

EXPOSURE DRAFT

2010-2011

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Competition and Consumer Amendment Bill (No. 1) 2011

No. , 2011

(Treasury)

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

EXPOSURE DRAFT

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	2
	Schedule 1—Amendments	3
	<i>Competition and Consumer Act 2010</i>	3

EXPOSURE DRAFT

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

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Competition and Consumer*
6 *Amendment Act (No. 1) 2011*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

EXPOSURE DRAFT

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.
5 Information may be inserted in this column, or information in it
6 may be edited, in any published version of this Act.

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.
12

1

2

Schedule 1—Amendments

3

4

Competition and Consumer Act 2010

5

1 Paragraph 6(2)(b)

6

Omit “44ZZRJ, 44ZZRK”, substitute “44ZZRJ and 44ZZRK,
Division 1A of Part IV, sections”.

7

8

2 After Division 1 of Part IV

9

Insert:

10

Division 1A—Anti-competitive disclosure of pricing and other information

11

12

44ZZS Definitions

13

In this Division:

14

disclose has a meaning affected by section 44ZZU.

15

Division 1A goods or services means goods or services to which
this Division applies (see section 44ZZT).

16

17

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.

18

19

20

intermediary: see subsection 44ZZU(2).

21

private disclosure to competitors: see section 44ZZV.

22

44ZZT Goods and services to which this Division applies

23

(1) This Division applies to goods and services of the classes (however
described) that are prescribed by the regulations for the purpose of
this section.

24

25

26

(2) Without limiting subsection (1), the regulations may limit the
description of a class of goods or services by reference to any
matters including (for example) any one or more of the following:

27

28

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 (a) a kind of supplier of goods or services;
2 (b) a kind of industry or business in which goods or services are
3 supplied;
4 (c) the circumstances in which goods or services are supplied.

5 **44ZZU Provisions affecting whether a corporation has disclosed**
6 **information to a person**

7 *Disclosure to director, employee or agent etc.*

- 8 (1) For the purpose of this Division:
9 (a) a disclosure of information that is made to a person in the
10 person's capacity as a director, employee or agent of a body
11 corporate is taken to have been made to that body corporate;
12 and
13 (b) a disclosure of information that is made to a person in the
14 person's capacity as an employee or agent of another person
15 (not being a body corporate) is taken to have been made to
16 that other person.

17 *Disclosure through intermediary*

- 18 (2) If:
19 (a) a corporation makes a disclosure of information to a person
20 (the *intermediary*); and
21 (b) the corporation makes the disclosure to the intermediary for
22 the purpose of the intermediary disclosing (or arranging for
23 the disclosure of) the information to one or more other
24 persons; and
25 (c) the information is so disclosed to one or more of those other
26 persons (the *recipients*);
27 then, for the purpose of this Division:
28 (d) the disclosure of the information to the recipients is taken to
29 have been made by the corporation; and
30 (e) the disclosure of the information to the intermediary is to be
31 disregarded (unless the intermediary is a competitor or
32 potential competitor of the corporation in a market).

EXPOSURE DRAFT

1 *Accidental disclosure*

2 (3) For the purpose of this Division, the disclosure of information by a
3 corporation to another person (the *recipient*) is to be disregarded if
4 the disclosure to the recipient is due to:

- 5 (a) an accident; or
6 (b) the default of a person other than the corporation; or
7 (c) some other cause beyond the control of the corporation.

8 Note: This subsection does not apply to a disclosure of information covered
9 by subsection (2).

10 *Section 84 not limited*

11 (4) This section does not limit section 84.

12 **44ZZV Meaning of *private disclosure to competitors***

13 *Main definition*

14 (1) A disclosure of information by a corporation is a ***private disclosure***
15 ***to competitors***, in relation to a particular market, if the disclosure is
16 to one or more competitors or potential competitors of the
17 corporation in the market, and is not to any other person.

18 Note: The effect of section 44ZZU must be taken into account in working
19 out whether the disclosure is to one or more competitors or potential
20 competitors, and is not to any other person.

21 *Anti-avoidance*

22 (2) For the purpose of determining whether a corporation has made a
23 private disclosure to competitors in relation to a particular market,
24 the fact that the disclosure is also made to a person who is not a
25 competitor or potential competitor of the corporation in the market
26 is to be disregarded if the corporation (or an intermediary) made
27 the disclosure to the person for the purpose of avoiding the
28 application of section 44ZZW.

29 *Fact that the information is otherwise available is not relevant*

30 (3) The question whether a disclosure of information by a corporation
31 is a private disclosure to competitors is not affected by the
32 information otherwise being or becoming available to competitors

EXPOSURE DRAFT

Schedule 1 Amendments

1 or potential competitors of the corporation in the market, or to
2 other persons.

3 **44ZZW Corporation must not make private disclosure of pricing**
4 **information etc. to competitors**

5 A corporation must not make a disclosure of information if:

- 6 (a) the information relates to a price for, or a discount,
7 allowance, rebate or credit in relation to, Division 1A goods
8 or services supplied or likely to be supplied, or acquired or
9 likely to be acquired, by the corporation in a market (whether
10 or not the information also relates to other matters); and
11 (b) the disclosure is a private disclosure to competitors.

12 Note: Conduct that would otherwise contravene this section can be
13 authorised under subsection 88(6A).

14 **44ZZX Corporation must not make disclosure of pricing**
15 **information etc. for purpose of substantially lessening**
16 **competition**

17 *The prohibition*

18 (1) A corporation must not make a disclosure of information if:

- 19 (a) the information relates to one or more of the following
20 (whether or not it also relates to other matters):
21 (i) a price for, or a discount, allowance, rebate or credit in
22 relation to, Division 1A goods or services supplied or
23 likely to be supplied, or acquired or likely to be
24 acquired, by the corporation;
25 (ii) the capacity, or likely capacity, of the corporation to
26 supply or acquire Division 1A goods or services;
27 (iii) any aspect of the commercial strategy of the corporation
28 that relates to Division 1A goods or services; and
29 (b) the corporation makes the disclosure for the purpose of
30 substantially lessening competition in a market.

31 Note: Conduct that would otherwise contravene this section can be
32 authorised under subsection 88(6A).

EXPOSURE DRAFT

Amendments **Schedule 1**

1 *Determining whether disclosure made for purpose of substantially*
2 *lessening competition*

- 3 (2) In determining, for the purpose of this section, if a corporation has
4 made a disclosure for the purpose of substantially lessening
5 competition in a market, the matters to which the court may have
6 regard include (but are not limited to):
7 (a) whether the disclosure was a private disclosure to
8 competitors; and
9 (b) the degree of specificity of the information; and
10 (c) whether the information relates to past, current or future
11 activities; and
12 (d) how readily available the information is to the public; and
13 (e) whether the disclosure is part of a pattern of similar
14 disclosures by the corporation.
- 15 (3) Without limiting the manner in which the purpose of a person may
16 be established for the purposes of any other provision of this Act, a
17 corporation may be taken to have made a disclosure of information
18 for the purpose of substantially lessening competition in a market
19 even though, after all the evidence has been considered, the
20 existence of that purpose is ascertainable only by inference from
21 the conduct of the corporation or of any other person or from other
22 relevant circumstances.

23 **44ZZY Exceptions that apply to sections 44ZZW and 44ZZX**

24 *Disclosure authorised by law*

- 25 (1) Sections 44ZZW and 44ZZX do not apply to the disclosure of
26 information by a corporation if:
27 (a) the disclosure is authorised by or under a law of the
28 Commonwealth, a State or a Territory; and
29 (b) the disclosure occurs before the end of 10 years after the day
30 on which the *Competition and Consumer Amendment Act*
31 (*No. 1*) 2011 receives the Royal Assent.

32 Note: This subsection has effect in addition to subsection 51(1) (which
33 covers things authorised by certain laws).

EXPOSURE DRAFT

Schedule 1 Amendments

1 *Disclosure to related bodies corporate*

- 2 (2) Sections 44ZZW and 44ZZX do not apply to the disclosure of
3 information by a corporation if the disclosure is to one or more
4 bodies corporate that are related to the corporation, and is not to
5 any other person.

6 Note: The effect of section 44ZZU must be taken into account in working
7 out whether the disclosure is to one or more bodies corporate that are
8 related to the corporation, and is not to any other person.

9 **44ZZZ Additional exceptions that only apply to section 44ZZW**

10 *Disclosure if supply or acquisition is for the purpose of re-supply*

- 11 (1) Section 44ZZW does not apply to the disclosure of information by
12 a corporation to a person (the *recipient*) if:
13 (a) the information relates to a price for, or a discount,
14 allowance, rebate or credit in relation to, Division 1A goods
15 or services supplied or likely to be supplied, by the
16 corporation to the recipient, for the purpose of re-supply by
17 the recipient; or
18 (b) the information relates to a price for, or a discount,
19 allowance, rebate or credit in relation to, Division 1A goods
20 or services acquired or likely to be acquired, by the
21 corporation from the recipient, for the purpose of re-supply
22 by the corporation.

23 *Disclosure to unknown competitor*

- 24 (2) Section 44ZZW does not apply to the disclosure of information by
25 a corporation to a person if:
26 (a) the person is a competitor or potential competitor of the
27 corporation in the market referred to in that section; and
28 (b) the corporation did not know, and could not reasonably be
29 expected to have known, that the person was such a
30 competitor or potential competitor.

31 *Disclosure to participants in joint venture*

- 32 (3) Section 44ZZW does not apply to the disclosure of information by
33 a corporation if:

EXPOSURE DRAFT

Amendments **Schedule 1**

- 1 (a) the corporation is a participant in a joint venture for the
2 production and/or supply of goods or services; and
3 (b) the disclosure is to one or more participants in the joint
4 venture, and is not to any other person; and
5 (c) the disclosure is made for the purposes of the joint venture.

6 Note: The effect of section 44ZZU must be taken into account in working
7 out whether the disclosure is to one or more participants in the joint
8 venture, and is not to any other person.

9 *Disclosure relating to acquisition of shares or assets*

- 10 (4) Section 44ZZW does not apply to the disclosure of information by
11 a corporation in so far as the information is disclosed in connection
12 with a contract, arrangement or understanding that provides, or a
13 proposed contract, arrangement or understanding that would
14 provide, for the acquisition of any shares in the capital of a body
15 corporate, or any assets of a person, by or from the corporation.

16 Note: For the meaning of acquisition of shares, and acquisition of assets, see
17 subsection 4(4).

18 **44ZZZA Burden of proof**

19 If:

- 20 (a) proceedings are brought against a person in relation to
21 section 44ZZW or 44ZZX; and
22 (b) the person seeks to rely on subsection 44ZZU(3), or on a
23 subsection of section 44ZZY or 44ZZZ;
24 the person bears an evidential burden in relation to the matters set
25 out in that subsection on which the person seeks to rely.

26 **3 Paragraph 84(1)(b)**

27 Omit “44ZZRJ, 44ZZRK,”, substitute “44ZZRJ or 44ZZRK,
28 Division 1A of Part IV, section”.

29 **4 Paragraph 84(3)(b)**

30 After “44ZZRK”, insert “, Division 1A of Part IV,”.

31 **5 After subsection 88(6)**

32 Insert:

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 (6A) Subject to this Part, the Commission may, on application by or on
2 behalf of a corporation, grant an authorisation to the corporation to
3 make a particular disclosure of information to which
4 section 44ZZW or 44ZZX would or might apply. While the
5 authorisation remains in force, that section does not apply in
6 relation to the corporation making the disclosure.
- 7 (6B) The Commission does not have power to grant an authorisation
8 under subsection (6A) to a corporation to make a particular
9 disclosure of information if the disclosure occurred before the
10 Commission makes a determination in respect of the application.
- 11 (6C) An application made to the Commission under subsection (6A) for
12 an authorisation in relation to a particular disclosure of information
13 may be expressed to be made also in relation to one or more other
14 similar disclosures of information. If an application is so
15 expressed, the Commission may grant a single authorisation in
16 respect of all the disclosures or may grant separate authorisations
17 in respect of any one or more of the disclosures.

6 After subsection 90(5B)

18
19 Insert:

- 20 (5C) The Commission must not make a determination granting an
21 authorisation under subsection 88(6A) in respect of a proposed
22 disclosure of information to which section 44ZZW would or might
23 apply, unless the Commission is satisfied in all the circumstances
24 that the proposed disclosure would result, or be likely to result, in
25 such a benefit to the public that the proposed disclosure should be
26 allowed to be made.
- 27 (5D) The Commission must not make a determination granting an
28 authorisation under subsection 88(6A) in respect of a proposed
29 disclosure of information to which section 44ZZX would or might
30 apply, unless the Commission is satisfied in all the circumstances:
31 (a) that the proposed disclosure would result, or be likely to
32 result, in a benefit to the public; and
33 (b) that the benefit would outweigh the detriment to the public
34 constituted by any lessening of competition that would result,
35 or be likely to result, if the corporation so disclosed the
36 information.

EXPOSURE DRAFT

Amendments Schedule 1

1 **7 Subsection 91A(4)**

2 After “(5B)”, insert “, (5D)”.

3 **8 Subsection 91A(5)**

4 Omit “90(8)”, substitute “90(5C), (8)”.

5 **9 Subsection 91B(5)**

6 After “(5B),”, insert “(5C), (5D),”.

7 **10 Subsection 91C(7)**

8 After “(5B),”, insert “(5C), (5D),”.

9 **11 Subsection 101(1A)**

10 After “(5B),”, insert “(5C), (5D),”.

11 **12 Subsection 101(2)**

12 After “(5B),”, insert “(5C), (5D),”.

13 **13 After Division 1 of Part 1 of Schedule 1**

14 Insert:

15 **Division 1A—Anti-competitive disclosure of pricing and**
16 **other information**

17 **44ZZS Definitions**

18 In this Division:

19 *disclose* has a meaning affected by section 44ZZU.

20 *Division 1A goods or services* means goods or services to which
21 this Division applies (see section 44ZZT).

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

25 *intermediary*: see subsection 44ZZU(2).

26 *private disclosure to competitors*: see section 44ZZV.

EXPOSURE DRAFT

Schedule 1 Amendments

1 **44ZZT Goods and services to which this Division applies**

2 This Division applies to goods and services of the classes
3 prescribed by the regulations for the purpose of section 44ZZT of
4 the *Competition and Consumer Act 2010*.

5 **44ZZU Provisions affecting whether a person has disclosed**
6 **information to another person**

7 *Disclosure to director, employee or agent etc.*

8 (1) For the purpose of this Division:

- 9 (a) a disclosure of information that is made to a person in the
10 person's capacity as a director, employee or agent of a body
11 corporate is taken to have been made to that body corporate;
12 and
13 (b) a disclosure of information that is made to a person in the
14 person's capacity as an employee or agent of another person
15 (not being a body corporate) is taken to have been made to
16 that other person.

17 *Disclosure through intermediary*

18 (2) If:

- 19 (a) a person (the **first person**) makes a disclosure of information
20 to another person (the **intermediary**); and
21 (b) the first person makes the disclosure to the intermediary for
22 the purpose of the intermediary disclosing (or arranging for
23 the disclosure of) the information to one or more other
24 persons; and
25 (c) the information is so disclosed to one or more of those other
26 persons (the **recipients**);
27 then, for the purpose of this Division:
28 (d) the disclosure of the information to the recipients is taken to
29 have been made by the first person; and
30 (e) the disclosure of the information to the intermediary is to be
31 disregarded (unless the intermediary is a competitor or
32 potential competitor of the first person in a market).

EXPOSURE DRAFT

Amendments **Schedule 1**

1 *Accidental disclosure*

- 2 (3) For the purpose of this Division, the disclosure of information by a
3 person (the *first person*) to another person (the *recipient*) is to be
4 disregarded if the disclosure to the recipient is due to:
5 (a) an accident; or
6 (b) the default of a person other than the first person; or
7 (c) some other cause beyond the control of the first person.

8 Note: This subsection does not apply to a disclosure of information covered
9 by subsection (2).

10 *Section 84 not limited*

- 11 (4) This section does not limit section 84.

12 **44ZZV Meaning of *private disclosure to competitors***

13 *Main definition*

- 14 (1) A disclosure of information by a person is a *private disclosure to*
15 *competitors*, in relation to a particular market, if the disclosure is to
16 one or more competitors or potential competitors of the person in
17 the market, and is not to any other person.

18 Note: The effect of section 44ZZU must be taken into account in working
19 out whether the disclosure is to one or more competitors or potential
20 competitors, and is not to any other person.

21 *Anti-avoidance*

- 22 (2) For the purpose of determining whether a person (the *first person*)
23 has made a private disclosure to competitors in relation to a
24 particular market, the fact that the disclosure is also made to
25 another person who is not a competitor or potential competitor of
26 the first person in the market is to be disregarded if the first person
27 (or an intermediary) made the disclosure to the other person for the
28 purpose of avoiding the application of section 44ZZW.

29 *Fact that the information is otherwise available is not relevant*

- 30 (3) The question whether a disclosure of information by a person is a
31 private disclosure to competitors is not affected by the information
32 otherwise being or becoming available to competitors or potential
33 competitors of the person in the market, or to other persons.

EXPOSURE DRAFT

Schedule 1 Amendments

1 **44ZZW Person must not make private disclosure of pricing**
2 **information etc. to competitors**

3 A person must not make a disclosure of information if:

- 4 (a) the information relates to a price for, or a discount,
5 allowance, rebate or credit in relation to, Division 1A goods
6 or services supplied or likely to be supplied, or acquired or
7 likely to be acquired, by the person in a market (whether or
8 not the information also relates to other matters); and
9 (b) the disclosure is a private disclosure to competitors.

10 Note: Conduct that would otherwise contravene this section can be
11 authorised under subsection 88(6A).

12 **44ZZX Person must not make disclosure of pricing information etc.**
13 **for purpose of substantially lessening competition**

14 *The prohibition*

15 (1) A person must not make a disclosure of information if:

- 16 (a) the information relates to one or more of the following
17 (whether or not it also relates to other matters):
18 (i) a price for, or a discount, allowance, rebate or credit in
19 relation to, Division 1A goods or services supplied or
20 likely to be supplied, or acquired or likely to be
21 acquired, by the person;
22 (ii) the capacity, or likely capacity, of the person to supply
23 or acquire Division 1A goods or services;
24 (iii) any aspect of the commercial strategy of the person that
25 relates to Division 1A goods or services; and
26 (b) the person makes the disclosure for the purpose of
27 substantially lessening competition in a market.

28 Note: Conduct that would otherwise contravene this section can be
29 authorised under subsection 88(6A).

30 *Determining whether disclosure made for purpose of substantially*
31 *lessening competition*

- 32 (2) In determining, for the purpose of this section, if a person has made
33 a disclosure for the purpose of substantially lessening competition
34 in a market, the matters to which the court may have regard include
35 (but are not limited to):

EXPOSURE DRAFT

- 1 (a) whether the disclosure was a private disclosure to
2 competitors; and
3 (b) the degree of specificity of the information; and
4 (c) whether the information relates to past, current or future
5 activities; and
6 (d) how readily available the information is to the public; and
7 (e) whether the disclosure is part of a pattern of similar
8 disclosures by the person.
- 9 (3) Without limiting the manner in which the purpose of a person may
10 be established for the purposes of any other provision of this Act, a
11 person may be taken to have made a disclosure of information for
12 the purpose of substantially lessening competition in a market even
13 though, after all the evidence has been considered, the existence of
14 that purpose is ascertainable only by inference from the conduct of
15 the person or of any other person or from other relevant
16 circumstances.

17 **44ZZY Exceptions that apply to sections 44ZZW and 44ZZX**

18 *Disclosure authorised by law*

- 19 (1) Sections 44ZZW and 44ZZX do not apply to the disclosure of
20 information by a person if:
21 (a) the disclosure is authorised by or under a law of the
22 Commonwealth, a State or a Territory; and
23 (b) the disclosure occurs before the end of 10 years after the day
24 on which the *Competition and Consumer Amendment Act*
25 (*No. 1*) 2011 receives the Royal Assent.

26 Note: This subsection has effect in addition to subsection 51(1) (which
27 covers things authorised by certain laws).

28 *Disclosure to related bodies corporate*

- 29 (2) Sections 44ZZW and 44ZZX do not apply to the disclosure of
30 information by a body corporate (the ***first body corporate***) if the
31 disclosure is to one or more other bodies corporate that are related
32 to the first body corporate, and is not to any other person.

33 Note: The effect of section 44ZZU must be taken into account in working
34 out whether the disclosure is to one or more bodies corporate that are
35 related to the first body corporate, and is not to any other person.

EXPOSURE DRAFT

Schedule 1 Amendments

1 **44ZZZ Additional exceptions that only apply to section 44ZZW**

2 *Disclosure if supply or acquisition is for the purpose of re-supply*

3 (1) Section 44ZZW does not apply to the disclosure of information by
4 a person (the *first person*) to another person (the *recipient*) if:

5 (a) the information relates to a price for, or a discount,
6 allowance, rebate or credit in relation to, Division 1A goods
7 or services supplied or likely to be supplied, by the first
8 person to the recipient, for the purpose of re-supply by the
9 recipient; or

10 (b) the information relates to a price for, or a discount,
11 allowance, rebate or credit in relation to, Division 1A goods
12 or services acquired or likely to be acquired, by the first
13 person from the recipient, for the purpose of re-supply by the
14 first person.

15 *Disclosure to unknown competitor*

16 (2) Section 44ZZW does not apply to the disclosure of information by
17 a person (the *first person*) to another person (the *recipient*) if:

18 (a) the recipient is a competitor or potential competitor of the
19 first person in the market referred to in that section; and

20 (b) the first person did not know, and could not reasonably be
21 expected to have known, that the recipient was such a
22 competitor or potential competitor.

23 *Disclosure to participants in joint venture*

24 (3) Section 44ZZW does not apply to the disclosure of information by
25 a person if:

26 (a) the person is a participant in a joint venture for the
27 production and/or supply of goods or services; and

28 (b) the disclosure is to one or more participants in the joint
29 venture, and is not to any other person; and

30 (c) the disclosure is made for the purposes of the joint venture.

31 Note: The effect of section 44ZZU must be taken into account in working
32 out whether the disclosure is to one or more participants in the joint
33 venture, and is not to any other person.

EXPOSURE DRAFT

Amendments **Schedule 1**

1 *Disclosure relating to acquisition of shares or assets*

2 (4) Section 44ZZW does not apply to the disclosure of information by
3 a person (the *first person*) in so far as the information is disclosed
4 in connection with a contract, arrangement or understanding that
5 provides, or a proposed contract, arrangement or understanding
6 that would provide, for the acquisition of any shares in the capital
7 of a body corporate, or any assets of a person, by or from the first
8 person.

9 Note: For the meaning of acquisition of shares, and acquisition of assets, see
10 subsection 4(4).

11 **44ZZZA Burden of proof**

12 If:

- 13 (a) proceedings are brought against a person in respect of
14 section 44ZZW or 44ZZX; and
15 (b) the person seeks to rely on subsection 44ZZU(3), or on a
16 subsection of section 44ZZY or 44ZZZ;

17 the person bears an evidential burden in relation to the matters set
18 out in that subsection on which the person seeks to rely.