

## **COMPETITION POLICY REFORM ACT 1995 No. 88 of 1995**

**DATE:** Assented 20 July 1995  
**SYNOPSIS:** An Act to amend the Trade Practices Act 1974 and the Prices Surveillance Act 1983, and for related purposes

### TABLE OF PROVISIONS

#### PART 1-PRELIMINARY

##### Section

1. Short title etc.
2. Commencement

#### PART 2- AMENDMENTS COMMENCING AT THE FIRST COMMENCEMENT TIME

##### Division 1- Amendments

3. Insertion of new section:
2. Object of this Act
4. Interpretation
5. Acquisition, supply and re-supply
6. Extended application of Parts IV, IVA and V
7. Associate members
8. Insertion of new sections:
- 43A. Counsel assisting Tribunal
- 43B. Consultants
9. Contracts, arrangements or understandings that restrict dealings or affect competition
10. Contracts, arrangements or understandings in relation to prices
11. Covenants affecting competition
12. Covenants in relation to prices
13. Exclusive dealing
14. Price discrimination
15. Exceptions
16. Power of Commission to grant authorisations
17. Determination of applications for authorisations
18. Notification of exclusive dealing
19. Commission to afford opportunity for conference before giving notice in relation to exclusive dealing
20. Register of notifications
21. Insertion of new section:
- 96A. Resale price maintenance in relation to services
22. Application for review of notice under subsection 93(3) or (3A)
23. Functions and powers of Tribunal
24. Regulations as to certain matters
25. Participants in proceedings before Tribunal
26. Insertion of new Part:

#### PART XIA-THE COMPETITION CODE

- 150A. Definitions
- 150B. Objects of this Part
- 150C. The Competition Code
- 150D. Federal Court may exercise jurisdiction under application laws

- 150E. Exercise of jurisdiction under cross-vesting provisions
- 150F. Application laws may confer functions on Commonwealth authorities and officers
- 150G. Application laws may operate concurrently with this Act
- 150H. No doubling- up of liabilities
- 150I. References in instruments to the Competition Code
- 150J. Authorisations etc. under this Act may relate also to Competition Code
- 150K. Gazettal of jurisdictions that excessively modify the Code
- 27. Power to obtain information, documents and evidence
- 28. Protection of members of Tribunal, counsel and witnesses
- 29. Annual report by Commission
- 30. Regulations
- 31. Addition of Schedule
- 32. Other amendments

#### Division 2-Transitional rules

- 33. Transitional rule for changes to section 51 exceptions
- 34. Existing contracts not affected by amendments

### PART 3-AMENDMENTS COMMENCING AT THE SECOND COMMENCEMENT TIME

#### Division 1-Amendments

- 35. Application of Act to Commonwealth and Commonwealth authorities
- 36. Interpretation
- 37. Extended application of Parts IV, IVA and V
- 38. Heading to Part II
- 39. Establishment of Commission
- 40. Constitution of Commission
- 41. Terms and conditions of appointment
- 42. Associate members
- 43. Deputy Chairperson
- 44. Acting Chairperson
- 45. Termination of appointment of members of the Commission
- 46. Arrangement of business
- 47. Disclosure of interests by members
- 48. Meetings of Commission
- 49. Chairperson may direct Commission to sit in Divisions
- 50. Insertion of new section:
- 20. Part XI of the Audit Act not to apply to Commission
- 51. Staff of Commission
- 52. Insertion of new section:
- 27A. Consultants
- 53. Functions of Commission in relation to dissemination of information, law reform and research
- 54. Commission to comply with directions of Minister and requirements of the Parliament
- 55. Insertion of new Part:

### PART IIA-THE NATIONAL COMPETITION COUNCIL

- 29A. Establishment of Council
- 29B. Functions and powers of Council
- 29C. Membership of Council
- 29D. Terms and conditions of office

- 29E. Acting Council President
- 29F. Remuneration of Councillors
- 29G. Leave of absence
- 29H. Termination of appointment of Councillors
- 29I. Resignation of Councillors
- 29J. Arrangement of Council business
- 29K. Disclosure of interests by Councillors
- 29L. Council meetings
- 29M. Staff to help Council
- 29N. Consultants
- 29O. Annual report
- 56. Heading to Part III
- 57. Constitution of Tribunal
- 58. Staff of Tribunal
- 59. Insertion of new Part:

### PART IIIA-ACCESS TO SERVICES

#### Division 1-Preliminary

- 44B. Definitions
- 44C. How this Part applies to partnerships and joint ventures
- 44D. Meaning of " designated Minister"
- 44E. This Part binds the Crown

#### Division 2-Declared services

- Subdivision A-Recommendation by the Council
- 44F. Person may request recommendation
- 44G. Limits on the Council recommending declaration of a service
- Subdivision B-Declaration by the designated Minister
- 44H. Designated Minister may declare a service
- 44I. Duration and effect of declaration
- 44J. Revocation of declaration
- 44K. Review of declaration
- 44L. Review of decision not to revoke a declaration
- Subdivision C-Miscellaneous
- 44M. Recommendation for a Ministerial decision on effectiveness of access regime
- 44N. Ministerial decision on effectiveness of access regime
- 44O. Review of Ministerial decision on effectiveness of access regime
- 44P. State or Territory ceasing to be a party to Competition Principles Agreement
- 44Q. Register of decisions and declarations

#### Division 3- Access to declared services

- Subdivision A-Scope of Division
- 44R. Constitutional limits on operation of this Division
- Subdivision B-Notification of access disputes
- 44S. Notification of access disputes
- 44T. Withdrawal of notifications
- Subdivision C-Arbitration of access disputes
- 44U. Parties to the arbitration
- 44V. Determination by Commission
- 44W. Restrictions on access determinations
- 44X. Matters that the Commission must take into account
- 44Y. Commission may terminate arbitration in certain cases
- Subdivision D-Procedure in arbitrations
- 44Z. Constitution of Commission for conduct of arbitration

- 44ZA. Member of the Commission presiding at an arbitration
- 44ZB. Reconstitution of Commission
- 44ZC. Determination of questions
- 44ZD. Hearing to be in private
- 44ZE. Right to representation
- 44ZF. Procedure of Commission
- 44ZG. Particular powers of Commission
- 44ZH. Power to take evidence on oath or affirmation
- 44ZI. Failing to attend as a witness
- 44ZJ. Failing to answer questions etc.
- 44ZK. Intimidation etc.
- 44ZL. Party may request Commission to treat material as confidential
- 44ZM. Sections 18 and 19 do not apply to the Commission in an arbitration
- 44ZN. Parties to pay costs of an arbitration
  - Subdivision E-Effect of determinations
- 44ZO. Operation of determinations
  - Subdivision F-Review of determinations
- 44ZP. Review by Tribunal
- 44ZQ. Provisions that do not apply in relation to a Tribunal review
- 44ZR. Appeals to Federal Court from determinations of the Tribunal
- 44ZS. Operation and implementation of a determination that is subject to appeal
- 44ZT. Transmission of documents
  - Subdivision G-Variation of determinations
- 44ZU. Variation of determinations

Division 4-Registered contracts for access to declared services

- 44ZV. Constitutional limits on operation of this Division
- 44ZW. Registration of contract
- 44ZX. Review of decision not to register contract
- 44ZY. Effect of registration of contract

Division 5-Hindering access to declared services

- 44ZZ. Prohibition on hindering access to declared services

Division 6-Access undertakings for non-declared services

- 44ZZA. Access undertakings by providers
- 44ZZB. Undertakings cannot be accepted in certain cases
- 44ZZC. Register of access undertakings

Division 7-Enforcement and remedies

- 44ZZD. Enforcement of determinations
- 44ZZE. Enforcement of prohibition on hindering access
- 44ZZF. Consent injunctions
- 44ZZG. Interim injunctions
- 44ZZH. Factors relevant to granting a restraining injunction
- 44ZZI. Factors relevant to granting a mandatory injunction
- 44ZZJ. Enforcement of access undertakings
- 44ZZK. Discharge or variation of injunction or other order

Division 8-Miscellaneous

- 44ZZL. Register of determinations

- 44ZZM. Commission may perform functions under other access regimes
- 44ZZN. Compensation for acquisition of property
- 44ZZO. Conduct by directors, servants or agents
- 44ZZP. Regulations about review by the Tribunal
- 44ZZQ. Regulations about fees for inspection etc. of registers
- 60. Opportunity for conference to be afforded before certain powers exercised
- 61. Civil action for recovery of pecuniary penalties
- 62. Injunctions
- 63. Divestiture
- 64. Commission to afford opportunity for conference before determining application for authorisation
- 65. Notification of exclusive dealing
- 66. Commission to afford opportunity for conference before giving notice in relation to exclusive dealing
- 67. Evidentiary provisions
- 68. Functions and powers of Tribunal
- 69. Repeal of Part XI
- 70. Power to obtain information, documents and evidence
- 71. Insertion of new section:
- 155AA. Protection of Part IV information
- 72. Power to obtain information and documents in New Zealand relating to trans-Tasman markets
- 73. Australian Competition and Consumer Commission may receive< LF> information and documents on behalf of New Zealand Commerce Commission
- 74. Refusal to be sworn or to answer questions
- 75. Jurisdiction of Court to make declarations and orders
- 76. Judicial notice
- 77. Amendments of other Acts

#### Division 2-Transitional rules

- 78. Government rail transport of coal not covered by access system for first 5 years

#### PART 4- AMENDMENTS COMMENCING AT THE THIRD COMMENCEMENT TIME

- 79. Amendment of Prices Surveillance Act: insertion of feminine pronouns

#### PART 5-AMENDMENTS COMMENCING AT THE FOURTH COMMENCEMENT TIME

##### Division 1-Amendments

- 80. Application of Act to Commonwealth and Commonwealth authorities
- 81. Insertion of new sections:
- 2B. Application of Act to States and Territories
- 2C. Activities that are not business
- 2D. Exemption of certain activities of local government bodies from Part IV
- 82. Interpretation
- 83. Constitution of Commission
- 84. Associate members
- 85. Deputy Chairperson
- 86. Exceptions
- 87. Insertion of new section:
- 51AAA. Concurrent operation of State and Territory laws

Division 2- Transitional rules

- 88. Temporary exemption from pecuniary penalties
- 89. Existing contracts not affected by amendments
- 90. Advance authorisations

PART 6-AMENDMENTS COMMENCING AT THE FIFTH COMMENCEMENT TIME

- 91. Amendment of Trade Practices Act: insertion of feminine pronouns

PART 7-MISCELLANEOUS

- 92. Regulations

SCHEDULE 1

SCHEDULE TO BE ADDED AT THE END OF THE PRINCIPAL ACT

SCHEDULE 2

AMENDMENTS RELATING TO CONDUCT RULES AND COMPETITION CODE

SCHEDULE 3

OTHER AMENDMENTS RELATING TO THE CREATION AND FUNCTIONS OF THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION AND TO ACCESS TO DECLARED SERVICES

PART 1-PRELIMINARY

Short title etc.

Commencement

PART 2-AMENDMENTS COMMENCING AT THE FIRST COMMENCEMENT TIME

Division 1-Amendments

Insertion of new section

Interpretation

Acquisition, supply and re-supply

Extended application of Parts IV, IVA and V

Associate members

Insertion of new sections

Contracts, arrangements or understandings that restrict dealings or affect competition

Contracts, arrangements or understandings in relation to prices

Covenants affecting competition

Covenants in relation to prices

Exclusive dealing

Price discrimination

Exceptions

Power of Commission to grant authorisations

Determination of applications for authorisations

Notification of exclusive dealing

Commission to afford opportunity for conference before giving notice in relation to exclusive dealing

Register of notifications

Insertion of new section

Application for review of notice under subsection 93(3) or (3A)

Functions and powers of Tribunal

Regulations as to certain matters

Participants in proceedings before Tribunal

Insertion of new Part

Power to obtain information, documents and evidence

Protection of members of Tribunal, counsel and witnesses

Annual report by Commission

Regulations

Addition of Schedule  
Other amendments  
Division 2-Transitional rules  
Transitional rule for changes to section 51 exceptions  
Existing contracts not affected by amendments

#### PART 3-AMENDMENTS COMMENCING AT THE SECOND COMMENCEMENT TIME

Division 1-Amendments  
Application of Act to Commonwealth and Commonwealth authorities  
Interpretation  
Extended application of Parts IV, IVA and V  
Heading to Part II  
Establishment of Commission  
Constitution of Commission  
Terms and conditions of appointment  
Associate members  
Deputy Chairperson  
Acting Chairperson  
Termination of appointment of members of the Commission  
Arrangement of business  
Disclosure of interests by members  
Meetings of Commission  
Chairperson may direct Commission to sit in Divisions  
Insertion of new section  
Staff of Commission  
Insertion of new section  
Functions of Commission in relation to dissemination of information,  
law reform and research  
Commission to comply with directions of Minister and requirements of  
the Parliament  
Insertion of new Part  
Heading to Part III  
Constitution of Tribunal  
Staff of Tribunal  
Insertion of new Part  
Opportunity for conference to be afforded before certain powers exercised  
Civil action for recovery of pecuniary penalties  
Injunctions  
Divestiture  
Commission to afford opportunity for conference before determining  
application for authorisation  
Notification of exclusive dealing  
Commission to afford opportunity for conference before giving notice in  
relation to exclusive dealing  
Evidentiary provisions  
Functions and powers of Tribunal  
Repeal of Part XI  
Power to obtain information, documents and evidence  
Insertion of new section  
Power to obtain information and documents in New Zealand relating to  
trans-Tasman markets  
Australian Competition and Consumer Commission may receive information  
and documents on behalf of New Zealand Commerce Commission  
Refusal to be sworn or to answer questions  
Jurisdiction of Court to make declarations and orders  
Judicial notice  
Amendments of other Acts  
Division 2-Transitional rules

Government rail transport of coal not covered by access system for first 5 years

**PART 4-AMENDMENTS COMMENCING AT THE THIRD COMMENCEMENT TIME**

Amendment of Prices Surveillance Act: insertion of feminine pronouns

**PART 5-AMENDMENTS COMMENCING AT THE FOURTH COMMENCEMENT TIME**

Division 1-Amendments

Application of Act to Commonwealth and Commonwealth authorities

Insertion of new sections

Interpretation

Constitution of Commission

Associate members

Deputy Chairperson

Exceptions

Insertion of new section

Division 2-Transitional rules

Temporary exemption from pecuniary penalties

Existing contracts not affected by amendments

Advance authorisations

**PART 6-AMENDMENTS COMMENCING AT THE FIFTH COMMENCEMENT TIME**

Amendment of Trade Practices Act: insertion of feminine pronouns

**PART 7-MISCELLANEOUS**

Regulations