



New South Wales

# Competition Policy Reform (New South Wales) Act 1995 No 8

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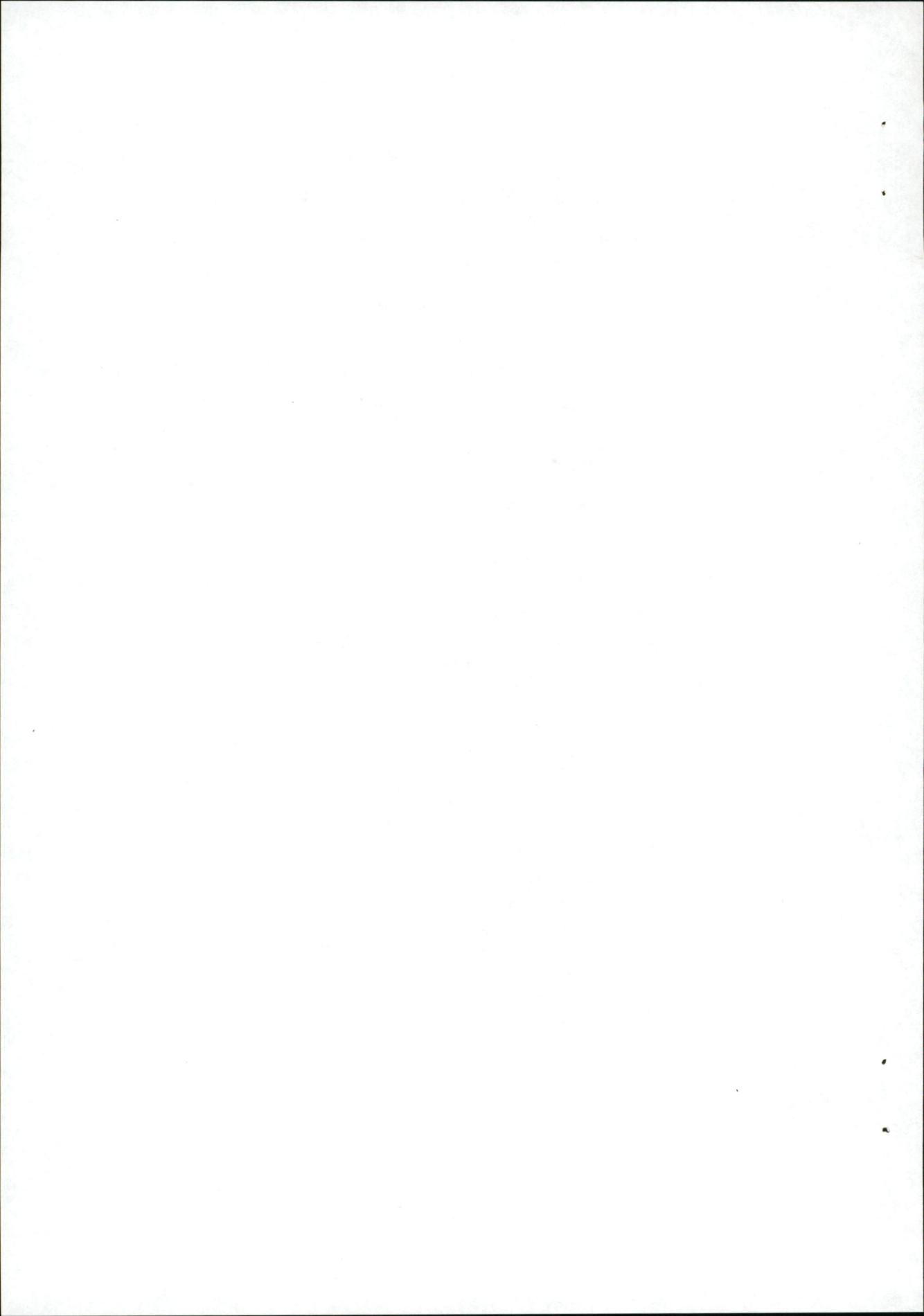
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New South Wales

# Competition Policy Reform (New South Wales) Act 1995 No 8

Act No 8, 1995

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An Act to apply certain laws of the Commonwealth relating to competition policy as laws of New South Wales; and for other purposes. [Assented to 9 June 1995]

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The Legislature of New South Wales enacts:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Competition Policy Reform (New South Wales) Act 1995*.

### 2 Commencement

- (1) Parts 1 and 7 commence on the date of assent to this Act.
- (2) The remaining provisions of this Act commence on the first day after the end of the period of 12 months after the day on which the *Competition Policy Reform Act 1995* of the Commonwealth received the Royal Assent, 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 proclamation, but any such postponement cannot be effected after the provisions have commenced.

### 3 Definitions

- (1) In this Act, unless the contrary intention appears:

***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.

**Commission** means the Australian Competition and Consumer Commission established by section 6A of the Trade Practices Act, and includes a member of the Commission or a Division of the Commission performing functions of the Commission.

**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 Trade Practices Act.

**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 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.

**officer**, in relation to the Commonwealth, has the meaning given in Part XIA of the Trade Practices Act.

**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.

**proclamation** means a proclamation of the Governor published in the Government Gazette of this jurisdiction.

**Schedule version of Part IV** means the text that is set out in the Schedule to the Trade Practices Act.

**State** includes a Territory.

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

**this jurisdiction** means New South Wales.

**Trade Practices Act** means the *Trade Practices Act 1974* of the Commonwealth.

**Tribunal** means the Australian Competition Tribunal referred to in the Trade Practices 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      The Competition Code**

### **4    The Competition Code text**

- (1) The Competition Code text consists of:
  - (a) the Schedule version of Part IV, and
  - (b) the remaining provisions of the Trade Practices 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 Trade Practices 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 New South Wales.
- (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, unless a proclamation appoints an earlier date, and
  - (b) does not apply under that section at all, if the modification is declared by a proclamation to be excluded from the operation of that section.

- (2) A proclamation under subsection (1) (a):
  - (a) cannot appoint any day that is earlier than the date of publication or notification of the proclamation 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 publication or notification of the proclamation or the date on which the modification of the text takes effect, whichever is the later.
- (3) A proclamation under subsection (1) (b) has effect only if published or 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 proclamation 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* of the Commonwealth 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
  - (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 *Interpretation Act 1987* of New South Wales does not apply to:
  - (a) the Competition Code of New South Wales, 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.
- (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 Trade Practices 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 New South Wales.

### **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 Crown**

### **13 Application law of this jurisdiction**

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

### **14 Application law of other jurisdictions**

The application law of each participating jurisdiction other than this jurisdiction binds the Crown in right of this jurisdiction, so far as the Crown carries on a business, either directly or by an authority of this jurisdiction.

### **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 Crown in the same right (and none of whom is an authority of the Commonwealth or an authority of a State), or
    - (ii) only persons who are all acting for the same authority of the Commonwealth, or
    - (iii) only persons who are all acting for the same authority of a State, or



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- (iv) only the Crown in right of the Commonwealth and one or more non-commercial authorities of the Commonwealth, or
  - (v) only the Crown in right of a State and one or more non-commercial authorities of that State, or
  - (vi) only non-commercial authorities of the Commonwealth, or
  - (vii) 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 the Commonwealth, a State, an authority of the Commonwealth 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 the Commonwealth or an authority of a State is ***non-commercial*** if:
- (a) it is constituted by only one person, and
  - (b) it is neither a trading corporation nor a financial corporation.

**16 Crown not liable to pecuniary penalty or prosecution**

- (1) Nothing in the application law of this jurisdiction makes the Crown in any capacity 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 Crown in right of this jurisdiction 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 any jurisdiction.

**17 This Part overrides the prerogative**

If, because of this Part, a provision of the law of another participating jurisdiction binds the Crown in right of this jurisdiction, the Crown in that right 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 3 Jurisdiction of courts**

#### **21 Jurisdiction of Federal Court**

Jurisdiction is conferred on the Federal Court of Australia with respect to all civil and criminal matters arising under the Competition Code of this jurisdiction.

## **22 Jurisdiction of courts of this jurisdiction**

Subject to section 23, the courts of this jurisdiction do not have jurisdiction with respect to the matters referred to in section 21.

## **23 Exercise of jurisdiction under cross-vesting provisions**

This Part does not affect the operation of any law of this jurisdiction relating to cross-vesting of 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 regulations 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 regulations 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 Trade Practices 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 Trade Practices 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 Trade Practices 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* of the Commonwealth,
  - (ii) the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth,
  - (iii) the *Freedom of Information Act 1982* of the Commonwealth,
  - (iv) the *Ombudsman Act 1976* of the Commonwealth,
  - (v) the *Privacy Act 1988* of the Commonwealth, 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 regulations 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 regulations 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.
- (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.

## **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 Trade Practices Act or an application law of another participating jurisdiction, and
  - (b) the offender has been punished for the offence under the Trade Practices 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 Trade Practices 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 Trade Practices Act or the Competition Code of one 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.

### **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 the regulations 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 Government may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### **39 Regulations for exceptions under section 51 of Trade Practices Act or Code**

Without limiting any other power to make regulations under any other Act, regulations may be made under this Act specifically authorising a specified thing to be done in this jurisdiction and referring expressly to the Trade Practices 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 2–6 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 the date on which the *Competition Policy Reform Act 1995* of the Commonwealth received the Royal Assent.



- (2) In deciding whether a person has contravened Part IV of the Code, a particular thing is to be disregarded if (and to the same extent) it is to be disregarded for the purposes of the Trade Practices Act because of section 29 of the *Competition Policy Reform Act 1995* of the Commonwealth.

#### **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 the day on which the *Competition Policy Reform Act 1995* of the Commonwealth received the Royal Assent.
- (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**

- (1) The regulations under this Act may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such savings or transitional provision may, if the regulations so provide, take effect retrospectively.

- (3) To the extent to which any such savings or transitional provision takes effect from a date that is earlier than the date of its publication or notification in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication or notification, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication or notification.

[Minister's second reading speech made in—  
Legislative Assembly on 23 May 1995  
Legislative Council on 6 June 1995]

BY AUTHORITY



First print



New South Wales

# Competition Policy Reform (New South Wales) Bill 1995

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The object of this Bill is to enact legislation that will give effect in New South Wales to the reform of competition policy, as endorsed by the Council of Australian Governments and as recommended by the Hilmer Report.

The *Competition Policy Reform Bill* 1995 of the Commonwealth (the Commonwealth Bill) is complemented by legislation to be enacted by the States and Territories. The package of competition law applying throughout Australia will be found in the *Trade Practices Act 1974* of the Commonwealth (as proposed to be amended by the Commonwealth Bill) and the proposed legislation of the States and Territories.

This Bill deals principally with the application of the Competition Code. It does so in concert with the Commonwealth Bill, which effectively creates the Competition Code but which does not itself apply the Code. The principal purpose of this scheme is to apply Part IV of the Trade Practices

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Act (TPA) to those persons and things that do not or may not fall within the constitutional competence of the Commonwealth (especially individuals and partnerships). It does so by applying the provisions of the Part to all persons (including corporations, as well as individuals and partnerships). The Competition Code consists of:

- The text set out in the Schedule to the TPA (this repeats most, but not all, of Part IV, but generalised so as to apply to "persons" instead of "corporations"). The result will be an overlap, mainly in the area of corporations (the question of double jeopardy is dealt with in the legislation, as mentioned below).
- The remaining provisions of the TPA (with certain exceptions), so far as they would relate to the Schedule version of Part IV if the Schedule version were substituted for the actual Part IV.
- Relevant regulations under the TPA.

## Outline of provisions

### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act. Part 1 and Part 7 will commence immediately on receiving assent. These Parts are supplementary to the substantive provisions of the Bill. Part 1 contains the name of the proposed Act, its commencement and definitions. Part 7 contains transitional provisions.

The remaining provisions are intended to commence 12 months after the date of assent to the Commonwealth Bill. Although the Commonwealth Bill contains a number of different commencement dates, virtually all of the Commonwealth Bill will have commenced 12 months after the date of assent. The result therefore is that the Commonwealth Bill will be in force when the State Bill commences.

There is provision in clause 2 of the Bill for the postponement of the commencement of those remaining provisions, to deal with any unforeseen circumstances that might arise.

**Clause 3** contains interpretive provisions for the proposed Act. Clause 3 (1) contains a list of definitions. An explanation of their origin or purpose is as follows:

***application law***—the same as in proposed Part XIA, to be inserted into the TPA by the Commonwealth Bill.

***Commission***—the same as in section 4 of the TPA, as amended by the Commonwealth Bill.

***Competition Code***—the same as in proposed Part XIA.

***Competition Code text***—the text of the law to be applied as the Competition Code.

***Conduct Code Agreement***—the same as in section 4 of the TPA, as amended by the Commonwealth Bill.

***Council***—the same as in section 4 of the TPA, as amended by the Commonwealth Bill.

***instrument***—the same as the definition used in corporations legislation and agricultural and chemical legislation (agvet legislation).

***jurisdiction***—to mean a State, which is in turn defined to include a Territory.

***law***—the same as the definition used in corporations and agvet legislation.

***modifications***—the same as in proposed Part XIA.

***month***—the same as in the *Acts Interpretation Act 1901* of the Commonwealth.

***officer***—merely picks up the definition in proposed Part XIA.

***participating jurisdiction***—a jurisdiction that applies the Competition Code.

***proclamation***—makes it clear that it is a proclamation of the State, not of the Commonwealth.

***Schedule version of Part IV***—the same as in proposed Part XIA.

***State***—is defined as including a Territory.

***Territory***—the same as in proposed Part XIA.

***this jurisdiction***—will mean New South Wales. Use of this definition reduces variation between the corresponding legislation.

***Trade Practices Act***—a convenient short definition.

***Tribunal***—the same as in section 4 of the TPA, as amended by the Commonwealth Bill.



**Clause 3 (2)** provides for expressions used in the Bill to have the same meanings as in the TPA.

**Clause 3 (3)** provides that references to Commonwealth Acts include amendments and replacements.

## **Part 2 The Competition Code**

**Clause 4** defines the Competition Code text that will be applied to become the Competition Code. As mentioned above, this is primarily the provisions of Part IV of the TPA.

**Clause 5** is the operative clause of the Bill. It applies the Competition Code text as a law of New South Wales.

**Clause 6** provides a scheme to deal with future modifications of the Competition Code text by Commonwealth legislation. In essence, the scheme provides that there is to be at least a two month gap between the enactment or making of Commonwealth modifications and their application under clause 5. That period can be shortened by proclamation; alternatively, a proclamation can provide that a modification is not to apply at all in the State.

**Clause 7** provides, for the purposes of uniformity, that the *Acts Interpretation Act 1901* of the Commonwealth applies to the interpretation of the Competition Code (instead of the *Interpretation Act 1987* of New South Wales).

**Clause 8** makes it clear that the Competition Code is not to be construed as merely applying in the territorial area of the State, and that the extraterritorial competence of the legislature of the State is being used. However provisions contained in section 5 of the TPA are repeated in the clause to require consent of the Commonwealth Minister for proceedings involving conduct outside Australia.

**Clause 9** provides for the interpretation of the expression "the commencement of this section" in the Schedule version of Part IV. This expression will, in effect, be read as a reference to the commencement of substantive provisions of the Bill.

## **Part 3 Citing the Competition Codes**

**Clauses 10–12.** This Part provides a system for referring to the Competition Codes.



#### **Part 4 Application of Competition Codes to Crown**

**Clause 13** provides that the Act and Competition Code of New South Wales will bind the Crown in all its capacities (to the full extent of constitutional capacity to do this). In line with section 2A (1) and proposed section 2B (1) of the TPA, this will apply to the Crown only when carrying on a business.

**Clause 14** is the counterpart of clause 13, and provides that the Act and Competition Code of another State or Territory will bind the Crown in right of New South Wales. Again, this will apply to the Crown only when carrying on a business.

**Clause 15** makes it clear that certain activities carried on by governments or government authorities do not amount to carrying on a business (for the purposes of clauses 13 and 14). The clause is the same as proposed section 2C of the TPA.

**Clause 16** provides that the Crown is not liable to pecuniary penalties or prosecutions. This is in line with proposed sections 2A (3) and 2B (2) of the TPA.

**Clause 17** makes it clear that, where the law of another jurisdiction binds the Crown in right of New South Wales by virtue of this Part, the Code overrides any prerogative right or privilege of the Crown (eg in relation to the payment of debts). Similar provisions are included in corporations and agvet legislation.

#### **Part 5 National administration and enforcement of Competition Codes**

**Clauses 18–33.** The provisions of this Part are intended to promote the uniform administration of the Competition Codes, as if they were a single Commonwealth Act. The provisions are similar to those included in corporations legislation.

#### **Part 6 Miscellaneous**

**Clause 34** recognises that the same conduct is capable of being punished under more than one law (the Competition Code of the State, the Competition Code of another jurisdiction, or the Trade Practices Act), and removes this double jeopardy. The clause has its counterpart in proposed section 150H of the TPA.

**Clause 35** makes it clear that documentation and other things are not invalid because they also serve other Competition Codes or the TPA.

**Clause 36** is intended to deal with the technical point that a reference in an applied law to another Commonwealth law is to be treated as if the other law were itself an applied law. There is a similar provision in the corporations and agvet legislation.

**Clause 37** provides that fees, taxes, penalties, fines and other money paid under the Competition Code of the State are to be paid to the Commonwealth. This will not apply to amounts recovered in actions for damages. Clause 37 (3) is a technical provision that imposes fees (including fees that are taxes) prescribed by the applied regulations.

**Clause 38** allows regulations to be made for the purposes of the proposed legislation.

**Clause 39** provides a specific power to make regulations for the purposes of prescribing exceptions under section 51 of the TPA or section 51 of the Competition Code.

## **Part 7 Transitional rules**

**Clause 40** contains definitions used in Part 7.

**Clause 41** gives effect to the policy that existing contracts made before 19 August 1994 (the date the legislative scheme was announced) are not caught by the Competition Code. However, if such a contract is varied on or after that date, the Competition Code will apply to future conduct in relation to the varied contract, except as regards matters that were previously protected. The Code applies to future conduct in relation to contracts made after that date.

Although a contract is "grandfathered" under clause 41 in relation to the Competition Code, it may still be caught by Part IV of the TPA.

Although clause 41 corresponds generally to clauses 30 and 84 of the Commonwealth Bill, those clauses do not contain provisions that correspond to clause 41 (1) (c) and (3). That paragraph and that subclause are inserted in this Bill for the purpose of clarifying the way the Competition Code applies in relation to existing contracts made on or after 19 August 1994, and are not intended to imply that clause 41 operates differently from those clauses of the Commonwealth Bill in this respect.



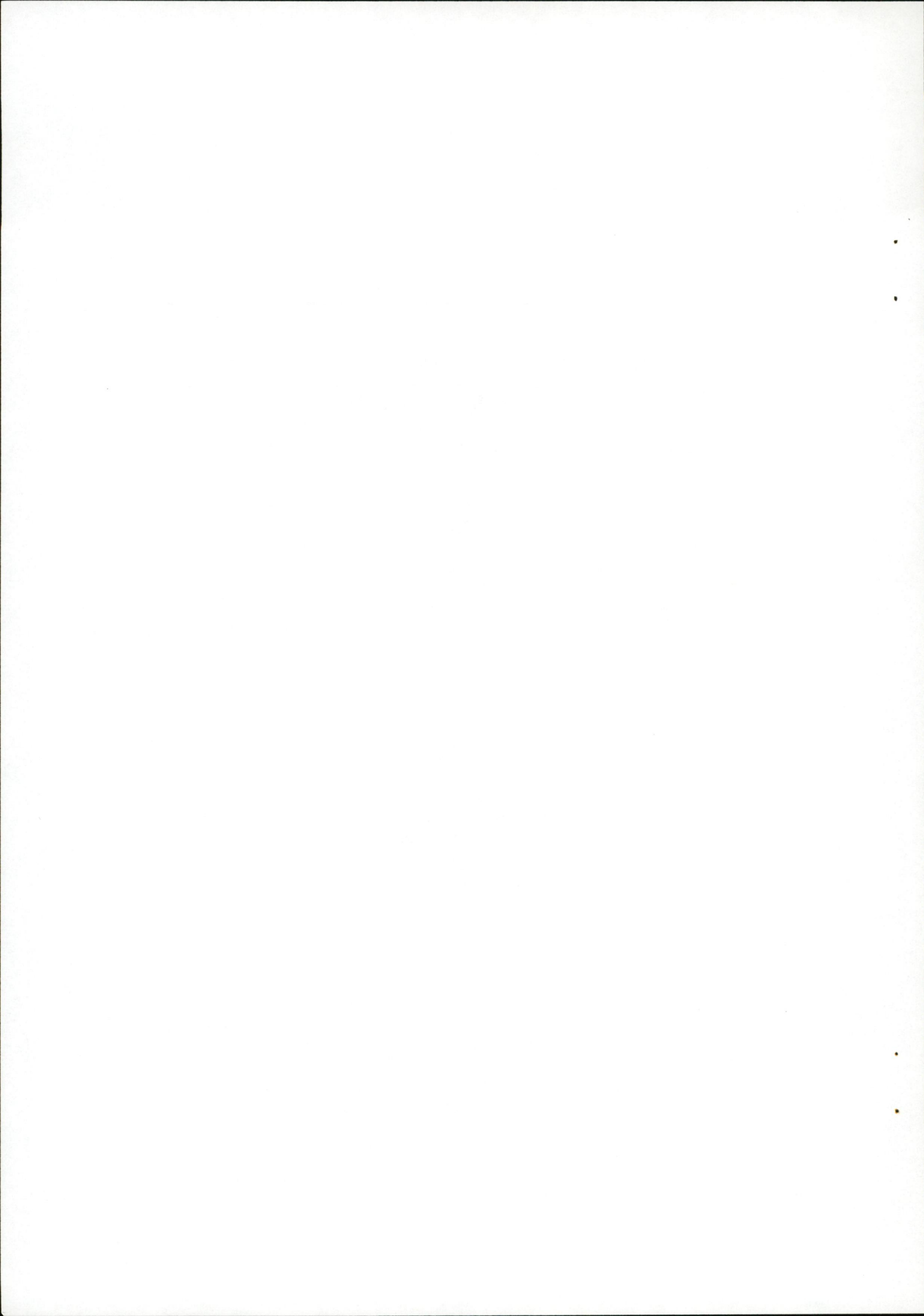
**Clause 42** complements clause 29 of the Commonwealth Bill. Clause 29 is intended to provide a three-year continuation of current exceptions (under section 51 of the TPA) that do not comply with the requirements of new section 51 (1) and (1B) of the TPA (to be inserted by clause 13 of the Commonwealth Bill). Clause 42 provides that the same exceptions will be treated as exceptions from Part IV of the Competition Code for that three-year period.

**Clause 43** gives effect to the policy that pecuniary penalties will not apply in respect of conduct that is being subjected to the competition law for the first time, until two years have passed after the Commonwealth Bill is assented to. Since this Bill is intended to commence 12 months after the Commonwealth Bill is assented to, this effectively means that there will be one year during which pecuniary penalties will not be available under the Competition Code. Other remedies will be available during that period of one year.

The period of one year will be extended if the commencement of the substantive provisions of this Bill is postponed under clause 2.

**Clause 44** permits persons to apply to the Commission for authorisation of conduct and to notify conduct to the Commission before the Competition Code applies to the conduct.

**Clause 45** enables regulations to be made for savings and transitional purposes. Regulations can be made retrospectively for this purpose, but any retrospective effect is not to prejudice rights or impose liabilities (except as regards the State or its authorities).







New South Wales

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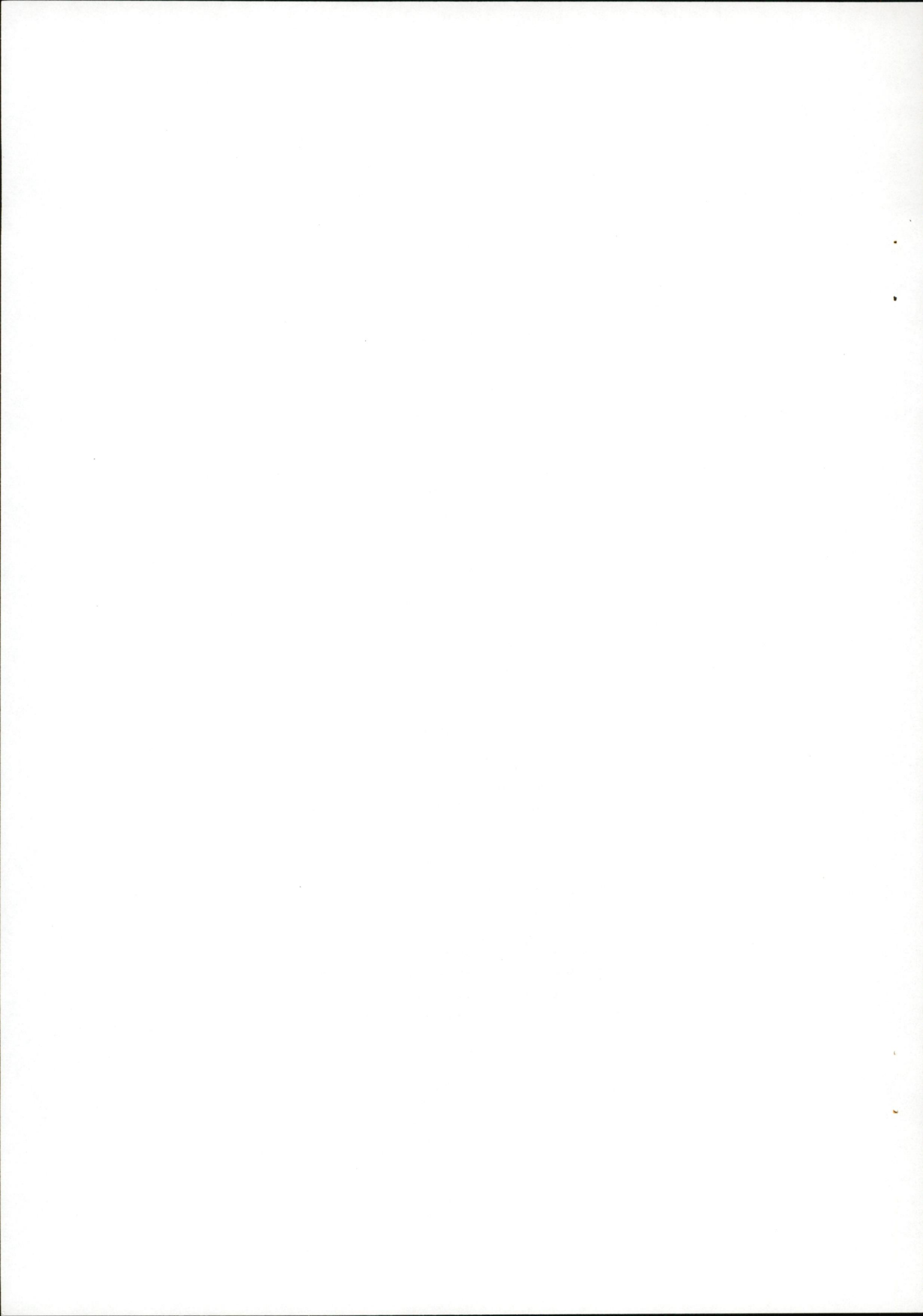
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New South Wales

# Competition Policy Reform (New South Wales) Bill 1995

No. , 1995

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## **A Bill for**

An Act to apply certain laws of the Commonwealth relating to competition policy as laws of New South Wales; and for other purposes.

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**The Legislature of New South Wales enacts:**

**Part 1 Preliminary**

**1 Name of Act**

This Act is the *Competition Policy Reform (New South Wales) Act 1995*. 5

**2 Commencement**

- (1) Parts 1 and 7 commence on the date of assent to this Act.
- (2) The remaining provisions of this Act commence on the first day after the end of the period of 12 months after the day on which the *Competition Policy Reform Act 1995* of the Commonwealth received the Royal Assent, 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). 10
- (3) The commencement of the provisions referred to in subsection (2) may be postponed from time to time by proclamation, but any such postponement cannot be effected after the provisions have commenced. 15

**3 Definitions**

- (1) In this Act, unless the contrary intention appears: 20  
*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 25
  - (c) the Competition Code, applying as a law of the participating jurisdiction, either with or without modifications.

**Commission** means the Australian Competition and Consumer Commission established by section 6A of the Trade Practices Act, and includes a member of the Commission or a Division of the Commission performing functions of the Commission.

**Competition Code** means (according to the context): 5

- (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. 10

**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. 15

**Council** means the National Competition Council established by section 29A of the Trade Practices Act.

**instrument** means any document whatever, including:

- (a) an Act or an instrument made under an Act, or 20
- (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 25
- (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 30
- (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 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. 5

**officer**, in relation to the Commonwealth, has the meaning given in Part XIA of the Trade Practices Act. 10

**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.

**proclamation** means a proclamation of the Governor published in the Government Gazette of this jurisdiction. 15

**Schedule version of Part IV** means the text that is set out in the Schedule to the Trade Practices Act.

**State** includes a Territory.

**Territory** means the Australian Capital Territory or the Northern Territory of Australia. 20

**this jurisdiction** means New South Wales.

**Trade Practices Act** means the *Trade Practices Act 1974* of the Commonwealth.

**Tribunal** means the Australian Competition Tribunal referred to in the Trade Practices Act, and includes a member of the Tribunal or a Division of the Tribunal performing functions of the Tribunal. 25

(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. 30

(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. 35



## Part 2 The Competition Code

### 4 The Competition Code text

- (1) The Competition Code text consists of:
  - (a) the Schedule version of Part IV, and
  - (b) the remaining provisions of the Trade Practices 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 5
  - (c) the regulations under the Trade Practices Act, so far as they relate to any provisions covered by paragraph (a) or (b). 10
- (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 15
  - (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 New South Wales. 20
- (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, unless a proclamation appoints an earlier date, and 25
  - (b) does not apply under that section at all, if the modification is declared by a proclamation to be excluded from the operation of that section. 30

- (2) A proclamation under subsection (1) (a):
- (a) cannot appoint any day that is earlier than the date of publication or notification of the proclamation or that is earlier than the date on which the modification of the text takes effect, and 5
  - (b) is taken in such a case to appoint the date of publication or notification of the proclamation or the date on which the modification of the text takes effect, whichever is the later.
- (3) A proclamation under subsection (1) (b) has effect only if published or notified before the end of 2 months after the date of the modification. 10
- (4) Subsection (1) (b) ceases to apply to the modification if a further proclamation 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. 15

## 7 Interpretation of Competition Code

- (1) The *Acts Interpretation Act 1901* of the Commonwealth applies as a law of this jurisdiction to: 20
- (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: 25
- (a) the statutory provisions in the Competition Code of this jurisdiction were a Commonwealth Act, and
  - (b) the regulations in the Competition Code of this jurisdiction or instruments mentioned in that subsection were regulations or instruments under a Commonwealth Act. 30
- (3) The *Interpretation Act 1987* of New South Wales does not apply to:
- (a) the Competition Code of New South Wales, or
  - (b) any instrument under that Code.

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## 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 5
  - (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). 10
- (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. 15
- (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. 20  
25
- (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 30
  - (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 Trade Practices Act. 35



## **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.

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## **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 New South Wales.

### **11 References to Competition Code**

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- (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. 10
- (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. 15

### **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. 20
- (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. 25

## **Part 4 Application of Competition Codes to Crown**

### **13 Application law of this jurisdiction**

The application law of this jurisdiction binds (so far as the legislative power of Parliament permits) the Crown in right of this jurisdiction and of each other jurisdiction, so far as the Crown carries on a business, either directly or by an authority of the jurisdiction concerned. 5

### **14 Application law of other jurisdictions**

The application law of each participating jurisdiction other than this jurisdiction binds the Crown in right of this jurisdiction, so far as the Crown carries on a business, either directly or by an authority of this jurisdiction. 10

### **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: 15

(a) imposing or collecting:

(i) taxes, or

(ii) levies, or

(iii) fees for licences, 20

(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 Crown in the same right (and none of whom is an authority of the Commonwealth or an authority of a State), or 25

(ii) only persons who are all acting for the same authority of the Commonwealth, or

(iii) only persons who are all acting for the same authority of a State, or 30

- (iv) only the Crown in right of the Commonwealth and one or more non-commercial authorities of the Commonwealth, or
- (v) only the Crown in right of a State and one or more non-commercial authorities of that State, or 5
- (vi) only non-commercial authorities of the Commonwealth, or
- (vii) 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: 10
  - (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. 15
- (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. 20
  - government body** means the Commonwealth, a State, an authority of the Commonwealth or an authority of a State.
  - licence** means a licence that allows the licensee to supply goods or services.
  - primary products** means: 25
    - (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 the Commonwealth or an authority of a State is **non-commercial** if: 30
  - (a) it is constituted by only one person, and
  - (b) it is neither a trading corporation nor a financial corporation.



**16 Crown not liable to pecuniary penalty or prosecution**

- (1) Nothing in the application law of this jurisdiction makes the Crown in any capacity 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 Crown in right of this jurisdiction liable to a pecuniary penalty or to be prosecuted for an offence. 5
- (3) The protection in subsection (1) or (2) does not apply to an authority of any jurisdiction. 10

**17 This Part overrides the prerogative**

If, because of this Part, a provision of the law of another participating jurisdiction binds the Crown in right of this jurisdiction, the Crown in that right is subject to that provision despite any prerogative right or privilege. 15



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## **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. 5

### **Division 2 Conferral of functions**

#### **19 Conferral of functions and powers on certain bodies 10**

(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. 15

(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

#### **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. 25

### **Division 3 Jurisdiction of courts**

#### **21 Jurisdiction of Federal Court**

Jurisdiction is conferred on the Federal Court of Australia with respect to all civil and criminal matters arising under the Competition Code of this jurisdiction. 30

## 22 Jurisdiction of courts of this jurisdiction

Subject to section 23, the courts of this jurisdiction do not have jurisdiction with respect to the matters referred to in section 21.

## 23 Exercise of jurisdiction under cross-vesting provisions

This Part does not affect the operation of any law of this jurisdiction relating to cross-vesting of jurisdiction. 5

## Division 4 Offences

### 24 Object

- (1) The object of this Division is to further the object of this Part by providing: 10
  - (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. 15
- (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 20
  - (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 25
  - (e) the sentencing, punishment and release of persons convicted of offences, and
  - (f) fines, penalties and forfeitures, and

- (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** 5

- (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. 10
- (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 15
  - (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 regulations under this Act.

**26 Application of Commonwealth laws to offences against Competition Codes of other jurisdictions** 20

- (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. 25
- (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 30
  - (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 regulations under this Act.

(4) This section does not require, prohibit, empower, authorise or otherwise provide for, the doing of an act outside this jurisdiction.

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**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 Trade Practices 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. 10

(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 Trade Practices 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. 15  
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(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 Trade Practices Act. 25



**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.

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**Division 5 Administrative law**

**29 Definition**

In this Division:

*Commonwealth administrative laws* means:

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(a) the following Acts:

(i) the *Administrative Appeals Tribunal Act 1975* of the Commonwealth,

(ii) the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth,

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(iii) the *Freedom of Information Act 1982* of the Commonwealth,

(iv) the *Ombudsman Act 1976* of the Commonwealth,

(v) the *Privacy Act 1988* of the Commonwealth, and

(b) the regulations in force under those Acts.

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**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.

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(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

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(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 regulations 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. 5
- (2) For the purposes of a law of this jurisdiction, a matter arising in relation to the Competition Code of another participating jurisdiction: 10
- (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. 15
- (3) Subsection (2) has effect for the purposes of a law of this jurisdiction except as prescribed by regulations under this Act.
- (4) This section does not require, prohibit, empower, authorise or otherwise provide for, the doing of an act outside this jurisdiction. 20

**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. 25
- (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. 30

- (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. 5

**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. 10



## 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 Trade Practices Act or an application law of another participating jurisdiction, and 5
  - (b) the offender has been punished for the offence under the Trade Practices Act or the application law of the other jurisdiction, 10
- 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 Trade Practices 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. 15

### 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 Trade Practices Act or the Competition Code of one or more other jurisdictions. 20

### 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. 25

### 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. 30



- (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 the regulations 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. 5

**38 Regulations**

The Government may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. 10

**39 Regulations for exceptions under section 51 of Trade Practices Act or Code** 15

Without limiting any other power to make regulations under any other Act, regulations may be made under this Act specifically authorising a specified thing to be done in this jurisdiction and referring expressly to the Trade Practices Act or the Competition Code. 20

## Part 7 Transitional rules

### 40 Definitions

In this Part:

*Code* means the Competition Code of this jurisdiction.

*cut-off date* means 19 August 1994. 5

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

*operative date* means the date of commencement of Parts 2–6 of this Act.

### 41 Existing contracts 10

- (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 15
  - (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 20
  - (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. 25
- (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 30

- (1) This section applies (in addition to section 51 (1) of the Code) to conduct taking place before the end of 3 years after the date on which the *Competition Policy Reform Act 1995* of the Commonwealth received the Royal Assent.

- (2) In deciding whether a person has contravened Part IV of the Code, a particular thing is to be disregarded if (and to the same extent) it is to be disregarded for the purposes of the Trade Practices Act because of section 29 of the *Competition Policy Reform Act 1995* of the Commonwealth.

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#### **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 the day on which the *Competition Policy Reform Act 1995* of the Commonwealth received the Royal Assent.
- (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.

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#### **44 Advance authorisations**

From the commencement of this section:

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- (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.

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#### **45 Regulations relating to savings and transitional matters**

- (1) The regulations under this Act may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such savings or transitional provision may, if the regulations so provide, take effect retrospectively.

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- (3) To the extent to which any such savings or transitional provision takes effect from a date that is earlier than the date of its publication or notification in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication or notification, or 5
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication or notification. 10