



Queensland

Competition Policy Reform (Queensland) Act 1996

Reprinted as in force on 1 January 2011
The attachment in this reprint contains Schedule 1 of the
Competition and Consumer Act 2010 (Cwlth) as at 1 January
2011

Reprint No. 3

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Information about this reprint

This Act is reprinted as at 1 January 2011. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- use different spelling consistent with current drafting practice (s 26(2))
- use aspects of format and printing style consistent with current drafting practice (s 35).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

Spelling

The spelling of certain words or phrases may be inconsistent with other reprints because of changes made in various editions of the Macquarie Dictionary (for example, in the dictionary, ‘lodgement’ has replaced ‘lodgment’).

Dates shown on reprints

Reprints dated at last amendment All reprints produced on or after 1 July 2002, authorised (that is, hard copy) and unauthorised (that is, electronic), are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If an authorised reprint is dated earlier than an unauthorised version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of an authorised reprint is the same as the date shown for an unauthorised version previously published, it merely means that the unauthorised version was published before the authorised version. Also, any revised edition of the previously published unauthorised version will have the same date as that version.

Replacement reprint date If the date of an authorised reprint is the same as the date shown on another authorised reprint it means that one is the replacement of the other.



Queensland

Competition Policy Reform (Queensland) Act 1996

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Competition Policy Reform (Queensland) Act 1996

[as amended by all amendments that commenced on or before 1 January 2011]

An Act to apply certain laws of the Commonwealth relating to competition policy as laws of Queensland, and for other purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Competition Policy Reform (Queensland) Act 1996*.

2 Commencement

- (1) This part, section 39 and parts 7 and 8 commence on the date of assent.
- (2) The remaining provisions of this Act commence on 21 July 1996, but, if the commencement of those provisions is postponed under subsection (3), they commence on the day to which their commencement has been postponed (or the later or latest of those days).
- (3) The commencement of the provisions referred to in subsection (2) may be postponed from time to time by regulation made by the Governor in Council, but any such postponement can not be effected after the provisions have commenced.

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3 Definitions

(1) In this Act—

application law means—

- (a) a law of a participating jurisdiction that applies the Competition Code, either with or without modifications, as a law of the participating jurisdiction; or
- (b) any regulations or other legislative instrument made under a law described in paragraph (a); or
- (c) the Competition Code, applying as a law of the participating jurisdiction, either with or without modifications.

Code, for part 7, see section 40.

Commission means the Australian Competition and Consumer Commission established by section 6A of the Competition and Consumer Act, and includes a member of the commission or a division of the commission performing functions of the commission.

Commonwealth administrative laws, for part 5, division 5, see section 29.

Competition and Consumer Act means the *Competition and Consumer Act 2010* (Cwlth).

Competition Code means (according to the context)—

- (a) the Competition Code text; or
- (b) the Competition Code text, applying as a law of a participating jurisdiction, either with or without modifications.

Competition Code text means the text described in section 4.

Conduct Code Agreement means the Conduct Code Agreement made on 11 April 1995 between the Commonwealth, the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania,

the Australian Capital Territory and the Northern Territory of Australia, as in force for the time being.

Council means the National Competition Council established by section 29A of the Competition and Consumer Act.

cut-off date, for part 7, see section 40.

existing contract, for part 7, see section 40.

instrument means any document whatever, including—

- (a) an Act or an instrument made under an Act; or
- (b) a law of this jurisdiction or an instrument made under such a law; or
- (c) an award or other industrial determination or order, or an industrial agreement; or
- (d) any other order (whether executive, judicial or otherwise); or
- (e) a notice, certificate or licence; or
- (f) an agreement; or
- (g) an application made, information or complaint laid, affidavit sworn, or warrant issued, for any purpose; or
- (h) an indictment, presentment, summons or writ; or
- (i) any other pleading in, or process issued in connection with, a legal or other proceeding.

jurisdiction means a State.

law, in relation to a Territory, means a law of, or in force in, that Territory.

modifications includes additions, omissions and substitutions.

month means a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of the next month.

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notification, for a regulation, see the *Statutory Instruments Act 1992*, section 47.

officer, in relation to the Commonwealth, has the meaning given in part XIA of the Competition and Consumer Act.

operative date, for part 7, see section 40.

participating jurisdiction means a jurisdiction that is a party to the Conduct Code Agreement and applies the Competition Code as a law of the jurisdiction, either with or without modifications.

Schedule version of Part IV means the text that is set out in part 1 of Schedule 1 of the Competition and Consumer Act.

State includes a Territory.

Territory means the Australian Capital Territory or the Northern Territory of Australia.

this jurisdiction means Queensland.

Tribunal means the Australian Competition Tribunal referred to in the Competition and Consumer Act, and includes a member of the tribunal or a division of the tribunal performing functions of the tribunal.

- (2) If an expression is defined in the Trade Practices Act and is also used in this Act, the expression as used in this Act has, unless the contrary intention appears, the same meaning as in that Act.
- (3) In this Act, a reference to a Commonwealth Act includes a reference to—
 - (a) that Commonwealth Act as amended and in force for the time being; and
 - (b) an Act enacted in substitution for that Act.

Part 2 Competition Code

4 Competition Code text

- (1) The Competition Code text consists of—
 - (a) the Schedule version of Part IV; and
 - (b) the remaining provisions of the Competition and Consumer Act (except sections 2A, 5, 6 and 172), so far as they would relate to the schedule version if the schedule version were substituted for part IV of that Act; and
 - (c) the regulations under the Competition and Consumer Act, so far as they relate to any provisions covered by paragraph (a) or (b).
- (2) For the purpose of forming part of the Competition Code text—
 - (a) the provisions referred to in subsection (1)(b) and (c) are to be modified as necessary to fit in with the Schedule version of Part IV; and
 - (b) in particular, references to corporations are to include references to persons who are not corporations.

5 Application of Competition Code

- (1) The Competition Code text, as in force for the time being, applies as a law of Queensland.
- (2) This section has effect subject to section 6.

6 Future modifications of Competition Code text

- (1) A modification made by a Commonwealth law to the Competition Code text after the commencement of this section—
 - (a) does not apply under section 5 until at least the end of the period of 2 months after the date of the modification,

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- unless a regulation under this Act appoints an earlier date; and
- (b) does not apply under that section at all, if the modification is declared by a regulation under this Act to be excluded from the operation of that section.
- (2) A regulation under subsection (1)(a)—
- (a) can not appoint any day that is earlier than the date of notification of the regulation or that is earlier than the date on which the modification of the text takes effect; and
- (b) is taken in such a case to appoint the date of notification of the regulation or the date on which the modification of the text takes effect, whichever is the later.
- (3) A regulation under subsection (1)(b) has effect only if notified before the end of 2 months after the date of the modification.
- (4) Subsection (1)(b) ceases to apply to the modification if a further regulation so provides.
- (5) For the purposes of this section, the date of the modification is the date on which the Commonwealth Act effecting the modification receives the Royal Assent or the regulation effecting the modification is notified in the Commonwealth of Australia Gazette.

7 Interpretation of Competition Code

- (1) The *Acts Interpretation Act 1901* (Cwlth) applies as a law of this jurisdiction to—
- (a) the Competition Code of this jurisdiction; and
- (b) any instrument under that code.
- (2) For the purposes of subsection (1), the Commonwealth Act mentioned in that subsection applies as if—
- (a) the statutory provisions in the Competition Code of this jurisdiction were a Commonwealth Act; and

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- (b) the regulations in the Competition Code of this jurisdiction or instruments mentioned in that subsection were regulations or instruments under a Commonwealth Act.
 - (3) The *Acts Interpretation Act 1954* does not apply to—
 - (a) the Competition Code of Queensland; or
 - (b) any instrument under that code.

8 Application of Competition Code

- (1) The Competition Code of this jurisdiction applies to and in relation to—
 - (a) persons carrying on business within this jurisdiction; or
 - (b) bodies corporate incorporated or registered under the law of this jurisdiction; or
 - (c) persons ordinarily resident in this jurisdiction; or
 - (d) persons otherwise connected with this jurisdiction.
- (2) Subject to subsection (1), the Competition Code of this jurisdiction extends to conduct, and other acts, matters and things, occurring or existing outside or partly outside this jurisdiction (whether within or outside Australia).
- (3) Where a claim under section 82 of the Competition Code of this jurisdiction is made in a proceeding, a person is not entitled to rely at a hearing in respect of that proceeding on conduct to which a provision of the code extends occurring outside Australia except with the consent in writing of the Commonwealth Minister.
- (4) A person other than the Commonwealth Minister or the Commission is not entitled to make an application to the Court for an order under section 87(1) or (1A) of the Competition Code of this jurisdiction in a proceeding in respect of conduct to which a provision of the code extends occurring outside Australia except with the consent in writing of the Commonwealth Minister.

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- (5) The Commonwealth Minister is required to give a consent under subsection (3) or (4) in respect of a proceeding unless, in the opinion of the Commonwealth Minister—
- (a) the law of the country in which the conduct concerned was engaged in required or specifically authorised the engaging in of the conduct; and
 - (b) it is not in the national interest that the consent be given.
- (6) In this section—

Commonwealth Minister means a Minister of State for the Commonwealth administering part IV of the Competition and Consumer Act.

9 Special provisions

The references in sections 45 and 45B of the Competition Code of this or another participating jurisdiction to *the commencement of this section* are taken to be references to the commencement of the provision of the law of that jurisdiction that provides that the Competition Code text as in force for the time being applies as a law of that jurisdiction.

Part 3 Citing the Competition Codes

10 Citation of Competition Code of this jurisdiction

The Competition Code text applying as a law of this jurisdiction may be cited as the Competition Code of Queensland.

11 References to Competition Code

- (1) The object of this section is to help ensure that the Competition Code of this jurisdiction can operate, in appropriate circumstances, as if that code, together with the

Competition Code of each other participating jurisdiction, constituted a single national Competition Code applying throughout the participating jurisdictions.

- (2) A reference in any instrument to the Competition Code is a reference to the Competition Codes of any or all of the participating jurisdictions.
- (3) Subsection (2) has effect except so far as the contrary intention appears in the instrument or the context of the reference otherwise requires.

12 References to Competition Codes of other jurisdictions

- (1) This section has effect for the purposes of an Act, a law of this jurisdiction or an instrument under an Act or such a law.
- (2) If a law of a participating jurisdiction other than this jurisdiction provides that the Competition Code text as in force for the time being applies as a law of that jurisdiction, the Competition Code of that jurisdiction is the Competition Code text, applying as a law of that jurisdiction.

Part 4 Application of Competition Codes to jurisdictions

13 Application law of this jurisdiction

The application law of this jurisdiction binds (so far as the legislative power of Parliament permits) the State of Queensland and each other State, so far as the relevant State carries on a business, either directly or by an authority of that State.

14 Application law of other jurisdictions

The application law of each participating jurisdiction other than this jurisdiction binds the State of Queensland, so far as

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the State carries on a business, either directly or by an authority of the State.

15 Activities that are not business

- (1) For the purposes of sections 13 and 14, the following do not amount to carrying on a business—
 - (a) imposing or collecting—
 - (i) taxes; or
 - (ii) levies; or
 - (iii) fees for licences;
 - (b) granting, refusing to grant, revoking, suspending or varying licences (whether or not they are subject to conditions);
 - (c) a transaction involving—
 - (i) only persons who are all acting for the same jurisdiction (and none of whom is an authority of a State); or
 - (ii) only persons who are all acting for the same authority of a State; or
 - (iii) only a State and 1 or more non-commercial authorities of that State; or
 - (iv) only non-commercial authorities of the same State;
 - (d) the acquisition of primary products by a government body under legislation, unless the acquisition occurs because—
 - (i) the body chooses to acquire the products; or
 - (ii) the body has not exercised a discretion that it has under the legislation that would allow it not to acquire the products.
- (2) Subsection (1) does not limit the things that do not amount to carrying on a business for the purposes of sections 13 and 14.
- (3) In this section—

acquisition of primary products by a government body under legislation includes vesting of ownership of primary products in a government body by legislation.

government body means a State or an authority of a State.

licence means a licence that allows the licensee to supply goods or services.

primary products means—

- (a) agricultural or horticultural produce; or
 - (b) crops, whether on or attached to the land or not; or
 - (c) animals (whether dead or alive); or
 - (d) the bodily produce (including natural increase) of animals.
- (4) For the purposes of this section, an authority of a State is ***non-commercial*** if—
- (a) it is constituted by only 1 person; and
 - (b) it is neither a trading corporation nor a financial corporation.

16 States not liable to pecuniary penalty or prosecution

- (1) Nothing in the application law of this jurisdiction makes a State liable to a pecuniary penalty or to be prosecuted for an offence.
- (2) Without limiting subsection (1), nothing in the application law of a participating jurisdiction makes the State of Queensland liable to a pecuniary penalty or to be prosecuted for an offence.
- (3) The protection in subsection (1) or (2) does not apply to an authority of a State.

17 This part overrides the prerogative

If, because of this part, a provision of the law of another participating jurisdiction binds the State of Queensland, the

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State is subject to that provision despite any prerogative right or privilege.

Part 5 National administration and enforcement of Competition Codes

Division 1 Preliminary

18 Object

The object of this part is to help ensure that the Competition Codes of the participating jurisdictions are administered on a uniform basis, in the same way as if those codes constituted a single law of the Commonwealth.

Division 2 Conferral of functions

19 Conferral of functions and powers on certain bodies

- (1) The authorities and officers of the Commonwealth referred to in the Competition Code of this jurisdiction, including (but not limited to) the Commission, the Tribunal and the Council, have the functions and powers conferred or expressed to be conferred on them respectively under the Competition Code of this jurisdiction.
- (2) In addition to the powers mentioned in subsection (1), the authorities and officers referred to in that subsection have power to do all things necessary or convenient to be done in connection with the performance of the functions and exercise of the powers referred to in that subsection.

20 Conferral of other functions and powers for purposes of law in this jurisdiction

The Commission and the Tribunal have power to do acts in this jurisdiction in the performance or exercise of any function or power expressed to be conferred on them respectively by the Competition Code of another participating jurisdiction.

Division 4 Offences

24 Object

- (1) The object of this division is to further the object of this part by providing—
 - (a) for an offence against the Competition Code of this jurisdiction to be treated as if it were an offence against a law of the Commonwealth; and
 - (b) for an offence against the Competition Code of another participating jurisdiction to be treated in this jurisdiction as if it were an offence against a law of the Commonwealth.
- (2) The purposes for which an offence is to be treated as mentioned in subsection (1) include, for example (but without limitation)—
 - (a) the investigation and prosecution of offences; and
 - (b) the arrest, custody, bail, trial and conviction of offenders or persons charged with offences; and
 - (c) proceedings relating to a matter referred to in paragraph (a) or (b); and
 - (d) appeals and review relating to criminal proceedings and to proceedings of the kind referred to in paragraph (c); and
 - (e) the sentencing, punishment and release of persons convicted of offences; and
 - (f) fines, penalties and forfeitures; and

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- (g) liability to make reparation in connection with offences; and
- (h) proceeds of crime; and
- (i) spent convictions.

25 Application of Commonwealth laws to offences against Competition Code of this jurisdiction

- (1) The Commonwealth laws apply as laws of this jurisdiction in relation to an offence against the Competition Code of this jurisdiction as if that code were a law of the Commonwealth and not a law of this jurisdiction.
- (2) For the purposes of a law of this jurisdiction, an offence against the Competition Code of this jurisdiction—
 - (a) is taken to be an offence against the laws of the Commonwealth, in the same way as if that code were a law of the Commonwealth; and
 - (b) is taken not to be an offence against the laws of this jurisdiction.
- (3) Subsection (2) has effect for the purposes of a law of this jurisdiction except as prescribed by a regulation under this Act.

26 Application of Commonwealth laws to offences against Competition Codes of other jurisdictions

- (1) The Commonwealth laws apply as laws of this jurisdiction in relation to an offence against the Competition Code of another participating jurisdiction as if that code were a law of the Commonwealth and not a law of that other jurisdiction.
- (2) For the purposes of a law of this jurisdiction, an offence against the Competition Code of another participating jurisdiction—
 - (a) is taken to be an offence against the laws of the Commonwealth, in the same way as if that code were a law of the Commonwealth; and

-
- (b) is taken not to be an offence against the laws of that jurisdiction.
 - (3) Subsection (2) has effect for the purposes of a law of this jurisdiction except as prescribed by a regulation under this Act.
 - (4) This section does not require, prohibit, empower, authorise or otherwise provide for, the doing of an act outside this jurisdiction.

27 Functions and powers conferred on Commonwealth officers and authorities

- (1) A Commonwealth law applying because of section 25 that confers on a Commonwealth officer or authority a function or power in relation to an offence against the Competition and Consumer Act also confers on the officer or authority the same function or power in relation to an offence against the corresponding provision of the Competition Code of this jurisdiction.
- (2) A Commonwealth law applying because of section 26 that confers on a Commonwealth officer or authority a function or power in relation to an offence against the Competition and Consumer Act also confers on the officer or authority the same function or power in relation to an offence against the corresponding provision of the Competition Code of another participating jurisdiction.
- (3) The function or power referred to in subsection (2) may only be performed or exercised in this jurisdiction.
- (4) In performing a function or exercising a power conferred by subsection (1) or (2), the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power in relation to an offence against the corresponding provision of the Competition and Consumer Act.

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28 Restriction of functions and powers of officers and authorities of this jurisdiction

Where, by reason of this division, a function or power is conferred on a Commonwealth officer or authority, that function or power may not be performed or exercised by an officer or authority of this jurisdiction.

Division 5 Administrative law

29 Definition

In this division—

Commonwealth administrative laws means—

- (a) the following Acts—
 - (i) the *Administrative Appeals Tribunal Act 1975* (Cwlth), excluding part IVA;
 - (ii) the *Freedom of Information Act 1982* (Cwlth);
 - (iii) the *Ombudsman Act 1976* (Cwlth);
 - (iv) the *Privacy Act 1988* (Cwlth); and
- (b) the regulations in force under those Acts.

30 Application of Commonwealth administrative laws to Competition Code of this jurisdiction

- (1) The Commonwealth administrative laws apply as laws of this jurisdiction to any matter arising in relation to the Competition Code of this jurisdiction as if that code were a law of the Commonwealth and not a law of this jurisdiction.
- (2) For the purposes of a law of this jurisdiction, a matter arising in relation to the Competition Code of this jurisdiction—
 - (a) is taken to be a matter arising in relation to laws of the Commonwealth in the same way as if that code were a law of the Commonwealth; and

- (b) is taken not to be a matter arising in relation to laws of this jurisdiction.
- (3) Subsection (2) has effect for the purposes of a law of this jurisdiction except as prescribed by a regulation under this Act.

31 Application of Commonwealth administrative laws to Competition Codes of other jurisdictions

- (1) The Commonwealth administrative laws apply as laws of this jurisdiction to any matter arising in relation to the Competition Code of another participating jurisdiction as if that code were a law of the Commonwealth and not a law of that jurisdiction.
- (2) For the purposes of a law of this jurisdiction, a matter arising in relation to the Competition Code of another participating jurisdiction—
 - (a) is taken to be a matter arising in relation to laws of the Commonwealth in the same way as if that code were a law of the Commonwealth; and
 - (b) is taken not to be a matter arising in relation to laws of that jurisdiction.
- (3) Subsection (2) has effect for the purposes of a law of this jurisdiction except as prescribed by a regulation under this Act.
- (4) This section does not require, prohibit, empower, authorise or otherwise provide for, the doing of an act outside this jurisdiction.

32 Functions and powers conferred on Commonwealth officers and authorities

- (1) A Commonwealth administrative law applying because of section 30 that confers on a Commonwealth officer or authority a function or power also confers on the officer or authority the same function or power in relation to a matter arising in relation to the Competition Code of this jurisdiction.

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- (2) A Commonwealth administrative law applying because of section 31 that confers on a Commonwealth officer or authority a function or power also confers on the officer or authority the same function or power in relation to a matter arising in relation to the Competition Code of another participating jurisdiction.
- (3) The function or power referred to in subsection (2) may only be performed or exercised in this jurisdiction.
- (4) In performing a function or exercising a power conferred by subsection (1) or (2), the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power under the Commonwealth administrative law.

33 Restriction of functions and powers of officers and authorities of this jurisdiction

Where, by reason of this division, a function or power is conferred on a Commonwealth officer or authority, that function or power may not be performed or exercised by an officer or authority of this jurisdiction.

33A Construction of references to part IVA of AAT Act (Cwlth)

For the purposes of sections 30 and 31, a reference in a provision of the *Administrative Appeals Tribunal Act 1975* (Cwlth), as that provision applies as a law of this jurisdiction, to the whole or any part of part IVA of that Act is taken to be a reference to the whole or any part of that part as it has effect as a law of the Commonwealth.

Part 6 Miscellaneous

34 No doubling-up of liabilities

- (1) If—
- (a) an act or omission is an offence against the Competition Code of this jurisdiction and is also an offence against the Competition and Consumer Act or an application law of another participating jurisdiction; and
 - (b) the offender has been punished for the offence under the Competition and Consumer Act or the application law of the other jurisdiction;

the offender is not liable to be punished for the offence against the Competition Code of this jurisdiction.

- (2) If a person has been ordered to pay a pecuniary penalty under the Competition and Consumer Act or the application law of another participating jurisdiction, the person is not liable to a pecuniary penalty under the Competition Code of this jurisdiction in respect of the same conduct.

35 Things done for multiple purposes

The validity of an authorisation, notification or any other thing given or done for the purposes of the Competition Code of this jurisdiction is not affected only because it was given or done also for the purposes of the Competition and Consumer Act or the Competition Code of 1 or more other jurisdictions.

36 Reference in Commonwealth law to a provision of another law

For the purposes of section 25, 26, 30 or 31, a reference in a Commonwealth law to a provision of that or another Commonwealth law is taken to be a reference to that provision as applying because of that section.

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37 Fees and other money

- (1) All fees, taxes, penalties (including pecuniary penalties referred to in section 76 of the Competition Code), fines and other money that, under the application law of this jurisdiction, are authorised or directed to be payable by or imposed on any person must be paid to the Commonwealth.
- (2) Subsection (1) does not apply to amounts recovered for loss or damage as referred to in section 82 or 87 of the Competition Code and other amounts prescribed by a regulation under this Act.
- (3) This subsection imposes the fees (including fees that are taxes) that the regulations in the Competition Code of this jurisdiction prescribe.

38 Regulations

The Governor in Council may make regulations under this Act.

39 Regulations for exceptions under section 51 of Competition and Consumer Act or Code

Without limiting any other power to make regulations under any other Act, the Governor in Council may make regulations under this Act specifically authorising a specified thing to be done in this jurisdiction and referring expressly to the Competition and Consumer Act or the Competition Code.

Part 7 Transitional rules

40 Definitions

In this part—

Code means the Competition Code of this jurisdiction.

cut-off date means 19 August 1994.

existing contract means a contract that was made before the operative date.

operative date means the date of commencement of parts 2 to 6 of this Act.

41 Existing contracts

- (1) For the purposes of deciding whether a person has contravened part IV of the Code at any time after the operative date—
 - (a) existing contracts made before the cut-off date, and things done to give effect to those contracts, are to be disregarded; and
 - (b) if an existing contract made before the cut-off date is varied on or after the cut-off date—things done to give effect to the varied contract are not to be disregarded under paragraph (a) unless they would have been disregarded under the contract as in force immediately before the cut-off date; and
 - (c) regard can be had to existing contracts made on or after the cut-off date and to things done to give effect to those contracts.
- (2) Part IV of the Code does not make unenforceable a provision of an existing contract made before the cut-off date, unless it was unenforceable immediately before the operative date.
- (3) Part IV of the Code can make unenforceable a provision of an existing contract made on or after the cut-off date.

42 Section 51 exceptions

- (1) This section applies (in addition to section 51(1) of the Code) to conduct taking place before the end of 3 years after 20 July 1995.
- (2) In deciding whether a person has contravened part IV of the Code, a particular thing is to be disregarded if (and to the

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same extent) it is to be disregarded for the purposes of the Trade Practices Act because of the *Competition Policy Reform Act 1995* (Cwlth), section 33.

43 Temporary exemption from pecuniary penalties

- (1) A person is not liable to a pecuniary penalty under the Code for conduct that happens within 2 years after 20 July 1995.
- (2) If the commencement of provisions of this Act is postponed under section 2, the period of 2 years mentioned in this section is extended by the same number of days.

44 Advance authorisations

From the commencement of this section—

- (a) an authorisation may be applied for and granted under the Code; and
- (b) a notice may be given under section 93 of the Code; as if the whole of this Act commenced at the same time as this section.

45 Regulations relating to savings and transitional matters

A regulation under this Act may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

Part 8 Attachment

46 Attachment—Schedule version of Part IV

- (1) Attached to this Act is a copy of the Schedule version of Part IV.
- (2) The attachment does not form part of this Act.

- (3) To remove doubt, it is declared that the copy of the Schedule version of Part IV in the attachment may be revised so that it is an accurate copy of the schedule version as amended from time to time.

Attachment to Competition Policy Reform (Queensland) Act 1996

section 46

The attachment to this Act contains the reprint of Schedule 1 of the *Competition and Consumer Act 2010* (Cwlth) as at 1 January 2011, as prepared by the Office of Legislative Drafting and Publishing, Attorney-General's Department, Canberra. For the most up-to-date reprint and for information about this reprint, including annotations, see the Comlaw website <www.comlaw.gov.au>.

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
-

- (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:
-

- (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

Section 51

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.

Endnotes

1 Index to endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 January 2011. Future amendments of the Competition Policy Reform (Queensland) Act 1996 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	none	21 July 1996	31 October 1996
2	1999 Act No. 72	10 December 1999	13 December 1999

Reprint No.	Amendments included	Effective	Notes
3	2001 Act No. 27 2010 Act No. 54	1 January 2011	

5 List of legislation

Competition Policy Reform (Queensland) Act 1996 No. 16

date of assent 17 July 1996

ss 1–3, 39, pts 7–8 commenced on date of assent (see s 2(1))

remaining provisions commenced 21 July 1996 (see s 2(2)–(3))

amending legislation—

Federal Courts (State Jurisdiction) Act 1999 No. 34 s 1 pt 4

date of assent 29 July 1999

commenced on date of assent

New Tax System Price Exploitation Code (Queensland) Act 1999 No. 72 ss 1(1), 2, 37 sch

date of assent 8 December 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 10 December 1999 (1999 SL No. 323)

Federal Courts (Consequential Amendments) Act 2001 No. 27 pts 1, 3

date of assent 25 May 2001

commenced on date of assent

Fair Trading (Australian Consumer Law) Amendment Act 2010 No. 54 ss 1–2, 67 sch

date of assent 1 December 2010

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2011 (2010 SL No. 359)

6 List of annotations

Definitions

s 3

def “**Commission**” amd 2010 No. 54 s 67 sch

def “**Competition and Consumer Act**” ins 2010 No. 54 s 67 sch

def “**Council**” amd 2010 No. 54 s 67 sch

def “**officer**” amd 2010 No. 54 s 67 sch

def “**Schedule version of Part IV**” amd 1999 No. 72 s 37 sch; 2010 No. 54 s 67 sch

def “**Trade Practices Act**” om 2010 No. 54 s 67 sch

def “**Tribunal**” amd 2010 No. 54 s 67 sch

Competition Code text

s 4

amd 2010 No. 54 s 67 sch

Application of Competition Code

s 8

amd 2010 No. 54 s 67 sch

Application law of this jurisdiction

s 13

sub 1999 No. 72 s 37 sch

Endnotes

Application law of other jurisdictions

s 14 sub 1999 No. 72 s 37 sch

States not liable to pecuniary penalty or prosecution

s 16 amd 1999 No. 72 s 37 sch

This part overrides the prerogative

s 17 amd 1999 No. 72 s 37 sch

**PART 5—NATIONAL ADMINISTRATION AND ENFORCEMENT OF
COMPETITION CODES**

Division 3—Jurisdiction of courts

div hdg om 2001 No. 27 s 9

Jurisdiction of Federal Court

s 21 om 2001 No. 27 s 9

Jurisdiction of courts of this jurisdiction

s 22 om 1999 No. 34 s 17

Exercise of jurisdiction under cross-vesting provisions

s 23 om 2001 No. 27 s 9

Functions and powers conferred on Commonwealth officers and authorities

s 27 amd 2010 No. 54 s 67 sch

Definition

s 29 def “Commonwealth administrative laws” amd 2001 No. 27 s 10

Construction of references to part IVA of ATT Act (Cwlth)

s 33A ins 2001 No. 27 s 11

No doubling-up of liabilities

s 34 amd 2010 No. 54 s 67 sch

Things done for multiple purposes

s 35 amd 2010 No. 54 s 67 sch

**Regulations for exceptions under section 51 of Competition and Consumer Act or
Code**

prov hdg amd 2010 No. 54 s 67 sch

s 39 amd 2010 No. 54 s 67 sch