ad. No. 58, 1997 rep. No. 140, 2002
S. 152DT .....	ad. No. 58, 1997 am. No. 52, 1999 rep. No. 140, 2010
S. 152DU .....	ad. No. 58, 1997 am. No. 52, 1999 rep. No. 140, 2010
Ss. 152DV–152DZ .....	ad. No. 58, 1997 rep. No. 140, 2010
S. 152EA .....	ad. No. 58, 1997 rep. No. 140, 2010
S. 152EAA .....	ad. No. 124, 2001 rep. No. 140, 2010
S. 152EB .....	ad. No. 58, 1997 rep. No. 140, 2010
Div. 9 of Part XIC.....	rep. No. 140, 2010
Ss. 152EC–152EE .....	ad. No. 58, 1997 rep. No. 140, 2010

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**Table of Amendments**


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 ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted
 

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Provision affected	How affected
<b>Division 10</b>	
Heading to Div. 10 of ..... Part XIC	rs. No. 140, 2002
Heading to s. 152EF .....	am. No. 140, 2002
S. 152EF .....	ad. No. 58, 1997 am. No. 140, 2002; No. 140, 2010
Heading to s. 152EG .....	am. No. 140, 2002
Ss. 152EG–152EL .....	ad. No. 58, 1997
<b>Division 10A</b>	
Div. 10A of Part XIC .....	ad. No. 119, 2005
S. 152ELA .....	ad. No. 119, 2005 am. No. 140, 2010
Ss. 152ELB, 152ELC .....	ad. No. 119, 2005 am. No. 8, 2010
<b>Division 11</b>	
S. 152ELD .....	ad. No. 140, 2010
Ss. 152EM–152EO .....	ad. No. 58, 1997
S. 152EOA .....	ad. No. 140, 2010
S. 152EP .....	ad. No. 58, 1997
S. 152EQ .....	ad. No. 119, 2005
S. 152ER .....	ad. No. 140, 2010
S. 153 .....	rep. No. 173, 1991
<b>Part XID</b>	
Part XID .....	ad. No. 131, 2006
<b>Division 1</b>	
S. 154 .....	rep. No. 34, 1989 ad. No. 131, 2006
S. 154A .....	ad. No. 131, 2006 am. No. 59, 2009
<b>Division 2</b>	
Ss. 154B, 154C .....	ad. No. 131, 2006
<b>Division 3</b>	
S. 154D .....	ad. No. 131, 2006 am. No. 159, 2007
Ss. 154E, 154F .....	ad. No. 131, 2006
S. 154F .....	ad. No. 131, 2006 am. No. 59, 2009
<b>Division 4</b>	
<b>Subdivision A</b>	
S. 154G .....	ad. No. 131, 2006 am. No. 59, 2009
S. 154GA .....	ad. No. 59, 2009
S. 154H .....	ad. No. 131, 2006 am. No. 59, 2009

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**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted	
Provision affected	How affected
Notes to s. 154H(3), ..... 154H(4)	ad. No. 59, 2009
S. 154J .....	ad. No. 131, 2006
<b>Subdivision B</b>	
Ss. 154K, 154L .....	ad. No. 131, 2006 am. No. 59, 2009
<b>Subdivision C</b>	
Ss. 154M, 154N .....	ad. No. 131, 2006
<b>Subdivision D</b>	
Ss. 154P, 154Q .....	ad. No. 131, 2006
S. 154R .....	ad. No. 131, 2006 am. No. 59, 2009
S. 154RA .....	ad. No. 59, 2009
<b>Subdivision E</b>	
S. 154S .....	ad. No. 131, 2006
Heading to s. 154T .....	am. No. 59, 2009
S. 154T .....	ad. No. 131, 2006 am. No. 59, 2009
Ss. 154U, 154V .....	ad. No. 131, 2006 am. No. 59, 2009
S. 154W .....	ad. No. 131, 2006
<b>Subdivision F</b>	
S. 154X .....	ad. No. 131, 2006
Note to s. 154X(2) .....	ad. No. 59, 2009
Ss. 154Y, 154Z .....	ad. No. 131, 2006
<b>Subdivision G</b>	
S. 154ZA .....	ad. No. 131, 2006
<b>Division 5</b>	
Ss. 154ZB, 154ZC .....	ad. No. 131, 2006
<b>Part XII</b>	
S. 155 .....	am. No. 81, 1977; No. 17, 1986; No. 70, 1990; No. 88, 1995; No. 58, 1997; No. 52, 1999; No. 146, 2001; No. 128, 2002; No. 134, 2003; No. 131, 2006; Nos. 68, 138 and 159, 2007; Nos. 116 and 139, 2008; No. 59, 2009
Note to s. 155(7A) .....	ad. No. 146, 2001
S. 155AAA .....	ad. No. 85, 2007 am. No. 68, 2007; No. 139, 2008; Nos. 103 and 140, 2010
Heading to s. 155AA .....	am. No. 61, 1999; No. 85, 2007
S. 155AA .....	ad. No. 88, 1995 am. No. 61, 1999; No. 131, 2006; No. 85, 2007; No. 111, 2009
S. 155AB .....	ad. No. 58, 1997 am. No. 52, 1999; No. 140, 2002; No. 131, 2006 rep. No. 85, 2007

**Table of Amendments**


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ad. = added or inserted	am. = amended	rep. = repealed	rs. = repealed and substituted
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Provision affected	How affected
S. 155A .....	ad. No. 70, 1990 am. No. 88, 1995; No. 159, 2007
S. 155B .....	ad. No. 70, 1990 am. No. 88, 1995; No. 146, 2001
S. 156 .....	am. No. 70, 1990; No. 88, 1995
Subhead. to s. 157(2) .....	ad. No. 59, 2009
S. 157 .....	am. No. 81, 1977; No. 17, 1986; No. 101, 1998; No. 63, 2001; No. 131, 2006; No. 59, 2009; Nos. 44 and 103, 2010
S. 157AA .....	ad. No. 131, 2006
S. 157A .....	ad. No. 108, 2004
Ss. 157B–157D .....	ad. No. 59, 2009
S. 158 .....	am. No. 81, 1977; No. 88, 1995
S. 159 .....	am. No. 81, 1977; No. 88, 1995; No. 59, 2009
Ss. 160, 161 .....	am. No. 81, 1977; No. 17, 1986; No. 88, 1995; No. 146, 2001
Note to s. 161(2) .....	ad. No. 146, 2001
S. 162 .....	rs. No. 81, 1977 am. No. 17, 1986; No. 88, 1995; No. 58, 1997; No. 146, 2001; No. 108, 2004; No. 103, 2010
S. 162A .....	ad. No. 17, 1986 am. No. 146, 2001; No. 108, 2004
Notes 1, 2 to s. 162A .....	ad. No. 146, 2001
S. 163 .....	am. No. 88, 1976; No. 17, 1986; No. 20, 1988; No. 70, 1990; No. 106, 1998; No. 57, 2000; No. 131, 2006; No. 59, 2009
Heading to s. 163A .....	rs. No. 57, 2000
Subhead. to s. 163A(1) .....	ad. No. 59, 2009
Subhead. to s. 163A(2) .....	ad. No. 59, 2009
Subhead. to s. 163A(3) .....	ad. No. 59, 2009
Subhead. to s. 163A(3A) .....	ad. No. 59, 2009
Subhead. to s. 163A(5) .....	ad. No. 59, 2009
S. 163A .....	ad. No. 88, 1976 am. No. 81, 1977; No. 39, 1983; No. 88, 1995; No. 58, 1997; No. 61, 1999; No. 57, 2000; No. 63, 2001; No. 108, 2004; Nos. 59 and 111, 2009; No. 103, 2010
S. 164 .....	rep. No. 81, 1977
S. 165 .....	am. No. 17, 1986; No. 59, 2009
S. 166 .....	am. No. 88, 1976; No. 81, 1977
S. 167 .....	am. No. 70, 1990; No. 88, 1995; No. 108, 2004
S. 168 .....	rep. No. 81, 1977
S. 169 .....	rs. No. 88, 1976 rep. No. 81, 1977
S. 170 .....	am. No. 88, 1976; No. 81, 1977; No. 61, 1981; No. 17, 1986; No. 106, 1992; No. 88, 1995; No. 36, 1998; No. 146, 1999; No. 131, 2006; No. 103, 2010
S. 171 .....	am. No. 88, 1976; No. 88, 1995; No. 63, 2001; Nos. 92 and 131, 2006; No. 103, 2010

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**Table of Amendments**


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 ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted
 

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Provision affected	How affected
S. 171A .....	ad. No. 136, 1991
Heading to s. 171B .....	am. No. 140, 2010
S. 171B .....	ad. No. 58, 1997 am. No. 140, 2010
S. 172 .....	am. No. 81, 1977; No. 136, 1991; No. 141, 1994; No. 88, 1995; No. 108, 2004; No. 131, 2006; No. 45, 2007; No. 103, 2010
S. 173 .....	ad. No. 106, 1998
<b>Part XIII</b>	
Part XIII .....	ad. No. 59, 2009
<b>Division 1</b>	
Ss. 174–178 .....	ad. No. 59, 2009
<b>Schedule 1</b>	
Heading to Schedule .....	rs. No. 61, 1999 am. No. 111, 2009
Renumbered Schedule 1 .....	No. 44, 2010
Schedule .....	ad. No. 88, 1995
<b>Part 1</b>	
Heading to Part 1 .....	ad. No. 61, 1999
<b>Division 1</b>	
Div. 1 of Part 1 .....	ad. No. 59, 2009
<b>Subdivision A</b>	
Ss. 44ZZRA–44ZZRE .....	ad. No. 59, 2009
<b>Subdivision B</b>	
Ss. 44ZZRF–44ZZRI .....	ad. No. 59, 2009
<b>Subdivision C</b>	
Ss. 44ZZRJ, 44ZZRK .....	ad. No. 59, 2009
<b>Subdivision D</b>	
Ss. 44ZZRL–44ZZRV .....	ad. No. 59, 2009
<b>Division 2</b>	
Heading to Div. 2 of .....	ad. No. 59, 2009
Part 1	
S. 45 .....	ad. No. 88, 1995 am. No. 131, 2006; No. 59, 2009
S. 45A .....	ad. No. 88, 1995 am. No. 131, 2006 rep. No. 59, 2009
Ss. 45B, 45C .....	ad. No. 88, 1995
S. 45D .....	ad. No. 88, 1995 rs. No. 60, 1996
S. 45DA .....	ad. No. 60, 1996
Note to s. 45DA(2) .....	am. No. 103, 2010
S. 45DC .....	ad. No. 60, 1996

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**Table of Amendments**


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ad. = added or inserted	am. = amended	rep. = repealed	rs. = repealed and substituted
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Provision affected	How affected
S. 45DD .....	ad. No. 60, 1996 am. No. 54, 2009
Note to s. 45DD(6) .....	am. No. 54, 2009
S. 45E .....	ad. No. 60, 1996
Ss. 45EA, 45EB .....	ad. No. 60, 1996
S. 46 .....	ad. No. 88, 1995 am. No. 131, 2006; No. 159, 2007; No. 116, 2008
S. 47 .....	ad. No. 88, 1995 am. No. 131, 2006
S. 48 .....	ad. No. 88, 1995
S. 49 .....	ad. No. 131, 2006
S. 50 .....	ad. No. 88, 1995 am. No. 63, 2001; No. 131, 2006
Note to s. 50(1) .....	ad. No. 131, 2006
S. 51 .....	ad. No. 88, 1995 am. No. 88, 1995; No. 60, 1996; No. 63, 2002; No. 103, 2010
Part 2 .....	ad. No. 61, 1999 rep. No. 111, 2009
Ss. 75AT, 75AU .....	ad. No. 61, 1999 am. No. 176, 1999 rep. No. 111, 2009
Ss. 75AV–75AY .....	ad. No. 61, 1999 rep. No. 111, 2009
S. 75AYA .....	ad. No. 69, 2000 rep. No. 111, 2009
S. 75AZ .....	ad. No. 61, 1999 rep. No. 111, 2009
<b>Schedule 2</b>	
Schedule 2 .....	ad. No. 44, 2010 rs. No. 103, 2010
<b>Chapter 1</b>	
Ss. 1–5 .....	ad. No. 44, 2010 rs. No. 103, 2010
S. 6 .....	ad. No. 103, 2010
Ss. 7, 8 .....	ad. No. 44, 2010 rs. No. 103, 2010
Ss. 9–17 .....	ad. No. 103, 2010
<b>Chapter 2</b>	
<b>Part 2-1</b>	
Ss. 18, 19 .....	ad. No. 103, 2010
<b>Part 2-2</b>	
Ss. 20–22 .....	ad. No. 103, 2010
<b>Part 2-3</b>	
Ss. 23–28 .....	ad. No. 103, 2010

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**Table of Amendments**


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 ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted
 

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Provision affected	How affected
<b>Chapter 3</b>	
<b>Part 3-1</b>	
<b>Division 1</b>	
Ss. 29–38 .....	ad. No. 103, 2010
<b>Division 2</b>	
Ss. 39–43 .....	ad. No. 103, 2010
<b>Division 3</b>	
Ss. 44–46 .....	ad. No. 103, 2010
<b>Division 4</b>	
Ss. 47, 48 .....	ad. No. 103, 2010
<b>Division 5</b>	
Ss. 49, 50 .....	ad. No. 103, 2010
<b>Part 3-2</b>	
<b>Division 1</b>	
<b>Subdivision A</b>	
Ss. 51–59 .....	ad. No. 103, 2010
<b>Subdivision B</b>	
Ss. 60–63 .....	ad. No. 103, 2010
<b>Subdivision C</b>	
S. 64 .....	ad. No. 103, 2010
S. 64A .....	ad. No. 103, 2010
<b>Subdivision D</b>	
Ss. 65–68 .....	ad. No. 103, 2010
<b>Division 2</b>	
<b>Subdivision A</b>	
Ss. 69–72 .....	ad. No. 103, 2010
<b>Subdivision B</b>	
Ss. 73–77 .....	ad. No. 103, 2010
<b>Subdivision C</b>	
Ss. 78–81 .....	ad. No. 103, 2010
<b>Subdivision D</b>	
Ss. 82–88 .....	ad. No. 103, 2010
<b>Subdivision E</b>	
Ss. 89–95 .....	ad. No. 103, 2010
<b>Division 3</b>	
Ss. 96–99 .....	ad. No. 103, 2010
<b>Division 4</b>	
Ss. 100–103 .....	ad. No. 103, 2010
<b>Part 3-3</b>	
<b>Division 1</b>	
Ss. 104–108 .....	ad. No. 103, 2010

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**Table of Amendments**


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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted	
Provision affected	How affected
<b>Division 2</b>	
<b>Subdivision A</b>	
Ss. 109–113 .....	ad. No. 103, 2010
<b>Subdivision B</b>	
Ss. 114–117 .....	ad. No. 103, 2010
<b>Subdivision C</b>	
Ss. 118, 119 .....	ad. No. 103, 2010
<b>Subdivision D</b>	
Ss. 120, 121 .....	ad. No. 103, 2010
<b>Division 3</b>	
<b>Subdivision A</b>	
Ss. 122–127 .....	ad. No. 103, 2010
<b>Subdivision B</b>	
S. 128 .....	ad. No. 103, 2010
<b>Division 4</b>	
Ss. 129, 130 .....	ad. No. 103, 2010
<b>Division 5</b>	
Ss. 131, 132 .....	ad. No. 103, 2010
S. 132A .....	ad. No. 103, 2010
<b>Division 6</b>	
S. 133 .....	ad. No. 103, 2010
<b>Part 3-4</b>	
Ss. 134–137 .....	ad. No. 103, 2010
<b>Part 3-5</b>	
<b>Division 1</b>	
Ss. 138–142 .....	ad. No. 103, 2010
<b>Division 2</b>	
Ss. 143–149 .....	ad. No. 103, 2010
<b>Division 3</b>	
S. 150 .....	ad. No. 103, 2010
<b>Chapter 4</b>	
<b>Part 4-1</b>	
<b>Division 1</b>	
Ss. 151–160 .....	ad. No. 103, 2010
<b>Division 2</b>	
Ss. 161–163 .....	ad. No. 103, 2010
<b>Division 3</b>	
S. 164 .....	ad. No. 103, 2010
<b>Division 4</b>	
Ss. 165, 166 .....	ad. No. 103, 2010
<b>Division 5</b>	
Ss. 167, 168 .....	ad. No. 103, 2010

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**Table of Amendments**


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 ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted
 

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Provision affected	How affected
<b>Part 4-2</b>	
<b>Division 1</b>	
S. 169.....	ad. No. 103, 2010
<b>Division 2</b>	
<b>Subdivision A</b>	
Ss. 170–173.....	ad. No. 103, 2010
<b>Subdivision B</b>	
Ss. 174–177.....	ad. No. 103, 2010
<b>Subdivision C</b>	
Ss. 178–181.....	ad. No. 103, 2010
<b>Subdivision D</b>	
Ss. 182–187.....	ad. No. 103, 2010
<b>Division 3</b>	
Ss. 188–191.....	ad. No. 103, 2010
<b>Division 4</b>	
Ss. 192, 193.....	ad. No. 103, 2010
<b>Part 4-3</b>	
<b>Division 1</b>	
Ss. 194–196.....	ad. No. 103, 2010
<b>Division 2</b>	
Ss. 197, 198.....	ad. No. 103, 2010
<b>Division 3</b>	
Ss. 199–201.....	ad. No. 103, 2010
<b>Division 4</b>	
S. 202.....	ad. No. 103, 2010
<b>Part 4-4</b>	
Ss. 203, 204.....	ad. No. 103, 2010
<b>Part 4-5</b>	
Ss. 205, 206.....	ad. No. 103, 2010
<b>Part 4-6</b>	
Ss. 207–211.....	ad. No. 103, 2010
<b>Part 4-7</b>	
Ss. 212–217.....	ad. No. 103, 2010
<b>Chapter 5</b>	
<b>Part 5-1</b>	
<b>Division 1</b>	
S. 218.....	ad. No. 103, 2010
<b>Division 2</b>	
Ss. 219–222.....	ad. No. 103, 2010
<b>Division 3</b>	
S. 223.....	ad. No. 103, 2010

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**Table of Amendments**


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 ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted
 

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Provision affected	How affected
<b>Part 5-2</b>	
<b>Division 1</b>	
Ss. 224–230 .....	ad. No. 103, 2010
<b>Division 2</b>	
Ss. 232–235 .....	ad. No. 103, 2010
<b>Division 3</b>	
S. 236 .....	ad. No. 103, 2010
<b>Division 4</b>	
<b>Subdivision A</b>	
Ss. 237, 238 .....	ad. No. 103, 2010
<b>Subdivision B</b>	
Ss. 239–241 .....	ad. No. 103, 2010
<b>Subdivision C</b>	
Ss. 242–245 .....	ad. No. 103, 2010
<b>Division 5</b>	
Ss. 246–250 .....	ad. No. 103, 2010
<b>Division 6</b>	
Ss. 251–253 .....	ad. No. 103, 2010
<b>Part 5-3</b>	
Ss. 254–258 .....	ad. No. 103, 2010
<b>Part 5-4</b>	
<b>Division 1</b>	
<b>Subdivision A</b>	
Ss. 259–266 .....	ad. No. 103, 2010
<b>Subdivision B</b>	
Ss. 267–270 .....	ad. No. 103, 2010
<b>Division 2</b>	
Ss. 271–273 .....	ad. No. 103, 2010
<b>Division 3</b>	
Ss. 274–276 .....	ad. No. 103, 2010
S. 276A .....	ad. No. 103, 2010
S. 277 .....	ad. No. 103, 2010
<b>Part 5-5</b>	
<b>Division 1</b>	
Ss. 278–286 .....	ad. No. 103, 2010
<b>Division 2</b>	
S. 287 .....	ad. No. 103, 2010

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**Note 2**

Subsection 6(3), subsection 75B(1), heading to section 78, subsection 82(1), section 83, subsection 86(1) and subsections 87(1) and (1C)—Schedule 5 (items 36, 50, 54 (Note), 65, 71, 74, 90 and 96) of the *Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010* (No. 103, 2010) provide as follows:

**Schedule 5****36 Subsection 6(3)**

Omit “Part IVA, of Divisions 1, 1A and 1AA of Part V and of Divisions 2 and 3 of Part VC”, substitute “Parts 2-1, 2-2, 3-1 (other than Division 3), 3-3, 3-4, 4-1 (other than Division 3), 4-3, 4-4 and 5-3 of the Australian Consumer Law”.

**50 Subsection 75B(1)**

Omit “Part IV, IVA, IVB, V or VC, or of section 95AZN or of the Australian Consumer Law”, substitute “Part IV or IVB, or of section 95AZN”.

**54**

Note: The heading to section 78 is altered by omitting “**or V or Australian Consumer Law**”.

**65 Subsection 82(1)**

Omit “Part IV, IVA, IVB or V or section 51AC, or a provision of the Australian Consumer Law,”, substitute “Part IV or IVB”.

**71 Section 83**

Omit “Part IV, IVA, IVB, V or VC, or of the Australian Consumer Law,”, substitute “Part IV or IVB”.

**74 Subsection 86(1)**

Omit “or has been instituted in relation to subsection 2(1) or 6(1) of the Australian Consumer Law (as applied under Division 1 of Part XI)”.

**90 Subsection 87(1)**

Omit “Part IV, IVA, IVB, V or VC or of the Australian Consumer Law”, substitute “Division 2 of Part IVB”.

### **Note 3**

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#### **96 Subsection 87(1C)**

Omit “Part IV, IVA, IVB, V or VC, or a provision of the Australian Consumer Law,”, substitute “Part IV or Division 2 of Part IVB”.

The proposed amendments were misdescribed and are not incorporated in this compilation.

### **Note 3**

*Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010* (No. 140, 2010)

The following amendments commence immediately after a final functional separation undertaking comes into force under Part 9 of Schedule 1 to the *Telecommunications Act 1997*:

### **Schedule 1**

#### **57 Division 14 of Part XIB**

Repeal the Division, substitute:

#### **Division 14—Functional separation for Telstra**

##### **151CP Functional separation for Telstra**

###### *Scope*

- (1) This section applies if a final functional separation undertaking given by Telstra is in force under Part 9 of Schedule 1 to the *Telecommunications Act 1997*.

###### *Commission must have regard to Telstra’s conduct*

- (2) If Telstra has engaged, or is required to engage, in conduct in order to comply with the undertaking, then, in performing a function, or exercising a power, under this Part in relation to Telstra, the Commission must have regard to the conduct to the extent that the conduct is relevant.

*Commission must not prevent Telstra from complying with the undertaking*

- (3) The Commission must not perform a function, or exercise a power, under this Part so as to prevent Telstra from complying with the undertaking.

## **58 After section 152EP**

Insert:

### **152EPA Assistance to independent telecommunications adjudicator**

- (1) For the purposes of this section, the *independent telecommunications adjudicator* is a company that:
  - (a) is limited by guarantee; and
  - (b) is identified, in a final functional separation undertaking in force under Part 9 of Schedule 1 to the *Telecommunications Act 1997*, as the independent telecommunications adjudicator for the purpose of this section.
- (2) The Commission may assist the independent telecommunications adjudicator.
- (3) The assistance may include the following:
  - (a) the provision of information (including protected information within the meaning of section 155AAA);
  - (b) the provision of advice;
  - (c) the making available of resources and facilities (including secretariat services and clerical assistance).

## **59 Section 152EQ**

Repeal the section, substitute:

### **152EQ Functional separation for Telstra**

*Scope*

- (1) This section applies if a final functional separation undertaking given by Telstra is in force under Part 9 of Schedule 1 to the *Telecommunications Act 1997*.

### Note 3

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*Commission must have regard to Telstra's conduct*

- (2) If Telstra has engaged, or is required to engage, in conduct in order to comply with the undertaking, then, in performing a function, or exercising a power, under this Part in relation to Telstra, the Commission must have regard to the conduct to the extent that the conduct is relevant.

*Commission must not prevent Telstra from complying with the undertaking*

- (3) The Commission must not perform a function, or exercise a power, under this Part so as to prevent Telstra from complying with the undertaking.

The following amendments commence immediately after an undertaking comes into force under section 577A of the *Telecommunications Act 1997*:

### Schedule 1

#### 66 Division 14 of Part XIB

Repeal the Division.

#### 67 Section 152EQ

Repeal the section, substitute:

#### 152EQ Assistance to independent telecommunications adjudicator

- (1) For the purposes of this section, the *independent telecommunications adjudicator* is a company that:
- (a) is limited by guarantee; and
  - (b) is identified, in an undertaking in force under section 577A of the *Telecommunications Act 1997*, as the independent telecommunications adjudicator for the purpose of this section.
- (2) The Commission may assist the independent telecommunications adjudicator.
- (3) The assistance may include the following:
- (a) the provision of information (including protected information within the meaning of section 155AAA);

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**Note 3**

- (b) the provision of advice;
- (c) the making available of resources and facilities (including secretariat services and clerical assistance).

As at 1 January 2011 the amendments are not incorporated in this compilation.

**Table A**

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**Table A**

**Application, saving or transitional provisions**

*Workplace Relations and Other Legislation Amendment Act 1996*  
(No. 60, 1996)

**Schedule 17**

**29 Definitions**

In this Part:

*amended TP Act* means the *Trade Practices Act 1974* as in force after the commencement.

*amended WR Act* means the *Workplace Relations Act* as in force after the commencement.

*commencement* means the commencement of this Schedule.

*Commission* has the same meaning as in the amended WR Act.

*conduct* includes threatened, impending or probable conduct.

*jurisdiction transfer day* means the transfer day as defined in Part 3 of Schedule 16.

*old TP Act* means the *Trade Practices Act 1974* as in force immediately before the commencement.

*old WR Act* means the *Workplace Relations Act* as in force immediately before the commencement.

**30 Conciliation proceedings in progress under Division 7 of Part VI of old WR Act**

If:

- (a) before the commencement, the Commission was exercising conciliation powers under Division 7 of Part VI of the old WR Act in relation to a dispute about conduct; and
- (b) that conduct continues after the commencement; and
- (c) paragraphs 156(a) and (b) of the amended WR Act are satisfied in relation to the dispute;

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**Table A**

the Commission may exercise conciliation powers under the amended WR Act in relation to the dispute as if the Commission had been notified of the dispute under section 157 of the amended WR Act.

**31 If certificate under section 163D of old WR Act granted in relation to conduct that ended before commencement**

If, before the commencement, the Commission granted a certificate under section 163D of the old WR Act in relation to a dispute about conduct and the conduct ended before the commencement:

- (a) the old WR Act continues to apply to that conduct as though the amendments made by this Schedule had not been made; and
- (b) subject to paragraph (c), a reference in Division 7 of Part VI of the old WR Act as so applying to the “Court” is to be taken, on and after the jurisdiction transfer day, to be a reference to the Federal Court of Australia; and
- (c) if, under Part 3 of Schedule 16, the Industrial Relations Court continues to have jurisdiction in relation to proceedings begun before the jurisdiction transfer day in relation to that conduct, that Court may, in accordance with that Part of that Schedule, continue to exercise jurisdiction in the proceedings.

Note: If no certificate was granted under section 163D of the old WR Act in relation to conduct that ended before the commencement, then (subject to item 30) no relief is available under the old WR Act or the amended TP Act in relation to that conduct.

**32 If certificate under section 163D of old WR Act granted in relation to conduct that continues after commencement**

- (1) This item applies if, before the commencement, the Commission granted a certificate under section 163D of the old WR Act in relation to a dispute about conduct and the conduct continues after the commencement.
- (2) In relation to so much of the conduct as occurred before the commencement:
  - (a) the old WR Act continues to apply to that conduct as though the amendments made by this Schedule had not been made; and
  - (b) subject to paragraph (c), a reference in Division 7 of Part VI of the old WR Act as so applying to the “Court” is to be

**Table A**

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taken, on and after the jurisdiction transfer day, to be a reference to the Federal Court of Australia; and

- (c) if, under Part 3 of Schedule 16, the Industrial Relations Court continues to have jurisdiction in relation to proceedings begun before the jurisdiction transfer day in relation to that conduct, that Court may, in accordance with that Part of that Schedule, continue to exercise jurisdiction in the proceedings.

- (3) In relation to so much of the conduct as occurs after the commencement, the amended TP Act applies as if that conduct had started on the commencement.

**33 If no certificate under section 163D of old WR Act granted in relation to conduct that continues after commencement**

If:

- (a) before the commencement, there was a dispute about conduct to which Division 7 of Part VI of the old WR Act applied; and
- (b) no certificate under section 163D of the old WR Act was granted in relation to the dispute before the commencement; and
- (c) the conduct continues after the commencement;

then, in relation to so much of the conduct as occurs after the commencement, the amended TP Act applies as if that conduct had started on the commencement.

Note: If no certificate was granted under section 163D of the old WR Act in relation to conduct that continues after the commencement, then (subject to item 30) no relief is available under the old WR Act or the amended TP Act in relation to so much of the conduct as occurred before the commencement.

**34 If conduct to which section 45D of old TP Act applied ended before commencement**

If conduct to which section 45D of the old TP Act applied ended before the commencement, the old TP Act continues to apply to that conduct as though the amendments made by this Schedule had not been made.

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**35 If conduct to which section 45D of old TP Act applied continues after commencement**

- (1) This item applies if conduct to which section 45D of the old TP Act applied started before the commencement and continues after the commencement.
- (2) In relation to so much of the conduct as occurred before the commencement, the old TP Act continues to apply to that conduct as though the amendments made by this Schedule had not been made.
- (3) In relation to so much of the conduct as occurs after the commencement, the amended TP Act applies as if that conduct started on the commencement.

**36 Power to vary or rescind orders and injunctions made under repealed provisions**

- (1) An order or injunction:
  - (a) made by a court before the commencement under or in relation to a repealed provision; or
  - (b) made by a court after the commencement under or in relation to a repealed provision as the provision continues to apply because of this Part;may, subject to subsection (2), be varied or rescinded by the court after the commencement, despite the repeal of the provision, as if the amendments made by this Schedule had not been made.
- (2) If the court that made the order or injunction is or was the Industrial Relations Court of Australia, the power to vary or rescind the order or injunction given by subsection (1) is, on or after the jurisdiction transfer day, to be exercised by the Federal Court of Australia, unless Part 3 of Schedule 16 provides for the Industrial Relations Court of Australia to continue to exercise jurisdiction in proceedings for the variation or rescission of the order or injunction.
- (3) In this section:

***repealed provision*** means:

  - (a) a provision of Division 7 of Part VI of the old WR Act; or
  - (b) section 45D of the old TP Act.

**Table A**

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**37 Power to vary or revoke decisions of Commission made under repealed provisions**

- (1) A decision of the Commission:
- (a) made before the commencement under or in relation to a repealed provision; or
  - (b) made after the commencement under or in relation to a repealed provision as the provision continues to apply because of this Part;
- may be varied or revoked by the Commission after the commencement, despite the repeal of the provision, as if the amendments made by this Schedule had not been made.
- (2) In this section:
- decision* includes an order, direction or determination.
- repealed provision* means a provision of Division 7 of Part VI of the old WR Act.

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*Trade Practices Amendment (Telecommunications) Act 1997*  
(No. 58, 1997)

**Schedule 1**

**15 Application—amendments of section 163A of the Trade Practices Act**

The amendments of section 163A of the *Trade Practices Act 1974* made by this Schedule do not apply to a proceeding instituted before the commencement of this item.

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**Table A***Gas Pipelines Access (Commonwealth) Act 1998* (No. 101, 1998)**Schedule 1****36 Saving provision**

Despite the repeal of subsection 89(3), the register of applications in place under that subsection immediately before the day item 35 commences continues to have effect on and after that date as if it had been created for the purposes of subsection 89(3) of the *Trade Practices Act 1974* as amended by this Act.

**47 Saving provision**

If, before the commencement of item 46:

- (a) the Commission had given notice under paragraph 91(4)(a) of the *Trade Practices Act 1974* in relation to the authorization; but
- (b) the Commission had not made a determination under paragraph 91(4)(b) of that Act;

subsection 91(4) of that Act continues in force as if the amendments of that Act made by items 27 to 56 had not been made.

**50 Saving provision**

Any application made by a person for review of a determination under subsection 101(1) of the *Trade Practices Act 1974* as in force before the commencement of item 49 has effect, on and after the commencement of that item, as if it were an application for that determination made under subsection 101(1) of the *Trade Practices Act 1974* as amended by that item.

*Telecommunications Legislation Amendment Act 1999* (No. 52, 1999)**Schedule 1****72 Transitional—section 151CM of the *Trade Practices Act 1974***

- (1) This item applies to a report under subsection 151CM(1) of the *Trade Practices Act 1974* for the financial year in which this item commenced.

**Table A**

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- (2) To avoid doubt, that report must deal with matters covered by paragraphs 151CM(1)(b) and (c) of that Act in relation to the whole of that financial year.

**73 Transitional—interim determinations**

An interim determination may be made in relation to an arbitration under Division 8 of Part XIC of the *Trade Practices Act 1974*, whether the access dispute was notified before, at or after the commencement of this item.

**74 Transitional—backdating of final determinations**

A final determination made by the Commission under Division 8 of Part XIC of the *Trade Practices Act 1974* has no effect to the extent (if any) to which any provision of the determination is expressed to have taken effect on a date earlier than the date of commencement of this item.

**75 Transitional—pre-commencement competition notices**

- (1) Despite the amendments made by items 6, 8, 11, 12, 14, 15, 16, 17, 18, 19, 21, 37, 41, 42 and 43 of this Schedule, Part XIB of the *Trade Practices Act 1974* continues to apply, after the commencement of this item, in relation to a competition notice in force immediately before the commencement of this item, as if those amendments had not been made.
- (2) Subsection 151AOA(2) of the *Trade Practices Act 1974* applies to a competition notice in force immediately before the commencement of this item in a corresponding way to the way in which it applies to a Part A competition notice.

**76 Transitional—section 152CT of the *Trade Practices Act 1974***

The amendments of section 152CT of the *Trade Practices Act 1974* made by this Schedule do not affect the continuity of a direction in force under that section immediately before the commencement of this item.

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**77 Transitional—interpretation of pre-commencement provisions of the *Trade Practices Act 1974***

In determining the meaning that a provision of the *Trade Practices Act 1974* had before the commencement of this item, the amendments made by this Schedule are to be disregarded.

**Schedule 3**

**81 Transitional—section 151CM of the *Trade Practices Act 1974***

Section 151CM of the *Trade Practices Act 1974* has effect, after the commencement of this item, as if the reference in that section to Part 9 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* included a reference to repealed Part 6 of the *Telstra Corporation Act 1991*.

**Schedule 4**

**28 Transitional—section 151CM of the *Trade Practices Act 1974***

Section 151CM of the *Trade Practices Act 1974* has effect, after the commencement of this item, as if the reference in that section to Division 5 of Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* included a reference to repealed Division 5 of Part 7 of the *Telecommunications Act 1997*.

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*Trade Practices Amendment (International Liner Cargo Shipping) Act 2000*  
(No. 123, 2000)

**Schedule 1**

**171 Transitional—declarations under subsection 10.03(1) of the *Trade Practices Act 1974***

- (1) This item applies to a declaration if:
- (a) the declaration was made under subsection 10.03(1) of the *Trade Practices Act 1974*; and
  - (b) the declaration was in force immediately before the commencement of this item.

**Table A**

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- (2) The declaration has effect, after the commencement of this item, as if:
  - (a) the declaration had been made under subsection 10.03(1) of the *Trade Practices Act 1974* as amended by this Schedule; and
  - (b) a reference in the declaration to a designated peak shipper body were a reference to a designated outwards peak shipper body.
- (3) The Registrar must take such action, by way of modifying the register of designated shipper bodies, as is necessary to ensure that the register is consistent with subitem (2).

**172 Transitional—declarations under subsection 10.03(2) of the *Trade Practices Act 1974***

- (1) This item applies to a declaration if:
  - (a) the declaration was made under subsection 10.03(2) of the *Trade Practices Act 1974*; and
  - (b) the declaration was in force immediately before the commencement of this item.
- (2) The declaration has effect, after the commencement of this item, as if:
  - (a) the declaration had been made under subsection 10.03(2) of the *Trade Practices Act 1974* as amended by this Schedule; and
  - (b) a reference in the declaration to a designated secondary shipper body were a reference to a designated outwards secondary shipper body.
- (3) The Registrar must take such action, by way of modifying the register of designated shipper bodies, as is necessary to ensure that the register is consistent with subitem (2).

**173 Transitional—notices under section 10.29 of the *Trade Practices Act 1974***

- (1) This item applies to a notice if:
  - (a) the notice was given under subsection 10.29(3) of the *Trade Practices Act 1974*; and
  - (b) the notice was in force immediately before the commencement of this item.

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**Table A**

- (2) The notice has effect, after the commencement of this item, as if:
- (a) the notice had been given under subsection 10.29(3) of the *Trade Practices Act 1974* as amended by this Schedule; and
  - (b) a reference in the notice to a designated secondary shipper body were a reference to a designated outwards secondary shipper body.
- (3) The Registrar must take such action, by way of modifying the register of designated shipper bodies, as is necessary to ensure that the register is consistent with subitem (2).

**174 Transitional—notifications under section 10.41 of the *Trade Practices Act 1974***

- (1) This item applies to a notice if:
- (a) the notice was given under paragraph (b) of the definition of *relevant designated shipper body* in subsection 10.41(3) of the *Trade Practices Act 1974*; and
  - (b) the notice was in force immediately before the commencement of this item.
- (2) The notice has effect, after the commencement of this item, as if:
- (a) the notice had been given under subparagraph (a)(ii) of the definition of *relevant designated shipper body* in subsection 10.41(3) of the *Trade Practices Act 1974* as amended by this Schedule; and
  - (b) a reference in the notice to a designated secondary shipper body were a reference to a designated outwards secondary shipper body.
- (3) The Registrar must take such action, by way of modifying the register of designated shipper bodies, as is necessary to ensure that the register is consistent with subitem (2).

**175 Transitional—pre-commencement directions under section 10.44 of the *Trade Practices Act 1974***

- (1) This item applies to a direction under section 10.44 of the *Trade Practices Act 1974* that was given before the commencement of this item.

**Table A**

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- (2) Despite the amendments of section 10.45 and subsections 10.46(1) and (3), 10.47(1) and 10.48(1) of the *Trade Practices Act 1974* made by this Schedule, those provisions continue to apply after the commencement of this item, in relation to that direction, as if those amendments had not been made.

**176 Transitional—notices under section 10.52 of the *Trade Practices Act 1974***

- (1) This item applies to a notice if:
- (a) the notice was given under paragraph (b) of the definition of ***relevant designated shipper body*** in subsection 10.52(3) of the *Trade Practices Act 1974*; and
  - (b) the notice was in force immediately before the commencement of this item.
- (2) The notice has effect, after the commencement of this item, as if:
- (a) the notice had been given under subparagraph (a)(ii) of the definition of ***relevant designated shipper body*** in subsection 10.52(3) of the *Trade Practices Act 1974* as amended by this Schedule; and
  - (b) a reference in the notice to a designated secondary shipper body were a reference to a designated outwards secondary shipper body.
- (3) The Registrar must take such action, by way of modifying the register of designated shipper bodies, as is necessary to ensure that the register is consistent with subitem (2).

**177 Transitional—pre-commencement inquiries**

- (1) This item applies if, before the commencement of this item, a question was referred to the Tribunal under section 10.50 or 10.63 of the *Trade Practices Act 1974* for inquiry and report.
- (2) Despite the amendments and repeals made by items 2, 65, 120, 121, 123, 124, 125, 137, 138, 139, 140, 145, 147, 152 and 153 of this Schedule, subsection 40(3) and Part X of the *Trade Practices Act 1974* continue to apply after the commencement of this item, in relation to that inquiry and report, as if those amendments and repeals had not been made.

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**Table A**

**178 Application—review of decisions of Commission**

Division 14A of Part X of the *Trade Practices Act 1974* applies to decisions of the Commission made after the commencement of this item.

**179 Application—review of decisions of the Minister**

Division 14B of Part X of the *Trade Practices Act 1974* applies to decisions of the Minister made after the commencement of this item.

**180 Transitional—pre-commencement inwards liner cargo shipping services**

Despite the repeals made by items 155 to 164 (inclusive) of this Schedule, the provisions of the *Trade Practices Act 1974* repealed by those items continue to apply after the commencement of this item, in relation to an inwards liner cargo shipping service provided wholly or partly before the commencement of this item, as if those repeals had not been made.

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*Communications and the Arts Legislation Amendment Act 2001*  
(No. 46, 2001)

**6 Saving of notices**

A notice in force under subsection 151AQB(2) of the *Trade Practices Act 1974* immediately before the commencement of this section is taken, after the commencement of this section, to be an advisory notice in force under subsection 151AQB(1) of that Act.

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*Trade Practices Amendment Act (No. 1) 2001* (No. 63, 2001)

**Schedule 1**

**5 Application of items 3 and 4**

The amendments made by items 3 and 4 apply in relation to a law of a State or Territory made before, on or after the commencement of those items.

**Table A**

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**8 Application of items 6 and 7**

The amendments made by items 6 and 7 apply in relation to goods supplied on or after the commencement of those items.

**10 Application of item 9**

The amendment made by item 9 only applies in relation to conduct engaged in on or after the commencement of that item.

**13 Application of item 12**

The amendment made by item 12 only applies in relation to conduct engaged in on or after the commencement of that item.

**15 Application of item 14**

The amendment made by item 14 does not apply in relation to a proceeding instituted under this Act in relation to a person if, before the commencement of that item, the Court:

- (a) ordered the person to pay a pecuniary penalty; or
- (b) imposed a fine on the person.

**17 Saving**

Despite the repeal of section 80A of the *Trade Practices Act 1974* made by item 16, an order made under that section that is in force immediately before the commencement of that item continues in force as if the repeal had not been made.

**19 Application of item 18**

The amendment made by item 18 only applies in relation to conduct engaged in on or after the commencement of that item.

**21 Application of item 20**

- (1) The amendment made by item 20 applies in relation to conduct engaged in on or after the commencement of that item.
- (2) The amendment made by item 20 also applies in relation to conduct engaged in before the commencement of that item, but only if the period that:
  - (a) relates to the conduct; and

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**Table A**

- (b) applied under subsection 82(2) of the *Trade Practices Act 1974* before the commencement of that item;

had not ended when that item commenced.

**23 Application of item 22**

The amendment made by item 22 only applies in relation to conduct engaged in on or after the commencement of that item.

**25 Application of item 24**

The amendment made by item 24 only applies in relation to conduct engaged in on or after the commencement of that item.

**27 Application of item 26**

The amendment made by item 26 only applies in relation to conduct engaged in on or after the commencement of that item.

**29 Application of item 28**

The amendment made by item 28 only applies to conduct engaged in on or after the commencement of that item.

**32 Application of item 31**

- (1) The amendment made by item 31 applies in relation to conduct engaged in on or after the commencement of that item.
- (2) The amendment made by item 31 also applies in relation to conduct engaged in before the commencement of that item, but only if the period that:
- (a) relates to the conduct; and
  - (b) applied under subsection 87(1CA) of the *Trade Practices Act 1974* before the commencement of that item;
- had not ended when that item commenced.

**34 Application of item 33**

The amendment made by item 33 only applies in relation to proceedings instituted on or after the commencement of that item.

**Table A**

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**36 Application of item 35**

The amendment made by item 35 only applies in relation to conduct engaged in on or after the commencement of that item.

**38 Application of item 37**

The amendment made by item 37 only applies in relation to matters arising on or after the commencement of that item.

**Schedule 2**

**3 Application of items 1 and 2**

The amendments made by items 1 and 2 only apply in relation to conduct engaged in on or after the commencement of those items.

**5 Application of item 4**

The amendment made by item 4 only applies in relation to conduct engaged in on or after the commencement of that item.

**8 Application of items 6 and 7**

The amendments made by items 6 and 7 only apply in relation to conduct engaged in on or after the commencement of those items.

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*Treasury Legislation Amendment (Application of Criminal Code) Act (No. 3) 2001* (No. 117, 2001)

**4 Application of amendments**

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
  - (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.
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**Table A**

*Trade Practices Amendment (Telecommunications) Act 2001* (No. 124, 2001)

**Schedule 1**

**23 Application of amendments**

- (1) The amendment made by item 1 applies in relation to:
  - (a) services that are declared to be declared services after the commencement of this Act; and
  - (b) declared services that are varied after the commencement of this Act.
- (2) The amendments made by items 4, 5, 6 and 16 apply in relation to access disputes that are notified after the commencement of this Act.
- (3) The amendment made by item 7 applies in relation to determinations that are made after the commencement of this Act.
- (4) The amendments made by items 14 and 15 apply in relation to access disputes that are notified either before or after the commencement of this Act.
- (5) The amendments made by items 17, 18 and 19 apply in relation to applications for review that are made after the commencement of this Act.
- (6) The amendment made by item 20 applies in relation to applications for review, or applications for a writ or injunction, that are made after the commencement of this Act.
- (7) The amendment made by item 21 applies in relation to appeals that are made after the commencement of this Act.

**24 Transitional—backdating final determinations**

- (1) This item applies to a final determination made after the commencement of this Act in respect of an access dispute notified after the commencement of this Act.

## **Table A**

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- (2) Despite the amendment made by item 16, the final determination has no effect to the extent (if any) to which any provision of the determination is expressed to have taken effect on a date earlier than the date of commencement of this Act.
- (3) In this item:
- final determination* means a final determination made by the Commission under Division 8 of Part XIC of the *Trade Practices Act 1974*.

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*Treasury Legislation Amendment (Application of Criminal Code) Act (No. 2) 2001* (No. 146, 2001)

## **4 Application of amendments**

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

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*Trade Practices Amendment Act (No. 1) 2002* (No. 128, 2002)

## **Schedule 1**

### **4 Application**

The amendments made by items 1 to 3 apply only to conduct engaged in after the commencement of this Schedule.

### **7 Application**

The amendments made by items 5 and 6 apply only to a contravention of a provision of Part VC of the *Trade Practices Act 1974* that occurs after the commencement of this Schedule.

**9 Application**

The amendment made by item 8 applies only to a contravention of subsection 155(5) or (6) of the *Trade Practices Act 1974* that occurs after the commencement of this Schedule.

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*Telecommunications Competition Act 2002* (No. 140, 2002)

**Schedule 2****9 Transitional—review of determinations**

- (1) This item applies if:
  - (a) a final determination was made by the Commission under Division 8 of Part XIC of the *Trade Practices Act 1974* before the commencement of this item; or
  - (b) both:
    - (i) a final determination is made by the Commission under Division 8 of Part XIC of the *Trade Practices Act 1974* after the commencement of this item; and
    - (ii) the final determination relates to an access dispute that was notified under section 152CM of the *Trade Practices Act 1974* before 26 September 2002.
- (2) Despite the amendments made by this Part, the *Trade Practices Act 1974* continues to apply, in relation to a review of the final determination, as if those amendments had not been made.

**15 Transitional—section 152ALA of the *Trade Practices Act 1974***

- (1) This item applies to a declaration if:
  - (a) the declaration was made under section 152AL of the *Trade Practices Act 1974*; and
  - (b) the declaration was in force immediately before the commencement of this item.
- (2) Section 152ALA of the *Trade Practices Act 1974* does not apply to the declaration unless and until the Commission makes a determination in relation to the declaration under subitem (3).

**Table A**

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- (3) The Commission may, by notice published in the *Gazette*, determine that section 152ALA of the *Trade Practices Act 1974* has effect, in relation to a declaration specified in the determination, as if a date specified in the determination had been specified in the declaration as the expiry date of the declaration.
- (4) The specified date must occur within the 5-year period beginning on the commencement of this item.
- (5) The Commission must take all reasonable steps to ensure that each declaration is covered by a determination under subitem (3) within 6 months after the commencement of this item.

**19 Transitional—section 152CQ of the *Trade Practices Act 1974***

To avoid doubt, the amendments of section 152CQ of the *Trade Practices Act 1974* made by this Part do not affect the validity of a determination made before the commencement of this item.

**21 Transitional—section 152CQ of the *Trade Practices Act 1974***

To avoid doubt, the amendment of section 152CQ of the *Trade Practices Act 1974* made by this Part does not affect the validity of a determination made before the commencement of this item.

**69 Application—section 152AW of the *Trade Practices Act 1974***

- (1) Subsections 152AW(1), (2) and (3) of the *Trade Practices Act 1974* as amended by this Part apply in relation to:
  - (a) an application under section 152AV of the *Trade Practices Act 1974* that was made after the commencement of this item; or
  - (b) an application under section 152AV of the *Trade Practices Act 1974* that was made before the commencement of this item, so long as the Tribunal did not make a decision on the review under subsection 152AW(1) of that Act before the commencement of this item.

**Table A**

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- (2) Subsections 152AW(4) to (7) of the *Trade Practices Act 1974* as amended by this Part apply in relation to an application under section 152AV of the *Trade Practices Act 1974* that was made after the commencement of this item.
  - (3) Despite the repeal of subsection 152AW(4) of the *Trade Practices Act 1974* by this Part, that subsection continues to apply, in relation to an application under section 152AV of the *Trade Practices Act 1974* that was made before the commencement of this item, as if that repeal had not happened.

**110 Transitional—subsection 152BS(6A) of the *Trade Practices Act 1974***

To avoid doubt, an access undertaking given before the commencement of subsection 152BS(6A) of the *Trade Practices Act 1974* is as valid as it would have been if that subsection had been in force when the undertaking was given.

**111 Application—section 152CF of the *Trade Practices Act 1974***

- (1) Subsections 152CF(1), (2) and (3) of the *Trade Practices Act 1974* as amended by this Part apply in relation to:
    - (a) an application under section 152CE of the *Trade Practices Act 1974* that was made after the commencement of this item; or
    - (b) an application under section 152CE of the *Trade Practices Act 1974* that was made before the commencement of this item, so long as the Tribunal did not make a decision on the review under subsection 152CF(1) of that Act before the commencement of this item.
  - (2) Subsections 152CF(4) to (8) of the *Trade Practices Act 1974* as amended by this Part apply in relation to an application under section 152CE of the *Trade Practices Act 1974* that was made after the commencement of this item.
  - (3) Despite the repeal of subsection 152CF(4) of the *Trade Practices Act 1974* by this Part, that subsection continues to apply, in relation to an application under section 152CE of the *Trade Practices Act 1974* that was made before the commencement of this item, as if that repeal had not happened.
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**Table A**

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**113 Transitional—paragraph 152AR(3)(b) of the *Trade Practices Act 1974***

The amendment made by this Part is to be disregarded in determining the meaning that paragraph 152AR(3)(b) of the *Trade Practices Act 1974* had before the commencement of this item.

**115 Transitional—section 151CJ of the *Trade Practices Act 1974***

Subsections 151CJ(1) and (2) of the *Trade Practices Act 1974* as amended by this Part apply in relation to:

- (a) an application under section 151CI of the *Trade Practices Act 1974* that was made after the commencement of this item; or
- (b) an application under section 151CI of the *Trade Practices Act 1974* that was made before the commencement of this item, so long as the Tribunal did not make a decision on the review under subsection 151CJ(1) of that Act before the commencement of this item.

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*Industry, Tourism and Resources Legislation Amendment Act 2003*  
(No. 21, 2003)

**Schedule 1**

**29 Application of amendments**

The amendments made by items 25 to 28 apply in respect of conduct engaged in, or representations made, after those items commence.

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*Trade Practices Legislation Amendment Act 2003* (No. 134, 2003)

**Schedule 2**

**44 Definitions**

In this Part:

*ACCC* means the Australian Competition and Consumer Commission.

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

**Table A**

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

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

#### **45 General**

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

<b>Operation of Part VIIA of the TPA</b>		
<b>Column 1 Item</b>	<b>Column 2 Occurrence under the PSA</b>	<b>Column 3 Occurrence under Part VIIA of the TPA</b>
1	A direction given under section 20	A direction given under subsection 95ZH(1)
2	A declaration made under paragraph 21(1)(a)	A declaration made under subsection 95X(1)
3	A declaration made under paragraph 21(1)(b)	A declaration made under subsection 95X(2)
4	A declaration made under paragraph 21(1)(c)	A declaration made under section 95B
5	A notice given under subsection 25(1)	A notice given under subsection 95N(5)
6	A summons given under subsection 34(2)	A summons given under subsection 95S(3)

**Table A****46 Price inquiries**

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

**Operation of Part VIIA of the TPA**

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

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**Table A****47 Price inquiry obligations**

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

**48 Price notifications**

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

**Table A**

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

**49 Register of price notifications**

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

**50 Delegations in relation to price notifications***Giving of notices*

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

*Withdrawal of notices*

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

*Definition*

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

**51 Price monitoring**

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

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

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

**Table A**

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

**53 Inspection of documents etc.**

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

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

*Refusal or failure to comply with notices*

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

*Refusal or failure to answer questions*

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

*Refusal or failure to produce documents*

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

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**Table A**

*Trade Practices Amendment (Personal Injuries and Death) Act (No. 2) 2004*  
(No. 113, 2004)

**Schedule 1**

**11 Application**

The amendments made by this Schedule (other than item 10) apply to contraventions of Part IVA, of Division 1A or 2A of Part V or of Part VA of the *Trade Practices Act 1974* that occur after this Schedule commences.

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*Telecommunications Legislation Amendment (Competition and Consumer Issues) Act 2005* (No. 119, 2005)

**Schedule 4**

**2 Application of amendment**

The amendment of section 151BX of the *Trade Practices Act 1974* made by this Schedule applies to a contravention of the competition rule if:

- (a) in the case of a contravention that continued during a period—the period began after the commencement of this item; or
- (b) otherwise—the contravention occurred after the commencement of this item.

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*Trade Practices Amendment (Personal Injuries and Death) Act 2006*  
(No. 11, 2006)

**Schedule 1**

**8 Application**

The amendments made by this Schedule apply in relation to contraventions of Division 1 of Part V of the *Trade Practices Act 1974* that occur after this Schedule commences.

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**Table A**

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*Jurisdiction of the Federal Magistrates Court Legislation Amendment Act 2006*  
(No. 23, 2006)

**Schedule 1**

**2 Application of amendment of subsection 86(1A)**

The amendment of subsection 86(1A) of the *Trade Practices Act 1974* made by this Schedule applies in relation to matters arising before, on or after the commencement of this Schedule.

**5 Application of amendments of section 86AA**

The amendments of section 86AA of the *Trade Practices Act 1974* made by this Schedule apply to:

- (a) proceedings instituted in the Federal Magistrates Court after the commencement of this Schedule; and
- (b) proceedings instituted in another court before, on or after the commencement of this Schedule and transferred to the Federal Magistrates Court after the commencement of this Schedule.

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*Trade Practices Amendment (National Access Regime) Act 2006*  
(No. 92, 2006)

**Schedule 1**

**114 Application—Council annual report**

The amendment made by item 3 applies in relation to financial years ending after the commencement of that item.

**115 Application—objects of Part IIIA**

The amendments made by the items mentioned in column 2 of the table apply in relation to the matter mentioned in column 3 of the table:

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<b>Objects of Part IIIA</b>		
<b>Column 1</b>	<b>Column 2 Items</b>	<b>Column 3 Matter</b>
1	Items 12 and 17	Applications made to the Council after the commencement of those items.

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**Table A**

<b>Objects of Part IIIA</b>		
<b>Column 1</b>	<b>Column 2 Items</b>	<b>Column 3 Matter</b>
2	Items 20 and 24	Declaration recommendations made to the designated Minister after the commencement of those items (where the applications for the recommendations were also made after that commencement).
3	Items 28 and 30	Revocation recommendations made to the designated Minister after the commencement of those items.
4	Item 37	Applications made to the Council after the commencement of that item.
5	Item 41	Recommendations made to the Commonwealth Minister after the commencement of that item (where the applications for the recommendations were also made after that commencement).
6	Item 65	Access disputes notified after the commencement of that item.
7	Item 88	Applications made to the Commission after the commencement of that item.
8	Item 92, in so far as it inserts paragraph 44ZZA(3)(aa) of the <i>Trade Practices Act 1974</i>	Access undertakings given to the Commission after the commencement of that item.
9	Item 100, in so far as it inserts paragraph 44ZZAA(3)(aa) of the <i>Trade Practices Act 1974</i>	Access codes given to the Commission after the commencement of that item.

**Table A****116 Application—target time limits**

The amendments made by the items mentioned in column 2 of the table apply in relation to the matter mentioned in column 3 of the table:

<b>Target time limits</b>		
<b>Column 1</b>	<b>Column 2 Items</b>	<b>Column 3 Matter</b>
1	Item 18, in so far as it inserts section 44GA of the <i>Trade Practices Act 1974</i>	Applications made to the Council after the commencement of that item.
2	Item 31	Revocation recommendations made to the designated Minister after the commencement of that item.
3	Item 44, in so far as it inserts section 44NC of the <i>Trade Practices Act 1974</i>	Applications made to the Council after the commencement of that item.
4	Item 44, in so far as it inserts section 44ND of the <i>Trade Practices Act 1974</i>	Recommendations made to the Commonwealth Minister after the commencement of that item.
5	Item 69	Access disputes notified after the commencement of that item.
6	Item 108, in so far as it inserts section 44ZZBC of the <i>Trade Practices Act 1974</i>	Access undertaking applications and access code applications made to the Commission after the commencement of that item.
7	Item 112	Applications for review made to the Tribunal after the commencement of that item.

**117 Application—competition test**

- (1) The amendment made by item 16 applies in relation to applications made to the Council after the commencement of that item.
- (2) The amendment made by item 23 applies in relation to declaration recommendations made to the designated Minister after the commencement of that item (where the applications for the recommendations were also made after that commencement).

**118 Application—public consultation**

- (1) The amendments made by items 18 (in so far as it inserts section 44GB of the *Trade Practices Act 1974*) and 44 (in so far as it inserts section 44NE of that Act) apply in relation to applications made to the Council after the commencement of those items.
- (2) The amendments made by items 96, 103 and 108 (in so far as it inserts section 44ZZBD of the *Trade Practices Act 1974*) apply in relation to access undertaking applications and access code applications made to the Commission after the commencement of those items.

**119 Application—publication of decisions**

- (1) The amendments made by items 18 (in so far as it inserts section 44GC of the *Trade Practices Act 1974*) and 44 (in so far as it inserts section 44NF of that Act) apply in relation to recommendations made by the Council after the commencement of those items.
- (2) The amendments made by items 25, 27, 43, 44 (in so far as it inserts section 44NG of the *Trade Practices Act 1974*) and 108 (in so far as it inserts section 44ZZBE of that Act) apply in relation to decisions made after the commencement of those items.

**120 Application—deemed decision not to declare a service**

The amendment made by item 26 applies in relation to declaration recommendations made to the designated Minister after the commencement of that item.

**121 Application—extensions of access regimes, access undertakings and access codes**

- (1) The amendment made by item 44 (in so far as it inserts section 44NA of the *Trade Practices Act 1974*) applies in relation to decisions made by the Commonwealth Minister before or after the commencement of that item that an access regime is an effective access regime.
- (2) The amendment made by item 108 (in so far as it inserts section 44ZZBB of the *Trade Practices Act 1974*) applies in relation to decisions made by the Commission before or after the commencement of that item to accept an access undertaking or an access code.

**Table A**

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**122 Transitional—review applications on effective access regime decisions**

An application made to the Tribunal under subsection 44O(1) of the *Trade Practices Act 1974* before the commencement of this item has effect, after that commencement, as if it had been made under that subsection after that commencement.

**123 Application—interim determinations**

The amendment made by item 58 applies in relation to access disputes notified to the Commission before or after the commencement of that item.

**124 Transitional—existing determinations continue in operation**

A determination:

- (a) made by the Commission under subsection 44V(1) of the *Trade Practices Act 1974* before the commencement of this item; and
- (b) that is in operation under that Act immediately before that commencement;

has effect, after that commencement, as if it were a final determination made by the Commission under subsection 44V(1) of that Act.

**125 Application—interconnections to facilities**

The amendments made by items 60, 63 and 66 apply:

- (a) in relation to access disputes notified after the commencement of those items; and
- (b) in relation to access disputes notified before that commencement in respect of which no determination has been made under subsection 44V(1) of the *Trade Practices Act 1974* before that commencement.

**126 Application—pricing principles**

The amendments made by items 67, 92 (in so far as it inserts paragraph 44ZZA(3)(ab) of the *Trade Practices Act 1974*) and 100 (in so far as it inserts paragraph 44ZZAA(3)(ab) of that Act) apply in relation to access disputes notified, and access undertakings and access codes given, to the Commission after the commencement of those items.

**Table A**

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**127 Application—joint arbitration hearings**

The amendment made by item 71 applies in relation to access disputes notified to the Commission either before or after the commencement of that item.

**128 Application—arbitration reports**

The amendment made by item 72 applies in relation to access disputes notified to the Commission after the commencement of that item.

**129 Application—backdating of final determinations**

The amendment made by item 75 applies in relation to access disputes notified to the Commission after the commencement of that item. However, a day specified under subsection 44ZO(3) of the *Trade Practices Act 1974* after that commencement cannot be a day occurring before that commencement.

**130 Application—assessment of access undertakings and access codes**

The amendments made by items 93, 95, 101, 102 and 107 apply in relation to access undertakings and access codes given to the Commission after the commencement of those items.

**131 Application—when access undertakings and access codes come into operation**

The amendments made by items 97, 104 and 108 (in so far as it inserts section 44ZZBA of the *Trade Practices Act 1974*) apply in relation to decisions made by the Commission after the commencement of those items.

**132 Transitional—old access undertakings and access codes continue in operation**

An access undertaking or access code, that is in operation under section 44ZZA or 44ZZAA of the *Trade Practices Act 1974* immediately before the commencement of this item, continues in operation after that commencement under section 44ZZBA of that Act.

Note: The effect of this item is to allow extensions of the undertaking or code after the commencement of this item under section 44ZZBB of that Act.

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**Table A**

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**133 Application—variation of access undertakings and access codes**

The amendments made by items 98 and 105 apply in relation to variations sought after the commencement of those items.

**134 Application—review of access undertaking decisions and access code decisions**

The amendment made by item 108 (in so far as it inserts section 44ZZBF of the *Trade Practices Act 1974*) applies in relation to decisions of the Commission made after the commencement of that item.

**135 Application—deferral of access disputes or access undertakings**

The amendment made by item 110 (in so far as it inserts section 44ZZCB of the *Trade Practices Act 1974*) applies in relation to access disputes notified, and access undertakings given, to the Commission after the commencement of that item.

**136 Application—Commission annual report**

The amendment made by item 113 applies in relation to financial years ending after the commencement of that item.

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*Trade Practices Legislation Amendment Act (No. 1) 2006* (No. 131, 2006)

**Schedule 1**

**52 Application of amendments**

The amendments made by this Schedule apply in relation to applications for clearances or authorisations made after the commencement of this item.

**53 Transitional**

- (1) A person cannot make an application (the *new application*), after the commencement of this item, for an authorisation under Division 3 of Part VII of the *Trade Practices Act 1974* in relation to an acquisition of shares or assets if, before the commencement of this item, the person

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**Table A**

made an application (the *old application*) under subsection 88(9) of that Act for an authorisation in relation to the acquisition.

- (2) However, the person can make the new application if:
- (a) the Commission has not made a determination on the old application; and
  - (b) the person withdraws the old application.

**Schedule 2****13 Application**

The amendments made by this Schedule apply in relation to applications made after the commencement of this Schedule.

**14 Saving**

- (1) Regulations in force for the purposes of subsection 89(1) of the *Trade Practices Act 1974* immediately before the commencement of this Schedule have effect, after that commencement, as if they had been made for the purposes of that subsection after that commencement.
- (2) An application made in accordance with subsection 89(1) of the *Trade Practices Act 1974* before the commencement of this Schedule has effect, after that commencement, as if it had been made in accordance with that subsection after that commencement.

**Schedule 3****28 Application**

The amendments made by this Schedule apply in relation to contracts or arrangements made, or understandings arrived at, after the commencement of this Schedule.

**29 Saving**

- (1) Regulations in force for the purposes of subsection 93(1) of the *Trade Practices Act 1974* immediately before the commencement of this Schedule have effect, after that commencement, as if they had been made for the purposes of subsection 93(1A) of that Act after that commencement.

## **Table A**

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- (2) A notice given in accordance with subsection 93(1) of the *Trade Practices Act 1974* before the commencement of this Schedule has effect, after that commencement, as if it had been given in accordance with subsection 93(1A) of that Act after that commencement.

### **Schedule 4**

#### **2 Application**

The amendment made by this Schedule applies in relation to proceedings instituted after the commencement of this Schedule (whether the contract or arrangement was made, or the understanding was arrived at, before or after that commencement).

### **Schedule 5**

#### **4 Application**

- (1) The amendments made by items 1 and 3 apply in relation to contracts or arrangements made, or understandings arrived at, before or after the commencement of this Schedule.
- (2) The amendment made by item 2 applies in relation to proceedings instituted after the commencement of this Schedule (whether the contract or arrangement was made, or the understanding was arrived at, before or after that commencement).

### **Schedule 6**

#### **20 Application**

- (1) The amendments made by items 1, 4, 7, 8, 9 and 19 apply in relation to arrangements made after the commencement of those items.
- (2) The amendment made by item 2 applies in relation to conduct engaged in after the commencement of that item.

### **Schedule 7**

#### **18 Application**

The amendment made by item 17 applies in relation to notifications made after the commencement of that item.

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**Table A**

**33 Application**

The amendments made by this Part apply in relation to conduct engaged in after the commencement of this Part.

**35 Application**

The amendment made by this Part applies in relation to notices given after the commencement of this Part (whether or not the application for authorisation was dismissed before or after that commencement).

**Schedule 8**

**28 Application**

The amendment made by item 4 applies in relation to contraventions occurring either before or after the commencement of that item.

**29 Transitional—old authorisations**

Subsection 155(2) of the *Trade Practices Act 1974*, as in force immediately before the commencement of this item, continues to apply after that commencement in relation to an authorisation given under that subsection before that commencement, but only in relation to any entry to premises under that authorisation that occurs before the 14th day after that commencement.

**Schedule 9**

**15 Application**

The amendments made by this Part apply in relation to contraventions occurring after the commencement of this Part.

**21 Application**

The amendments made by this Part apply in relation to contraventions occurring after the commencement of this Part.

**24 Application**

The amendments made by this Part apply in relation to contraventions occurring after the commencement of this Part.

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## **Table A**

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*Trade Practices Legislation Amendment Act (No. 1) 2007* (No. 159, 2007)

### **Schedule 1**

#### **4 No effect on existing appointment**

The amendments made by items 2 and 3 of this Schedule do not affect the validity of an appointment under subsection 10(1) of the *Trade Practices Act 1974* that is in force immediately before the commencement of this item.

### **Schedule 2**

#### **12 Application of amendments**

- (1) The amendments made by items 1, 2 and 3 of this Schedule apply in relation to contraventions of section 46 of the *Trade Practices Act 1974* (as amended by this Act) that occur after the commencement of those items.
- (2) The amendments made by items 4 to 8 of this Schedule apply in relation to contraventions of section 151AK of the *Trade Practices Act 1974* (as amended by this Act) that occur after the commencement of those items.
- (3) The amendments made by items 9, 10 and 11 of this Schedule apply in relation to contraventions of section 46 of the Schedule to the *Trade Practices Act 1974* (as amended by this Act) that occur after the commencement of those items.

### **Schedule 3**

#### **9 Application of amendments**

The amendments made by this Schedule apply in relation to conduct engaged in after the commencement of the amendments in relation to contracts for the supply or acquisition of goods or services made before or after commencement.

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**Table A**

*Trade Practices Legislation Amendment Act 2008* (No. 116, 2008)

**Schedule 3**

**13 Application of item 12**

The amendments made by item 12 of this Schedule apply in relation to conduct engaged in after the commencement of that item, including conduct in relation to contracts for the supply or acquisition of goods or services whether made before or after that commencement.

**15 Application of item 14**

- (1) Item 14 applies in relation to a matter referred to in subsection 155(1) of the *Trade Practices Act 1974* whether the matter arose before or after the commencement of that item.
- (2) Without limiting subitem (1), item 14 of this Schedule applies even if an interim injunction has been granted in relation to the matter.

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*Trade Practices Amendment (Clarity in Pricing) Act 2008* (No. 126, 2008)

**Schedule 1**

**5 Application**

The amendments made by this Schedule apply in relation to conduct engaged in after the commencement of this Schedule.

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*Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009*  
(No. 59, 2009)

**Schedule 1**

**118 Application—subsection 163(2) of the *Trade Practices Act 1974***

Despite the repeal of subsection 163(2) of the *Trade Practices Act 1974* by this Schedule, that subsection continues to apply, in relation to prosecutions instituted before the commencement of this item, as if that repeal had not happened.

**Table A**

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**Schedule 2**

**52 Application—search warrants**

The amendments of the following provisions made by this Schedule:

- (a) section 154A of the *Trade Practices Act 1974* (to the extent to which that section relates to Division 4 of Part XIX of that Act);
- (b) Division 4 of Part XIX of the *Trade Practices Act 1974*;

apply in relation to search warrants issued after the commencement of this item.

**53 Application—giving answers and producing documents etc.**

- (1) The amendments of subsection 155(7) of the *Trade Practices Act 1974* made by this Schedule apply in relation to notices under section 155 of that Act served after the commencement of this item.
- (2) The amendments of section 159 of the *Trade Practices Act 1974* made by this Schedule apply in relation to:
  - (a) requirements to give evidence; and
  - (b) requirements to produce documents;imposed after the commencement of this item.

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*Statute Stocktake (Regulatory and Other Laws) Act 2009* (No. 111, 2009)

**Schedule 1**

**49 Application of items 47 and 48**

If, at the time when this item commences, item 5 of Schedule 4 to the *Trade Practices Amendment (Australian Consumer Law) Act 2009* has commenced, then a reference to the Schedule in the heading of item 47 or 48 of this Part is taken to be a reference to Schedule 1.

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## 50 Transitional—Repeal of subparagraph 163A(1)(a)(ia) of the *Trade Practices Act 1974*

- (1) Despite the repeal of subparagraph 163A(1)(a)(ia) of the *Trade Practices Act 1974* made by item 46 of this Part, that subparagraph continues to apply, so that a declaration about the operation or effect of Part VB of the old law cannot be sought, as if that repeal had not happened.
- (2) In this item:  
*old law* means the *Trade Practices Act 1974* as in force immediately before the commencement of this item.

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*Trade Practices Amendment (Australian Consumer Law) Act (No. 1) 2010*  
 (No. 44, 2010)

### Schedule 1

#### 2 Application and transitional provisions

- (1) Part 2 of Schedule 2 to the *Trade Practices Act 1974* applies to a contract entered into on or after the commencement of this Schedule.
- (2) That Part does not apply to a contract entered into before the commencement of this Schedule. However:
- (a) if the contract is renewed on or after that commencement—that Part applies to the contract as renewed, on and from the day (the *renewal day*) on which the renewal takes effect, in relation to conduct that occurs on or after the renewal day; or
  - (b) if a term of the contract is varied on or after that commencement, and paragraph (a) has not already applied in relation to the contract—that Part applies to the term as varied, on and from the day (the *variation day*) on which the variation takes effect, in relation to conduct that occurs on or after the variation day.
- (2A) If paragraph (2)(b) applies to a term of a contract, subsection 2(2) and section 7 of Schedule 2 to the *Trade Practices Act 1974* applies to the contract.

**Table A**

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- (3) Despite paragraphs (2)(a) and (b) and subitem (2A), that Part does not apply to a contract, or a term of a contract, to the extent that the operation of that Part would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph of the Constitution).

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*Trade Practices Amendment (Infrastructure Access) Act 2010*  
(No. 102, 2010)

**Schedule 1**

**72 Application of amendments**

- (1) The amendments made by items 1, 2, 3, 4, 5, 6, 17, 18, 19, 23, 24, 25, 26, 27, 31 and 33 of this Schedule apply in relation to applications made to the Council after the commencement of those items.
- (3) The amendments made by items 8, 9 and 10 of this Schedule apply in relation to revocation recommendations made to the designated Minister after the commencement of those items.
- (4) The amendments made by items 11, 12, 13, 14, 15, 16, 34, 35, 36, 42, 43, 45, 46, 47, 48, 51, 52, 54, 55, 56, 57, 66, 67, 68, 69, 70 and 71 of this Schedule apply in relation to applications for review made to the Tribunal after the commencement of those items.
- (5) The amendments made by items 20, 21, 22, 28, 29, 30 and 32 of this Schedule apply in relation to recommendations received by the Commonwealth Minister after the commencement of those items.
- (6) The amendments made by items 37, 38, 39, 40 and 41 of this Schedule apply in relation to applications made to the Commission after the commencement of those items.
- (7) The amendments made by items 49 and 50 of this Schedule apply in relation to access disputes notified after the commencement of those items.
- (8) The amendments made by items 58, 59, 60, 61, 62, 63, 64 and 65 of this Schedule apply in relation to access undertaking applications and access code applications made to the Commission after the commencement of those items.

**Schedule 3****11 Application provision**

The amendments made by Part 1 of this Schedule apply to access undertakings given to the Commission after the commencement of that Part.

**Schedule 4****5 Application provisions**

- (1) The amendments made by Part 1 of this Schedule, other than items 2 and 4, apply in relation to access undertakings given to the Commission after the commencement of that Part.
- (2) The amendment made by item 2 in Part 1 of this Schedule applies in relation to access undertakings, whether given to the Commission before or after the commencement of that Part.
- (3) The amendment made by item 4 in Part 1 of this Schedule applies in relation to access codes, whether given to the Commission before or after the commencement of that Part.

**Schedule 5****20 Application—resolutions without meetings**

The amendment made by item 1 of this Schedule applies in relation to documents signed by all Councillors (other than those that must not sign a document because of subsection 29LA(3) of the *Trade Practices Act 1974* as inserted by item 1 of this Schedule) after the commencement of that item.

**21 Application of effective access regime criterion amendments**

- (1) The amendments made by items 2 (to the extent that it repeals paragraph 44DA(1)(a) of the *Trade Practices Act 1974*), 6 and 7 of this Schedule apply in relation to applications received after the commencement of those items.
- (2) The amendments made by items 2 (to the extent that it repeals paragraph 44DA(1)(b) of the *Trade Practices Act 1974*), 9 and 10 of this Schedule apply in relation to declaration recommendations received

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**Table A**

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after the commencement of those items (where the applications for declaration recommendations were also made after commencement).

**22 Application of health and safety criterion amendments**

- (1) The amendment made by item 5 of this Schedule applies in relation to applications made after the commencement of that item.
- (2) The amendment made by item 8 of this Schedule applies in relation to declaration recommendations received after the commencement of that item (where the applications for declaration recommendations were also made after commencement).

**23 Application—variations to declaration applications**

The amendment made by item 4 of this Schedule applies in relation to applications made to the Council after the commencement of that item.

**24 Application—stay of declarations and costs**

The amendments made by items 11, 12, 13 and 15 of this Schedule apply in relation to applications for review made to the Tribunal after the commencement of those items.

**25 Application—arbitration while review underway**

The amendments made by items 14, 16, 18 and 19 of this Schedule apply in relation to access disputes notified after the commencement of those items (where applications for review were also made after commencement).

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*Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010*  
(No. 103, 2010)

**Schedule 4**

**5 Application provision**

Division 4 of Part IVB of the *Competition and Consumer Act 2010*, inserted by this Schedule, does not apply in relation to contravening conduct that occurred before the commencement of this item.

**Schedule 7****1 Definitions**

In this Schedule:

*Australian Consumer Law* has the same meaning as in Part XI of the *Competition and Consumer Act 2010* as substituted by Schedule 2 to this Act.

*Commonwealth Minister* has the same meaning as in the Australian Consumer Law.

**2 Declarations of goods to be unsafe goods**

A notice under subsection 65C(5) of the *Trade Practices Act 1974* that was in force immediately before the commencement of this item continues in force after that commencement as if:

- (a) it were an interim ban imposed under section 109 of the Australian Consumer Law by the Commonwealth Minister; and
- (b) it starts on the day of that commencement.

**3 Permanent bans**

A notice under subsection 65C(7) of the *Trade Practices Act 1974* that was in force immediately before the commencement of this item continues in force after that commencement as if it were a permanent ban imposed under section 114 of the Australian Consumer Law.

**4 Prescribed consumer product safety standards**

A prescribed consumer product safety standard under section 65C of the *Trade Practices Act 1974* that was in force immediately before the commencement of this item continues in force after that commencement as if it were a safety standard made under section 104 of the Australian Consumer Law.

**5 Prescribed consumer product information standards**

A prescribed consumer product information standard under section 65D of the *Trade Practices Act 1974* that was in force immediately before the commencement of this item continues in force after that commencement as if it were an information standard made under section 134 of the Australian Consumer Law.

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**Table A**

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**6 Acts or omissions that occurred before commencement**

- (1) The *Trade Practices Act 1974* as in force immediately before the commencement of this item continues to apply, after that commencement, in relation to acts or omissions that occurred before that commencement.
- (2) Without limiting subitem (1), action may be taken, under or in relation to Part VC or VI of that Act as so in force, in relation to those acts or omissions.

**7 Proceedings already commenced**

- (1) The *Trade Practices Act 1974* as in force immediately before the commencement of this item continues to apply to or in relation to any proceedings, under or in relation to that Act, that were commenced, but not concluded, before that commencement.
- (2) However, to the extent that any such proceeding are proceedings for an injunction under section 80 of that Act as so in force, the proceedings are taken, after that commencement, to be proceedings for an injunction under section 232 of the Australian Consumer Law.

**8 Unfair contract terms**

- (1) Part 2-3 of the Australian Consumer Law applies to a contract entered into on or after the commencement of this item.
- (2) That Part does not apply to a contract entered into before that commencement. However:
  - (a) if the contract is renewed on or after that commencement—that Part applies to the contract as renewed, on and from the day (the *renewal day*) on which the renewal takes effect, in relation to conduct that occurs on or after the renewal day; or
  - (b) if a term of the contract is varied on or after that commencement, and paragraph (a) has not already applied in relation to the contract—that Part applies to the term as varied, on and from the day (the *variation day*) on which the variation takes effect, in relation to conduct that occurs on or after the variation day.
- (3) If paragraph (2)(b) applies to a term of a contract, subsection 23(2) and section 27 of the Australian Consumer Law apply to the contract.

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**Table A**

- (4) Despite paragraphs (2)(a) and (b) and subitem (3), that Part does not apply to a contract, or a term of a contract, to the extent that the operation of that Part would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph of the Constitution).

**9 Requests for itemised bills**

Section 101 of the Australian Consumer Law does not apply in relation to a supply of services to the extent that the services were supplied before the commencement of this item.

**10 Pecuniary penalties—having regard to previous findings**

The reference in paragraph 224(2)(c) of the Australian Consumer Law to proceedings under Chapter 4 or Part 5-2 of Schedule 2 includes a reference to proceedings, commenced before the commencement of this item, under or in relation to:

- (a) Part VC or VI of the *Trade Practices Act 1974*; or
- (b) equivalent provisions of a law of a State or a Territory.

**11 Regulations relating to professional standards laws**

Regulations made for the purposes of section 87AB of the *Trade Practices Act 1974* that were in force immediately before the commencement of this item have effect, after the commencement of this item, as if they had been made for the purposes of section 137 of that Act as amended by this Act.

**12 General power for regulations to deal with transitional matters**

The Governor-General may make regulations prescribing matters of a transitional, application or saving nature in relation to the amendments and repeals made by the Schedules to this Act.

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**Table A**

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*Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010* (No. 140, 2010)

**Schedule 1**

**40 Transitional—continuity of special Telstra directions**

The repeal of section 151BUAAA of the *Competition and Consumer Act 2010* effected by this Part does not affect the continuity of a special Telstra direction (within the meaning of that section) that was in force immediately before the commencement of this item.

**198 Definitions**

In this Division:

***access agreement*** has the same meaning as in Part XIC of the *Competition and Consumer Act 2010* as amended by this Part.

***access determination*** has the same meaning as in Part XIC of the *Competition and Consumer Act 2010* as amended by this Part.

***binding rules of conduct*** has the same meaning as in Part XIC of the *Competition and Consumer Act 2010* as amended by this Part.

**202 Transitional—ordinary class exemptions from standard access obligations**

- (1) This item applies to a determination that:
- (a) was made under section 152AS of the *Competition and Consumer Act 2010*; and
  - (b) was in force immediately before the commencement of this item.
- (2) Despite:
- (a) the repeal of section 152AS of the *Competition and Consumer Act 2010* effected by this Part; and
  - (b) the amendment of paragraph 152BBAA(1)(a) of that Act made by this Part;

that section and that paragraph continue to apply, in relation to the determination, as if that repeal had not happened and that amendment had not been made. This subitem has effect subject to the following subitem.

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- (3) The determination ceases to have effect, to the extent to which it relates to a particular declared service, when the first access determination relating to access to the declared service comes into force.

**203 Transitional—ordinary individual exemptions from standard access obligations**

- (1) This item applies to a determination that:
- (a) was made under section 152AT of the *Competition and Consumer Act 2010*; and
  - (b) was in force immediately before the commencement of this item.

- (2) Despite:
- (a) the repeal of section 152AT of the *Competition and Consumer Act 2010* effected by this Part; and
  - (b) the amendment of paragraph 152BBAA(1)(b) of that Act made by this Part;

that section and that paragraph continue to apply, in relation to the determination, as if that repeal had not happened and that amendment had not been made. This subitem has effect subject to the following subitem.

- (3) The determination ceases to have effect, to the extent to which it relates to a particular declared service, when the first access determination relating to access to the declared service comes into force.

**204 Transitional—ordinary access undertakings given to the Commission before 15 September 2009**

- (1) This item applies to an ordinary access undertaking that:
- (a) was given by a carrier or carriage service provider to the Commission under section 152BS of the *Competition and Consumer Act 2010* before 15 September 2009; and
  - (b) was accepted by the Commission under section 152BU of that Act before the commencement of this item; and
  - (c) was in operation immediately before the commencement of this item.
- (2) Despite the following repeals effected, and amendments made, by this Part:

**Table A**

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- (a) the repeal of Subdivision A of Division 5 of Part XIC of the *Competition and Consumer Act 2010*;
- (b) the amendment of the definition of ***access undertaking*** in section 152AC of that Act;
- (c) the repeal of the definition of ***ordinary access undertaking*** in section 152AC of that Act;
- (d) the amendment of subparagraph (c)(i) of the definition of ***protected information*** in subsection 155AAA(21) of that Act;

that Subdivision and those definitions continue to apply, in relation to the undertaking, as if those repeals had not happened and those amendments had not been made. This subitem has effect subject to the following subitems.

- (3) The undertaking cannot be varied so as to extend its duration.
- (4) If the undertaking adopts a set of model terms and conditions set out in the telecommunications access code, then, despite the repeal of sections 152BJ and 152BK of the *Competition and Consumer Act 2010*, those sections continue to apply, in relation to the undertaking, as if those repeals had not happened.
- (5) If the undertaking is inconsistent with an access agreement, the undertaking has no effect to the extent of the inconsistency.

**205 Transitional—ordinary access undertakings given to the Commission on or after 15 September 2009**

- (1) This item applies to an ordinary access undertaking that:
  - (a) was given to the Commission under section 152BS of the *Competition and Consumer Act 2010* on or after 15 September 2009; and
  - (b) was accepted by the Commission under section 152BU of that Act before the commencement of this item; and
  - (c) was in operation immediately before the commencement of this item.
- (2) Despite the following repeals effected, and amendments made, by this Part:
  - (a) the repeal of Subdivision A of Division 5 of Part XIC of the *Competition and Consumer Act 2010*;

**Table A**

- (b) the amendment of the definition of *access undertaking* in section 152AC of that Act;
- (c) the repeal of the definition of *ordinary access undertaking* in section 152AC of that Act;
- (d) the amendment of subparagraph (c)(i) of the definition of *protected information* in subsection 155AAA(21) of that Act;

that Subdivision and those definitions continue to apply, in relation to the undertaking, as if those repeals had not happened and those amendments had not been made. This subitem has effect subject to the following subitems.

- (3) The undertaking cannot be varied so as to extend its duration.
- (4) The undertaking ceases to have effect, to the extent to which it relates to a particular declared service, when the first access determination relating to access to the declared service comes into force.
- (5) If the undertaking adopts a set of model terms and conditions set out in the telecommunications access code, then, despite the repeal of sections 152BJ and 152BK of the *Competition and Consumer Act 2010*, those sections continue to apply, in relation to the undertaking, as if those repeals had not happened.
- (6) If the undertaking is inconsistent with an access agreement, the undertaking has no effect to the extent of the inconsistency.

**206 Transitional—continuity of special access undertakings**

The amendment of subsection 152CBA(1) of the *Competition and Consumer Act 2010* made by this Part does not affect the continuity of a special access undertaking that was in operation immediately before the commencement of this item.

**207 Transitional—arbitration of access disputes**

- (1) Despite the following repeals effected, and amendments made, by this Part:
  - (a) the repeal of Division 8 of Part XIC of the *Competition and Consumer Act 2010*;
  - (b) the amendment of the definition of *pre-request right* in subsection 152AR(12) of that Act;
  - (c) the repeal of subsection 152BBC(5) of that Act;

**Table A**

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- (d) the repeal of section 152CGB of that Act;
- (e) the amendments of section 152ELA of that Act;
- (f) the amendment of subsection 171B(1) of that Act;

that Division, that definition, and those sections and subsections continue to apply as if those repeals had not happened and those amendments had not been made. This subitem has effect subject to the following subitems.

(2) If:

- (a) a declared service is supplied, or proposed to be supplied, by a carrier or a carriage service provider; and
- (b) one or more standard access obligations apply, or will apply, to the carrier or provider in relation to the declared service; and
- (c) an access seeker is unable to agree with the carrier or provider about one or more aspects of access to the declared service;

then:

- (d) if the declared service was a declared service immediately before the commencement of this item—a person is not entitled to notify an access dispute to the Commission under section 152CM of the *Competition and Consumer Act 2010* at any time after the first final access determination relating to access to the declared service has come into force; or
- (e) otherwise—a person is not entitled to notify an access dispute to the Commission under section 152CM of the *Competition and Consumer Act 2010*.

(3) If:

- (a) a declared service is supplied, or proposed to be supplied, by a carrier or a carriage service provider; and
- (b) one or more standard access obligations apply, or will apply, to the carrier or provider in relation to the declared service; and
- (c) an access seeker is unable to agree with the carrier or provider about the terms and conditions on which the carrier or provider is to comply with those obligations;

then:

- (d) if the declared service was a declared service immediately before the commencement of this item—a person is not

**Table A**

entitled to notify an access dispute to the Commission under section 152CM of the *Competition and Consumer Act 2010* at any time after the first final access determination relating to access to the declared service has come into force; or

- (e) otherwise—a person is not entitled to notify an access dispute to the Commission under section 152CM of the *Competition and Consumer Act 2010*.

(3A) If:

- (a) a declared service is supplied, or proposed to be supplied, by Telstra; and
- (b) one or more standard access obligations apply, or will apply, to Telstra in relation to the declared service; and
- (c) an access agreement relating to access to the declared service:
- (i) is in force between an NBN corporation (within the meaning of section 577BA of the *Telecommunications Act 1997*) and Telstra; and
  - (ii) is specified in an undertaking in force under section 577A of the *Telecommunications Act 1997*; and
- (d) the access agreement was entered into before the first final access determination relating to access to the declared service has come into force;

neither Telstra nor the NBN corporation is entitled to notify an access dispute to the Commission under section 152CM of the *Competition and Consumer Act 2010* in relation to the declared service.

(4) A final determination made by the Commission under Division 8 of Part XIC of the *Competition and Consumer Act 2010* after the commencement of this item must specify an expiry date for the determination. Unless sooner revoked, the determination ceases to be in force on the expiry date for the determination.

(5) If:

- (a) an access agreement relating to access to a declared service is entered into before the first final access determination relating to access to the declared service has come into force; and
- (b) the access agreement is inconsistent with a determination under Division 8 of Part XIC of the *Competition and Consumer Act 2010*;

**Table A**

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- the access agreement has no effect to the extent of the inconsistency.
- (6) If a determination under Division 8 of Part XIC of the *Competition and Consumer Act 2010*:
- (a) does not have an expiry date; and
  - (b) is inconsistent with a final access determination;
- the first-mentioned determination has no effect to the extent of the inconsistency.
- (7) If:
- (a) a final access determination is inconsistent with a determination under Division 8 of Part XIC of the *Competition and Consumer Act 2010*; and
  - (b) the determination under Division 8 of Part XIC of the *Competition and Consumer Act 2010* has an expiry date;
- the final access determination has no effect to the extent of the inconsistency.
- (8) If an interim access determination is inconsistent with a determination under Division 8 of Part XIC of the *Competition and Consumer Act 2010*, the interim access determination has no effect to the extent of the inconsistency.
- (9) If a determination under Division 8 of Part XIC of the *Competition and Consumer Act 2010*:
- (a) does not have an expiry date; and
  - (b) is inconsistent with binding rules of conduct;
- the determination has no effect to the extent of the inconsistency.
- (10) If:
- (a) binding rules of conduct are inconsistent with a determination under Division 8 of Part XIC of the *Competition and Consumer Act 2010*; and
  - (b) the determination under Division 8 of Part XIC of the *Competition and Consumer Act 2010* has an expiry date;
- the binding rules of conduct have no effect to the extent of the inconsistency.
- (11) If a determination under Division 8 of Part XIC of the *Competition and Consumer Act 2010* relating to access to a declared service is
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**Table A**

inconsistent with an access agreement that was entered into after the first final access determination relating to access to the declared service has come into force, the first-mentioned determination has no effect to the extent of the inconsistency.

- (12) The Commission may, at any time, terminate an arbitration under Division 8 of Part XIC of the *Competition and Consumer Act 2010* (without making a determination under that Division) if the Commission commences to hold a public inquiry under Part 25 of the *Telecommunications Act 1997* about a proposal to make an access determination relating to access to the declared service concerned.

### **208 Transitional—compliance with standard access obligations**

- (1) This item applies if:
- (a) a carrier or carriage service provider is required to comply with any or all of the standard access obligations; and
  - (b) either:
    - (i) an ordinary access undertaking given by the carrier or carriage service provider is in operation, and the undertaking specifies any or all of the terms and conditions on which the carrier or carriage service provider is to comply with any of the standard obligations; or
    - (ii) a determination made by the Commission under Division 8 of Part XIC of the *Competition and Consumer Act 2010* is in force, and the determination specifies any or all of the terms and conditions on which the carrier or carriage service provider is to comply with any of the standard obligations.
- (2) The carrier or carriage service provider must comply with the obligations mentioned in paragraph (1)(a):
- (a) if an access agreement between:
    - (i) the carrier or carriage service provider, as the case requires; and
    - (ii) the access seeker;
 is in operation and specifies terms and conditions about a particular matter—on such terms and conditions relating to that matter as are set out in the agreement; or

**Table A**

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- (b) if:
- (i) paragraph (a) does not apply in relation to terms and conditions about a particular matter; and
  - (ii) an access undertaking given by the carrier or carriage service provider is in operation, and the undertaking specifies terms and conditions about that matter—on such terms and conditions relating to that matter as are set out in the undertaking; or
- (c) if:
- (i) neither paragraph (a) nor (b) applies to terms and conditions about a particular matter; and
  - (ii) binding rules of conduct specify terms and conditions about that matter;
- on such terms and conditions relating to that matter as are set out in the binding rules of conduct; or
- (d) if:
- (i) none of the above paragraphs applies to terms and conditions about a particular matter; and
  - (ii) a determination made by the Commission under Division 8 of Part XIC of the *Competition and Consumer Act 2010* specifies terms and conditions about that matter;
- on such terms and conditions relating to that matter as are set out in the determination; or
- (e) if:
- (i) none of the above paragraphs applies to terms and conditions about a particular matter; and
  - (ii) an access determination specifies terms and conditions about that matter;
- on such terms and conditions relating to that matter as are set out in the access determination.

Note 1: Subitems 204(5), 205(6) and 207(5) to (11) of this Schedule, and sections 152BCC, 152BDB, 152BDE, 152CBIA, 152CBIB, 152CBIC and 152CGB of the *Competition and Consumer Act 2010*, which deal with inconsistency, should be read and applied before this item is read and applied.

Note 2: Even though subitem (2) mentions binding rules of conduct, binding rules of conduct may only be made if the Commission considers that there is an urgent need to do so.

**Table A**

- (3) Section 152AY of the *Competition and Consumer Act 2010* as amended by this Part does not apply in relation to compliance by the carrier or carriage service provider with the standard access obligations.

**209 Transitional—hindering the fulfilment of an obligation imposed by an arbitration determination**

In addition to its effect apart from this item, section 152EF of the *Competition and Consumer Act 2010* as amended by this Part also has the effect it would have if the reference in paragraph (1)(a) of that section to a standard access obligation included a reference to an obligation imposed by a determination made by the Commission under Division 8 of Part XIC of the *Competition and Consumer Act 2010*.

**210 Transitional—regulations**

The Governor-General may make regulations in relation to transitional matters arising out of the amendments made by this Part.

**213 Application—competition notices**

The amendment of section 151AKA of the *Competition and Consumer Act 2010* made by this Part applies in relation to Part A competition notices issued after the commencement of this item.

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*Financial Framework Legislation Amendment Act 2010* (No. 148, 2010)

**Schedule 6**

**2 Property held by Commission**

Any real or personal property that was held by the Commission immediately before this Schedule commences is taken, after this Schedule commences, to be real or personal property held by the Commission for and on behalf of the Commonwealth.

**3 Right to sue**

To avoid doubt, the Commission's right to sue is not affected by the amendment of the *Competition and Consumer Act 2010* in accordance with this Schedule.