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| **EXPOSURE DRAFT** |

Inserts for

Treasury Laws Amendment Bill 2024: Acquisitions

| Commencement information | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Schedule 1, Part 1 | The day after this Act receives the Royal Assent. |  |
| 2. Schedule 1, Part 2 | 1 December 2025. | 1 December 2025 |
| 3. Schedule 1, Part 3 | 1 January 2026. | 1 January 2026 |
| 4. Schedule 2, Part 1 | 1 January 2026. | 1 January 2026 |
| 5. Schedule 2, Parts 2 to 4 | The day after this Act receives the Royal Assent. |  |

Schedule 1—Acquisitions

Part 1—Amendments commencing day after Royal Assent

Competition and Consumer Act 2010

1 After subsection 88(1)

Insert:

(1A) The application must be made on or before 30 June 2025 if any of the specified provisions is section 50.

Part 2—Amendments commencing 1 December 2025

Administrative Decisions (Judicial Review) Act 1977

2 At the end of Schedule 1

Add:

; (zk) decisions under subsection 51ABZD(1) of the *Competition and Consumer Act 2010*.

Competition and Consumer Act 2010

3 Before Part 1

Insert:

Chapter 1—Preliminary

4 At the end of subsection 2B(1)

Add:

; (d) the acquisitions provisions.

5 Section 2BA (heading)

After “**Part IV**”, insert “**and acquisitions provisions**”.

6 Subsection 2BA(1)

Omit “applies”, substitute “and the acquisitions provisions apply”.

7 Subsection 4(1)

Insert:

***acquisition determination***, in respect of a notification of an acquisition, means:

(a) a determination made under subsection 51ABW(1) in respect of the notification; or

(b) a determination made under subsection 51ABZL(1) in respect of a substantial public benefit application relating to the notification.

***acquisitions provision*** means any of the following provisions:

(a) a provision of Division 1A of Part IV;

(b) a provision of Part IVA;

(c) a provision of Division 1B of Part IX;

(d) another provision of this Act, to the extent that it relates to a provision covered by paragraph (a), (b) or (c).

***acquisitions register*** means the register kept by the Commission under section 51ABZX.

***ADI*** (short for authorised deposit‑taking institution) means:

(a) a body corporate that is an ADI for the purposes of the *Banking Act 1959*; or

(b) the Reserve Bank of Australia; or

(c) a person who carries on State banking within the meaning of paragraph 51(xiii) of the Constitution.

***authorised insurance company*** means:

(a) a company authorised under the *Insurance Act 1973* to carry on insurance business; or

(b) a company registered under section 21 of the *Life Insurance Act 1995*.

***building society*** includes a society registered or incorporated as a cooperative housing society or similar society under:

(a) a law of a State or Territory; or

(b) a law of a foreign country or a part of a foreign country.

***business day***: in Part IVA, ***business day*** has the meaning given by section 51ABP.

***determination period***:

(a) for a notification of an acquisition—has the meaning given by subsection 51ABZB(3); and

(b) for a substantial public benefit application—has the meaning given by section 51ABZR.

***directly related***: for when a restriction is ***directly related*** to an acquisition, see section 51ABO.

***effective application date***, of a substantial public benefit application, has the meaning given by subsection 51ABZG(7), paragraph 51ABZH(7)(a) and subsections 51ABZI(4) and 51ABZW(2).

***effective notification date***, of a notification of an acquisition, has the meaning given by subsection 51ABQ(4), paragraph 51ABS(7)(a) and subsections 51ABT(4), 51ABU(2) and 51ABZW(2).

***fast track review*** has the meaning given by section 100D.

***finally considered***, in relation to a notification of an acquisition, has the meaning given by section 51ABJ.

***financial institution*** means:

(a) an ADI; or

(b) a bank; or

(c) a building society; or

(d) a credit union.

8 Subsection 4(1) (paragraph (b) of the definition of *merger authorisation*)

Before “Part IV”, insert “Division 1 or 2 of”.

9 Subsection 4(1)

Insert:

***notice of competition concerns*** has the meaning given by subsection 51ABZE(1).

***notification***, of an acquisition, means a notification, of a proposal to put the acquisition into effect, to which section 51ABQ applies.

Note: Section 51ABQ only applies to notifications of certain acquisitions of shares in the capital of a body corporate or of assets of a person: see Subdivision B of Division 1 of Part IVA.

***notified acquisition*** has the meaning given by subsections 51ABQ(2) and 51ABV(6).

***notifying party***, of a notification of an acquisition, has the meaning given by subsection 51ABQ(3).

10 Subsection 4(1) (definition of *party*)

Repeal the definition, substitute:

***party***:

(a) to a contract that is a covenant—includes a person bound by, or entitled to the benefit of, the covenant; and

(b) to an acquisition—has the meaning given by section 51ABM.

11 Subsection 4(1)

Insert:

***phase 1 determination period***, for a notification of an acquisition, has the meaning given by section 51ABZC.

***phase 2 determination period***, for a notification of an acquisition, has the meaning given by section 51ABZF.

***principal party***, to an acquisition, has the meaning given by section 51ABM.

***purportedly puts into effect***, in relation to an acquisition, has the meaning given by subsection 45AV(2).

***required to be notified***, in relation to an acquisition, has the meaning given by section 51ABG.

***stale***, in relation to a notification of an acquisition, has the meaning given by section 51ABK.

***standard review*** means a review of an acquisition determination under Division 1B of Part IX that is not a fast track review.

***stayed***, in relation to an acquisition, has the meaning given by section 51ABI.

***subject*** to a condition: for when putting a notified acquisition into effect is ***subject*** to a condition, see section 51ABL.

***subject to phase 2 review*** has the meaning given by paragraph 51ABZD(2)(a).

***substantially lessening competition*** has a meaning affected by subsection 4G(2).

***substantial public benefit application*** has the meaning given by subsection 51ABZG(6).

***substantial public benefit assessment*** has the meaning given by subsection 51ABZQ(1).

12 Subsection 4A(5A)

After “and VII”, insert “and the acquisitions provisions”.

13 Section 4G (heading)

Omit “**to include preventing or hindering competition**”.

14 Section 4G

Before “For the purposes”, insert “(1)”.

15 At the end of section 4G

Add:

Meaning of **substantially lessening competition**

(2) To avoid doubt:

(a) a reference in this Act to ***substantially lessening competition*** in a market includes a reference to substantially lessening competition in the market by creating, strengthening or entrenching a substantial degree of power in the market; and

(b) a reference in this Act to ***substantially lessening competition***, other than a reference to substantially lessening competition in a particular market, includes a reference to substantially lessening competition by creating, strengthening or entrenching a substantial degree of power in any market; and

(c) none of the following affects the meaning of ***substantially lessening competition***:

(i) section 51ABG or 51ABH;

(ii) any regulations made for the purposes of paragraph 51ABG(1)(a);

(iii) any legislative instrument made under subsection 51ABH(1).

(3) Subsections 46(3) to (8) apply in relation to paragraphs (2)(a) and (b) of this section in the same way as those subsections apply in relation to section 46.

16 After paragraph 5(1)(f)

Insert:

(fa) the acquisitions provisions;

17 Paragraph 6(2)(h)

After “or 151AJ”, insert “, in an acquisitions provision”.

18 Subsection 6(2A)

Before “Part IV”, insert “Division 1 or 2 of”.

19 Before subsection 6(2C)

Insert:

Cartel conduct

20 After subsection 6(2E)

Insert:

Acquisitions

(2EA) In addition to the effect that this Act (other than Parts IIIA, VIIA and X) has as provided by another subsection of this section, this Act (other than Parts IIIA, VIIA and X) has, by force of this subsection, the effect it would have if:

(a) any references in the acquisitions provisions to an acquisition of shares in the capital of a body corporate, or an acquisition of any assets of a person, were, by express provision, confined to such an acquisition put into effect:

(i) in the course of, or in relation to, trade or commerce between Australia and places outside Australia; or

(ii) in the course of, or in relation to, trade or commerce among the States; or

(iii) in the course of, or in relation to, trade or commerce within a Territory, between a State and a Territory or between 2 Territories; and

(b) each reference in the acquisitions provisions to a corporation included a reference to a person not being a corporation.

(2EB) Subsection (2EA) has effect in relation to a participating Territory as if the words “within a Territory,” were omitted from subparagraph (2EA)(a)(iii). For this purpose, ***participating Territory*** means a Territory that is a participating Territory within the meaning of Part XIA but is not named in a notice in operation under section 150K.

(2EC) In addition to the effect that this Act (other than Parts IIIA, VIIA and X) has as provided by another subsection of this section, this Act (other than Parts IIIA, VIIA and X) has, by force of this subsection, the effect it would have if:

(a) any references in the acquisitions provisions to an acquisition of shares in the capital of a body corporate, or an acquisition of any assets of a person, were, by express provision, confined to such an acquisition to the extent to which putting the acquisition into effect involves the use of, or relates to, a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution; and

(b) each reference in the acquisitions provisions to a corporation included a reference to a person not being a corporation.

(2ED) In addition to the effect that this Act (other than Parts IIIA, VIIA and X) has as provided by another subsection of this section, this Act (other than Parts IIIA, VIIA and X) has, by force of this subsection, the effect it would have if:

(a) any references in the acquisitions provisions to an acquisition of shares in the capital of a body corporate, or an acquisition of any assets of a person, were, by express provision, confined to such an acquisition to the extent to which the acquisition is put into effect in, or relates to, a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*); and

(b) each reference in the acquisitions provisions to a corporation included a reference to a person not being a corporation.

Payment surcharges

21 Before subsection 6(3)

Insert:

Certain provisions of Australian Consumer Law

22 Before subsection 6(5A)

Insert:

Offences relating to cartel conduct

23 Paragraph 29(1A)(a)

After “IV,”, insert “IVA”.

24 Section 44ZZNA (heading)

After “**IV**”, insert “**, IVA**”.

25 Section 44ZZNA

After “IV”, insert “, IVA”.

26 Before Part IIIA

Insert:

Chapter 2—Access to services

27 Before Part IV

Insert:

Chapter 3—Restrictive trade practices

28 After section 45AM

Insert:

45AMA Acquisition subject to notification

(1) Sections 45AF and 45AJ do not apply in relation to the making of a contract that contains a cartel provision, in so far as the cartel provision provides directly or indirectly for:

(a) an acquisition of shares in the capital of a body corporate; or

(b) an acquisition of any assets of a person;

if:

(c) the contract is subject to a condition that the provision will not come into force unless and until the acquisition becomes a notified acquisition; and

(d) the acquisition becomes a notified acquisition within 30 days after the contract is made.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code* and subsection (2) of this section).

(2) A person who wishes to rely on subsection (1) in relation to a contravention of section 45AJ bears an evidential burden in relation to that matter.

29 At the end of section 45AT

Add:

(3) Sections 45AF, 45AG, 45AJ and 45AK do not apply in relation to a contract, arrangement or understanding containing a cartel provision, in so far as the cartel provision provides directly or indirectly for an acquisition, if the acquisition is a notified acquisition.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code* and subsection (4) of this section).

(4) A person who wishes to rely on subsection (3) in relation to a contravention of section 45AJ or 45AK bears an evidential burden in relation to that matter.

30 After Division 1 of Part IV

Insert:

Division 1A—Acquisitions

Subdivision A—Preliminary

45AV Purportedly putting acquisitions into effect

(1) A reference in this Division to putting an acquisition into effect includes a reference to purportedly putting the acquisition into effect.

(2) A person ***purportedly puts into effect*** an acquisition if the person engages in conduct that, apart from this Division, would constitute putting the acquisition into effect.

Subdivision B—Obligations

45AW Commission must be notified of acquisitions

A person contravenes this section if:

(a) the person is a principal party to an acquisition; and

(b) the acquisition is required to be notified; and

(c) the acquisition is put into effect; and

(d) when the acquisition is put into effect:

(i) the acquisition is not a notified acquisition; or

(ii) no notification of the acquisition has an effective notification date (see section 51ABS); or

(iii) the latest notification of the acquisition that has an effective notification date is stale.

Note 1: For when an acquisition is ***required to be notified***, see section 51ABG.

Note 2: For when an acquisition is ***stale***, see section 51ABK.

Note 3: For enforcement, see Part VI.

45AX Commission must be notified of material changes of fact in relation to notified acquisitions

(1) This section applies if:

(a) a person is the notifying party of a notification of an acquisition; and

(b) a change of fact occurs;

(c) the person becomes aware of the change of fact at a time:

(i) occurring on or after the time specified in subsection (2); and

(ii) at which the Commission has not decided to cease considering the notification under section 51ABV; and

(iii) at which the Commission has not made a determination in respect of the notification under subsection 51ABW(1); and

(d) the change of fact is material to the Commission making a determination under subsection 51ABW(1) in respect of the notification.

(2) For the purposes of subparagraph (1)(c)(i) of this section, the time is:

(a) if the acquisition is required to be notified under section 51ABG—the time at which the notification is made; or

(b) otherwise—the later of:

(i) the time at which the notification is made; and

(ii) the start of the effective notification date of the notification.

(3) This section also applies if:

(a) a person is the notifying party of a notification of an acquisition; and

(b) a change of fact occurs; and

(c) the person becomes aware of the change of fact at a time at which:

(i) the notifying party has made a substantial public benefit application in respect of the notification; and

(ii) the Commission has not decided to cease considering the application under section 51ABZK; and

(iii) the Commission has not made a determination under subsection 51ABZL(1) in respect of the application; and

(d) the change of fact is material to the Commission making a determination under subsection 51ABZL(1) in respect of the application.

(4) The person contravenes this subsection if the Commission is not notified of the change of fact, as soon as practicable after the person becomes aware of the change, by:

(a) if the person is the only notifying party of the notification of the acquisition—the person; or

(b) otherwise—all of the notifying parties jointly.

Note: For enforcement, see Part VI.

(5) For the purposes of this section, a person who ought reasonably to be aware of a change is taken to be aware of the change.

45AY Stayed acquisitions must not be put into effect

A person contravenes this section if:

(a) the person puts an acquisition into effect; and

(b) the acquisition is stayed.

Note 1: For when an acquisition is ***stayed***, see section 51ABI.

Note 2: For enforcement, see Part VI.

45AZ Conditions must be complied with

(1) This section applies to a person who puts a notified acquisition into effect, if putting the acquisition into effect is subject to conditions.

Note: For when putting an acquisition into effect is ***subject*** to conditions, see section 51ABL.

(2) The person contravenes this subsection if any of those conditions are not complied with.

Note: For enforcement, see Part VI.

Subdivision C—Acquisitions void if put into effect while stayed

45AZA Acquisitions void if put into effect while stayed

(1) This section applies to an acquisition if, when the acquisition is put into effect, the acquisition is stayed.

Note: For when an acquisition is ***stayed***, see section 51ABI.

(2) The acquisition, and any directly related restriction, is, and is taken always to have been, void by force of this subsection.

Note: For when a restriction is ***directly related***, see section 51ABO.

Subdivision D—Miscellaneous

45AZB Providing false or misleading information

(1) A person contravenes this subsection if:

(a) the person gives information to the Commission or the Tribunal under an acquisition provision; and

(b) the person is negligent as to whether the information is false or misleading in a material particular.

Note: For enforcement, see Part VI.

(2) For the purposes of subsection (1), proof that the person knew, or was reckless as to whether, the information was false or misleading in a material particular is taken to be proof that the person was negligent as to whether the information was false or misleading in a material particular.

31 After subsection 45(4)

Insert:

Acquisitions

(4A) For the purposes of subsection (1), and without limiting that subsection, a provision of:

(a) a contract, arrangement or understanding; or

(b) a proposed contract, arrangement or understanding;

is taken to have the purpose of substantially lessening competition if:

(c) the provision directly or indirectly provides for:

(i) an acquisition of shares in the capital of a body corporate; or

(ii) an acquisition of any assets of a person; and

(d) the purpose of the acquisition is to substantially lessen competition.

(4B) For the purposes of subsection (1), and without limiting that subsection, a concerted practice is taken to have the purpose of substantially lessening competition if:

(a) the concerted practice directly relates to:

(i) an acquisition of shares in the capital of a body corporate; or

(ii) an acquisition of any assets of a person; and

(b) the purpose of the acquisition is to substantially lessen competition.

(4C) For the purposes of subsection (4A) or (4B), an acquisition is taken to have a particular purpose if:

(a) the acquisition is put into effect for that purpose or for purposes that included or include that purpose; and

(b) that purpose was or is a substantial purpose.

Contracts etc. to which this section does not apply

32 At the end of subsection 45(7)

Add “on or before 31 December 2025”.

33 After subsection 45(7)

Insert:

(7A) This section does not apply to or in relation to:

(a) a contract, arrangement or understanding to the extent that the contract, arrangement or understanding directly or indirectly provides for; or

(b) a proposed contract, arrangement or understanding to the extent that the proposed contract, arrangement or understanding would directly or indirectly provide for; or

(c) a concerted practice to the extent that the practice directly involves;

a notified acquisition.

(7B) The making by a corporation of a contract is not a contravention of subsection (1) to the extent that the contract directly or indirectly provides for:

(a) an acquisition of shares in the capital of a body corporate; or

(b) an acquisition of any assets of a person;

if:

(c) the contract is subject to a condition that the provision will not come into force unless and until the acquisition becomes a notified acquisition; and

(d) the acquisition becomes a notified acquisition within 30 days after the contract is made;

but nothing in this subsection prevents the giving effect by a corporation to such a provision from constituting a contravention of subsection (1).

34 Subsection 46A(6)

Omit “subsection 45(8A)”, substitute “subsection 45(7A) or (8A)”.

35 After subsection 50(5A)

Insert:

(5B) This section does not apply to a notified acquisition.

36 After subsection 50A(7)

Insert:

(7A) Subsection (1) does not apply to a notified acquisition.

37 Paragraph 51(2)(e)

Before “to any provision”, insert “subject to subsection (2AAA),”.

38 After subsection 51(2)

Insert:

(2AAA) Paragraph (2)(e) does not apply to a provision of a contract to the extent to which:

(a) the protection referred to in that paragraph is by means of a restriction that is directly related to an acquisition; and

(b) the acquisition:

(i) is required to be notified under section 51ABG; or

(ii) is a notified acquisition;

if:

(c) subject to subsection (2AAB) of this section, the acquisition is not a notified acquisition; or

(d) the acquisition is stayed; or

(e) the restriction is not specified in the latest notification of the acquisition as mentioned in subsection 51ABR(4); or

(f) the restriction is declared in a determination made under subsection 51ABW(1) in respect of the latest notification of the acquisition to be a restriction to which paragraph (2)(e) of this section does not apply.

Note: For when a restriction is ***directly related***, see section 51ABO.

(2AAB) Paragraph (2AAA)(c) does not apply if:

(a) the restriction is subject to a condition that the restriction will not come into force unless and until the acquisition becomes a notified acquisition; and

(b) the acquisition becomes a notified acquisition within 30 days after the contract is made.

39 After Part IV

Insert:

Part IVA—Notification of acquisitions

Division 1—Preliminary

Subdivision A—Simplified outline

51ABA Simplified outline of this Part

Acquisitions of shares in the capital of a body corporate, or of any assets of a person, are required to be notified to the Commission before they are put into effect if they are determined under section 51ABG.

Division 2 provides for persons to notify proposals to put acquisitions into effect to the Commission (including acquisitions that are not required to be notified).

The Commission may determine that a notified acquisition may be put into effect if the Commission believes it would not substantially lessen competition (Division 3).

If the Commission does not make such a determination, the notifying parties may ask the Commission to determine that the proposed acquisition would be of substantial public benefit (Division 4).

Note: For the consequences of failing to notify the Commission of an acquisition, or for putting into effect an acquisition that the Commission has neither determined may be put into effect nor determined would be of substantial public benefit, see Division 1A of Part IV.

Subdivision B—Acquisitions to which acquisitions provisions apply

51ABB Acquisitions to which acquisitions provisions apply

Subject to this Subdivision, the acquisitions provisions apply to the following acquisitions:

(a) a direct or indirect acquisition by a corporation of shares in the capital of a body corporate;

(b) a direct or indirect acquisition by a corporation of any assets of a person;

(c) a direct or indirect acquisition of shares in the capital of a corporation;

(d) a direct or indirect acquisition of any assets of a corporation.

51ABC Acquisitions of shares to which acquisitions provisions do not apply

Acquisitions that do not give control

(1) The acquisitions provisions do not apply to an acquisition by a person of shares in the capital of a body corporate (the ***target***) if:

(a) immediately before the acquisition, the person (whether alone or, if the person is a body corporate, together with any related bodies corporate) controlled the target; or

(b) immediately after the acquisition, the person (whether alone or, if the person is a body corporate, together with any related bodies corporate) does not control the target.

(2) For the purposes of subsection (1):

(a) if the person’s voting power (within the meaning of the *Corporations Act 2001*) in the target is less than 20% at a particular time, the person is taken not to control the target at that time, unless the contrary is proved; and

(b) if the person’s voting power in the target is 20% or more at a particular time, the person is taken to control the target at that time, unless the contrary is proved.

(3) For the purposes of subsection (1), ***control*** of a body corporate is the capacity to directly or indirectly determine the policy of the body corporate in relation to one or more matters.

(4) In determining whether a person has the capacity mentioned in subsection (3) in relation to a body corporate:

(a) the practical influence the person can exert (rather than the rights it can enforce) is the issue to be considered; and

(b) any practice or pattern of behaviour affecting the policies of the body corporate is to be taken into account (even if it involves a breach of an agreement or a breach of trust).

(5) For the purposes of subsection (1), if a person:

(a) has the capacity to determine the policy of a body corporate; and

(b) is under a legal obligation to exercise that capacity for the benefit of someone other than the person’s members;

the person is taken not to ***control*** the body corporate.

Temporary holdings by financial institutions and authorised insurance companies

(6) The acquisitions provisions do not apply to an acquisition of shares in the capital of a body corporate by a financial institution or authorised insurance company (the ***holder***), if:

(a) the holder holds the shares on a temporary basis with a view to reselling them; and

(b) the ordinary course of business of the holder includes transactions and dealings in securities (within the meaning of subsection 92(1) of the *Corporations Act 2001*) for the holder’s own account or for the account of others; and

(c) subsection (7) of this section applies.

(7) This subsection applies if:

(a) the holder does not exercise voting rights in respect of the shares; or

(b) the holder exercises such voting rights only with a view to maintaining the value of the shares; or

(c) the holder exercises such voting rights only with a view to:

(i) preparing the disposal of all or part of the body corporate or its assets; or

(ii) disposing of the shares;

and any such disposal takes place within 12 months of the acquisition.

51ABD Acquisitions of assets to which acquisitions provisions do not apply

A reference in the acquisitions provisions to an acquisition of any assets of a person does not include a reference to an acquisition of a share in the capital of a body corporate.

51ABE Internal restructures and reorganisations

The acquisitions provisions do not apply to an acquisition that is, or is part of, a restructure or reorganisation of a group of persons who are related:

(a) in the ways referred to in section 4A (related bodies corporate); or

(b) by means of trust or partnership.

51ABF Other circumstances in which the acquisitions provisions do not apply

The acquisitions provisions do not apply to an acquisition:

(a) by a person in the person’s capacity as an administrator, receiver, receiver and manager or liquidator (all within the meaning of section 9 of the *Corporations Act 2001*); or

(b) that takes place pursuant solely to a testamentary disposition, intestacy or a right of survivorship under a joint tenancy.

Subdivision C—Definitions relating to notification, and Commission consideration, of acquisitions

51ABG When acquisitions are *required to be notified*

(1) An acquisition is ***required to be notified*** if it is determined:

(a) by the regulations for the purposes of this paragraph; or

(b) under section 51ABH.

Note 1: An acquisition is only ***required to be notified*** if it is an acquisition to which this section applies. For the acquisitions to which this section applies, see Subdivision B.

Note 2: For determination by class, see subsection 13(3) of the *Legislation Act 2003*.

(2) To avoid doubt, and without limiting how an acquisition may be determined for the purposes of paragraph (1)(a) or (b), an acquisition may be determined for the purposes of that paragraph wholly or partly by reference to:

(a) the value of an acquisition or of a contract, arrangement or understanding; or

(b) a party, or a class of parties, to an acquisition or to a contract, arrangement or understanding; or

(c) an asset or a class of assets; or

(d) a business or class of businesses; or

(e) the turnover of a person, a business or part of a business; or

(f) a market or a class of markets; or

(g) another acquisition, or a class of acquisitions.

51ABH When acquisitions are *required to be notified*—ministerial determinations

(1) The Minister may, by legislative instrument, determine an acquisition for the purposes of paragraph 51ABG(1)(b).

(2) In making a determination under subsection (1) of this section, the Minister may consider any reports or advice of the Commission.

Note: For consultation requirements, see section 17 of the *Legislation Act 2003*.

(3) A determination made under subsection (1) must not be expressed to commence earlier than the 30th day after the instrument is registered under the *Legislation Act 2003*.

(4) This subsection repeals a determination made under subsection (1) on the fifth anniversary of the registration of the determination under the *Legislation Act 2003*, unless the determination is repealed earlier.

51ABI When acquisitions are *stayed*

(1) An acquisition to which any of the following subsections applies is ***stayed***.

(2) This subsection applies to an acquisition that:

(a) is required to be notified; but

(b) is not a notified acquisition.

Note: For when an acquisition is ***required to be notified***, see section 51ABG.

(3) This subsection applies to a notified acquisition if the most recent notification of the acquisition has not been finally considered.

Note: For when a notification has not been ***finally considered***, see section 51ABJ.

(4) This subsection applies to a notified acquisition if:

(a) the most recent determination under subsection 51ABW(1) in respect of a notification of the acquisition is a determination that the acquisition must not be put into effect; and

(b) since making that determination, the Commission has not made a determination under paragraph 51ABZL(1)(a) or (b) in respect of the notification.

(5) This subsection applies to a notified acquisition if the most recent notification of the acquisition is stale.

Note: For when a notification is ***stale***, see section 51ABK.

51ABJ When notifications have not been *finally considered*

A notification of an acquisition has not been ***finally considered*** if:

(a) the notification does not have an effective notification date; or

(b) the Commission has not made a determination under subsection 51ABW(1) in respect of the notification (including because the Commission has decided under section 51ABV to cease considering the notification); or

(c) all of the following subparagraphs apply:

(i) the Commission has made a determination under paragraph 51ABW(1)(b) in respect of the notification;

(ii) a substantial public benefit application has been made in relation to the notification;

(iii) the Commission has neither made a determination under subsection 51ABZL(1) in respect of the application nor decided to cease considering the application under section 51ABZK; or

(d) all of the following subparagraphs apply:

(i) the Commission has made a determination under paragraph 51ABW(1)(c) in respect of the notification;

(ii) a substantial public benefit application has been made in relation to the notification;

(iii) the Commission has not made a determination under subsection 51ABZL(1) in respect of the application (including because the Commission has decided under section 51ABZK to cease considering the application);

(e) all of the following subparagraphs apply:

(i) the Commission has made an acquisition determination in respect of the notification;

(ii) an application has not been made under subsection 100C(1) for review of the determination in circumstances to which subsection 100C(2) applies;

(iii) the period during which such an application could be made under subsection 100C(1) has not ended; or

(f) all of the following subparagraphs apply:

(i) the Commission has made an acquisition determination in respect of the notification;

(ii) an application has been made under subsection 100C(1) for review of the determination in circumstances to which subsection 100C(2) applies;

(iii) the application has not been withdrawn under subsection 100E(1), or the application has been withdrawn but has been reinstated under subsection 100E(3);

(iv) the Tribunal has not dismissed the application;

(v) the Tribunal has not made a determination on the review under paragraph 100M(1)(a); or

(g) all of the following subparagraphs apply:

(i) the Commission has made an acquisition determination in respect of the notification;

(ii) an application has been made under subsection 100C(1) for review of the determination in circumstances to which subsection 100C(2) applies;

(iii) the application has been withdrawn under subsection 100E(1);

(iv) the period during which a participant in the proceedings for review could apply to the Tribunal for reinstatement of the application under subsection 100E(2) has not ended.

51ABK When notifications become *stale*

A notification of an acquisition becomes ***stale*** 12 months after the time (if any) at which the Commission:

(a) unless paragraph (b) of this section applies—makes a determination under paragraph 51ABW(1)(a) or (b) in respect of the notification; or

(b) if the Commission makes a determination under paragraph 51ABZL(1)(a) or (b) in respect of a substantial public benefit application that relates to the notification—makes that determination.

51ABL When notified acquisitions are *subject* to conditions

Putting a notified acquisition into effect is ***subject*** to a condition if:

(a) both:

(i) the most recent determination in respect of a notification of the acquisition under subsection 51ABW(1) is a determination that the acquisition may be put into effect subject to that condition; and

(ii) since making that determination, the Commission has not made a determination under paragraph 51ABZL(1)(a) or (b) in respect of the notification; or

(b) both:

(i) the most recent determination in respect of a notification of the acquisition under subsection 51ABZL(1) is a determination that the acquisition would be of substantial public benefit subject to that condition; and

(ii) since making that determination, the Commission has not made a determination under subsection 51ABW(1) in respect of a notification of the acquisition.

Subdivision D—Other definitions

51ABM Parties to acquisitions

(1) Each of the following is a ***party*** to an acquisition of shares in the capital of a body corporate, or an acquisition of any assets of a person:

(a) the person (a ***principal party*** to the acquisition) who acquires the shares or assets;

(b) without limiting paragraph (a)—a person that is a party to a contract, arrangement or understanding pursuant to which the acquisition takes place.

(2) To avoid doubt, a reference to a ***party*** or ***principal party*** to an acquisition that has not been put into effect is a reference to a person that would be a party or principal party to the acquisition if the acquisition were put into effect.

51ABN Acquisition of assets

(1) The acquisitions provisions, subparagraphs 45(4A)(c)(ii) and (4B)(a)(ii) and paragraph 88(8)(e) apply in relation to any of the following that is not an asset in the same way as they apply in relation to an asset:

(a) any kind of property;

(b) a legal or equitable right that is not property;

(c) without limiting paragraphs (a) and (b) of this subsection:

(i) part of, or an interest in, an asset referred to in paragraph (a) or (b); or

(ii) goodwill or an interest in it; or

(iii) an interest in an asset of a partnership; or

(iv) an interest in a partnership that is not covered by subparagraph (iii).

(2) For the purposes of the acquisitions provisions, subparagraphs 45(4A)(c)(ii) and (4B)(a)(ii) and paragraph 88(8)(e), the reference in paragraph 4(4)(b) to an acquisition of an asset in the ordinary course of business is taken not to apply if the asset is:

(a) land, or an interest in land; or

(b) a patent, or an interest in a patent.

51ABO When a restriction is *directly related* to an acquisition

A restriction is ***directly related*** to an acquisition if the restriction:

(a) is a restriction, under a contract, arrangement or understanding, on:

(i) a party to the acquisition; or

(ii) a subsidiary of a party to the acquisition; or

(iii) an agent of a person to whom subparagraph (i) or (ii) applies; and

(b) is directly related to, and necessary for, putting the acquisition into effect.

51ABP Meaning of *business day*

For the purposes of this Part, a ***business day*** is a day that is not:

(a) a Saturday; or

(b) a Sunday; or

(c) a public holiday in the Australian Capital Territory; or

(d) a day occurring between 23 December and 31 December in a year.

Division 2—Notification of acquisitions

Subdivision A—Notification of acquisitions

51ABQ Notifications of acquisitions

(1) This section applies if the Commission is notified, in accordance with subsection 51ABR(1), of a proposal to put into effect an acquisition (whether or not the acquisition is required to be notified).

Note: For the acquisitions to which this section applies, see Subdivision B of Division 1.

(2) The acquisition is a ***notified acquisition***.

(3) The principal party that makes the notification, or each of the principal parties that jointly make the notification, is a ***notifying party*** of the notification.

(4) The ***effective notification date*** of the notification is the day the notification is made.

(5) The Commission must give the notifying party, or at least one of the notifying parties, written notice:

(a) that the Commission has received the notification; and

(b) of the effective notification date.

51ABR Requirements for notifications

(1) A notification of an acquisition is made in accordance with this subsection if it:

(a) is made in writing; and

(b) is accompanied by the fee (if any) prescribed by the regulations for the purposes of this paragraph in relation to the notification; and

(c) is made by:

(i) if there is only one principal party to the acquisition—the principal party; or

(ii) otherwise—all of the principal parties jointly.

(2) To avoid doubt, the notification is taken not to be made before the fee (if any) required by paragraph (1)(b) is paid.

Notifications may cover multiple acquisitions

(3) To avoid doubt, the proposal may be a proposal to put into effect 2 or more related acquisitions, in which case the acquisitions provisions apply in relation to a notification of the proposal as if:

(a) those acquisitions together constituted a single acquisition; and

(b) each party to those acquisitions were a party to that single acquisition; and

(c) each principal party to those acquisitions were a principal party to that single acquisition.

Notifications may specify related restrictions

(4) If the acquisition is an acquisition of a share in the capital of a body corporate, the notification may state that the proposal to put the acquisition into effect includes a restriction that:

(a) is a restriction, under a contract, arrangement or understanding, on:

(i) a party to the acquisition; or

(ii) a subsidiary of a party to the acquisition; or

(iii) an agent of a person to whom subparagraph (i) or (ii) applies; and

(b) is related to the acquisition.

Note: Paragraph 51(2)(e) does not apply to a restriction if the restriction:

(a) is directly related to the acquisition; but

(b) not specified in the notification.

Multiple notifying parties

(5) If there is more than one notifying party of a notification of an acquisition:

(a) a reference in this Part (other than this Subdivision) to giving a notice to the notifying party of the notification of the acquisition is taken to be a reference to giving a notice to any of those notifying parties; and

(b) a reference in this Part (other than this Subdivision) to the notifying party of the notification of the acquisition doing a thing (such as giving additional information or documents or making a request or application) is taken to be a reference to all of those notifying parties doing that thing jointly.

Subdivision B—Powers of the Commission in response to incomplete and misleading notifications and changes of fact

51ABS Notifications that are incomplete or misleading

(1) The Commission may determine in writing that a notification of an acquisition should be taken not to have an effective notification date, if:

(a) the Commission has not made a determination in respect of the notification under subsection 51ABW(1); and

(b) the Commission reasonably considers that subsection (2) of this section applies to the notification.

(2) This subsection applies to the notification if it:

(a) is materially incomplete; or

(b) is materially misleading; or

(c) contains information that is false in a material particular.

(3) The determination must be made within a reasonable period after the Commission begins to consider that subsection (2) applies to the notification.

(4) In considering whether subsection (3) applies to the notification, the Commission may have regard to:

(a) the extent to which the notification:

(i) is made in a form determined under paragraph (5)(a) for the purposes of this subparagraph in relation to the notification; and

(ii) includes, or is accompanied by, any information or document determined under paragraph (5)(b) for the purposes of this subparagraph in relation to the notification; or

(b) any additional information or documents given to the Commission as mentioned in section 51ABT in response to any previous determination under subsection (1) of this section in relation to the notification; or

(c) any change of fact:

(i) of which the Commission becomes aware after the notification is made; and

(ii) that is material to the Commission making a determination under subsection 51ABW(1) in respect of the notification.

(5) The Minister may, in writing, determine:

(a) a form for the purposes of subparagraph (4)(a)(i) in relation to the notification; or

(b) information or documents for the purposes of subparagraph (4)(a)(ii) in relation to the notification.

(6) A determination made under subsection (5) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the instrument.

Consequences of determination

(7) If the Commission makes a determination under subsection (1) of this section:

(a) the notification is taken never to have had an ***effective notification date***; and

(b) the Commission must give to the notifying party of the notification of the acquisition written notice of:

(i) the determination; and

(ii) the grounds on which the Commission considers that subsection (2) applies to the notification.

Note: For review of the determination, see section 51ABZV.

(8) The Commission must not make a determination under subsection 51ABW(1) in respect of the notification if, because of a determination made under subsection (1) of this section, the notification does not have an effective notification date.

51ABT Notifications that are incomplete or misleading—providing additional information and documents

(1) This section applies in relation to a notification of an acquisition if:

(a) because of a determination made under subsection 51ABS(1), the notification does not have an effective notification date; and

(b) the notifying party of the notification gives the Commission additional information or documents in response to the determination in accordance with subsection (2) of this section.

(2) The additional information or documents are given in accordance with this subsection if:

(a) in the case of information—the information is given in writing; and

(b) the information or documents are accompanied by the fee (if any) prescribed by the regulations for the purposes of this paragraph in relation to the information or documents and the notification of the acquisition.

(3) To avoid doubt, the additional information or documents are taken not to be given before the fee (if any) required by paragraph (2)(b) is paid.

(4) The ***effective notification date*** of the notification of the acquisition is the day the additional information or documents are given.

(5) The Commission must give the notifying party written notice of the effective notification date.

51ABU Material changes of fact

(1) This section applies in relation to a notification of an acquisition if:

(a) the Commission has not made a determination in respect of the notification under subsection 51ABW(1); and

(b) the Commission becomes aware of a change of fact.

(2) The Commission may, in writing, determine that the ***effective notification date*** of the notification is the date on which the Commission becomes aware of the change of fact, if the Commission reasonably considers that the change of fact is material to the Commission making a determination under subsection 51ABW(1) in respect of the notification.

(3) The determination must be made within a reasonable period after the Commission becomes aware of the change of fact.

(4) If the Commission makes a determination under subsection (1), the Commission must give written notice of the determination to the notifying party of the notification.

Note: For review of the determination, see section 51ABZV.

Subdivision C—When Commission may cease considering notifications

51ABV When Commission may cease considering notifications

(1) This section applies to a notification of an acquisition if the Commission has not made a determination in respect of the notification under subsection 51ABW(1).

(2) The Commission must decide, in writing, to cease considering the notification if requested to do so, in writing, by the notifying party of the notification.

(3) The Commission may also decide to cease considering the notification if the Commission reasonably believes that the parties to the acquisition no longer intend to put the acquisition into effect.

(4) Subsections (2) and (3) do not limit each other.

(5) If the Commission decides under subsection (2) or (3) to cease considering the notification:

(a) the Commission must give written notice of the decision to the notifying party of the notification; and

(b) Subdivision B and Division 3 do not apply to the notification.

Note 1: An effect of the decision is that the acquisition must not be put into effect (see section 45AY, subsection 51ABI(3) and paragraph 51ABJ(b)).

(6) To avoid doubt, a decision under subsection (2) or (3) of this section does not have the effect that the acquisition ceases to be a ***notified acquisition***.

Division 3—Commission consideration of acquisitions: substantial lessening of competition

Subdivision A—Commission consideration of acquisitions

51ABW Commission consideration of acquisitions

(1) If the Commission is notified of a proposal to put an acquisition into effect in accordance with subsection 51ABR(1), the Commission may, in writing, determine:

(a) that the acquisition may be put into effect; or

(b) that the acquisition may be put into effect subject to specified conditions; or

(c) that the acquisition must not be put into effect.

Example: A condition that a specified person must give an undertaking to the Commission for the purposes of section 87B and comply with the undertaking.

(2) The Commission must not determine under paragraph (1)(b) that the acquisition may be put into effect subject to conditions unless the Commission reasonably believes that:

(a) there is a real, and not merely a remote, possibility that the acquisition, if put into effect, would have the effect, or would be likely to have the effect, of substantially lessening competition in a market; and

(b) the conditions would comprehensively address that possibility, including by addressing the adverse effects of such a substantial lessening of competition.

(3) The Commission must not determine under paragraph (1)(c) that the acquisition must not be put into effect unless:

(a) the notification is subject to phase 2 review; and

(b) the Commission has given a notice of competition concerns in relation to the notification in accordance with section 51ABZE; and

(c) the Commission reasonably believes that the acquisition, if put into effect, would have the effect, or be likely to have the effect, of substantially lessening competition in any market.

(4) The Commission must give written notice of the determination under subsection (1) to the notifying party of the notification of the acquisition.

Note 1: If the Commission determines that the acquisition must not be put into effect or may be put into effect subject to conditions, the notifying party may apply to the Commission under Division 4 for a determination that the acquisition would be of substantial public benefit.

Note 2: An interested person may apply to the Tribunal under Division 1B of Part IX for review of a determination made under subsection (1).

51ABX Relevant matters

(1) This section sets out matters to which the Commission must or may have regard in making a determination under subsection 51ABW(1) in respect of a notification of an acquisition.

(2) The Commission must have regard to:

(a) the object of this Act; and

(b) all relevant matters, including the interests of consumers.

(3) Without limiting subsection (2), the Commission may have regard to the following matters:

(a) the need to maintain and develop effective competition in markets;

(b) the effect of the acquisition on conditions for competition;

(c) the following matters relating to the parties to the acquisition:

(i) their market positions;

(ii) their economic and financial power;

(iii) their commercial relationships;

(d) the following matters relating to any market that could be affected by the acquisition:

(i) the alternatives, to goods or services offered by the parties to the acquisition, that are available to suppliers, consumers and users of goods and services;

(ii) the access, of suppliers, users or consumers of goods or services, to supplies, inputs (including data) or markets;

(iii) barriers to entry;

(iv) supply and demand trends for goods and services;

(e) technical innovations, economic developments and productivity gains that could result from the acquisition, including:

(i) the extent to which they would be to the advantage of consumers; and

(ii) the extent to which they would result in, or increase, obstacles to competition.

(4) Without limiting paragraph (3)(a), a reference in that paragraph to a need includes a reference to a need that results from any of the following:

(a) the structure of the markets that could be affected by the acquisition;

(b) actual or potential competition from persons carrying on business in Australia, whether the persons are located in Australia or elsewhere.

(5) Without limiting subsection (2), the Commission may have regard to:

(a) the contract, arrangement or understanding, or proposed contract etc., pursuant to which the acquisition is to take place; and

(b) any restriction under a contract, arrangement or understanding that is directly related to, and necessary for, putting the acquisition into effect.

Matters relating to conditions

(6) Without limiting subsection (2), in making a determination under paragraph 51ABW(1)(b) specifying conditions, the Commission may have regard to:

(a) the effect on the interests of consumers that compliance with the conditions would have, or be likely to have; or

(b) without limiting paragraph (a) of this subsection—any consumer benefits that would result, or be likely to result from compliance with the conditions.

51ABY Commitments and undertakings

In making a determination under subsection 51ABW(1) in respect of a notification of an acquisition, the Commission must not have regard to a commitment or undertaking offered by a party to the acquisition:

(a) if paragraph (b) of this section does not apply—unless:

(i) the commitment or undertaking is offered no later than 20 business days after the effective notification date of the notification; or

(ii) subsection 51ABZT(3) applies to the commitment or undertaking in relation to the phase 1 determination period; or

(b) if the notification is subject to phase 2 review—unless:

(i) the commitment or undertaking is offered no later than the 50th business day occurring on or after the start of the phase 2 determination period; or

(ii) subsection 51ABZT(3) applies to the commitment or undertaking in relation to the phase 2 determination period.

51ABZ Cumulative effect of acquisitions

(1) For the purposes of making a determination under subsection 51ABW(1) in respect of a notification of an acquisition (the ***current acquisition***), the current acquisition is taken to have the effect, or be likely to have the effect, of substantially lessening competition in any market if, were the current acquisition put into effect, the combined effect of:

(a) the current acquisition; and

(b) any acquisitions of shares in the capital of a body corporate, or acquisitions of any assets of a person:

(i) that are put into effect during the 3 years ending on the effective notification date of the notification of the current acquisition; and

(ii) the parties to which include any party to the current acquisition or, if a party to the current acquisition is a body corporate, include a body corporate that is related to that party; and

(iii) that involve the same industry as the current acquisition;

would be, or would be likely to be, to substantially lessen competition in any market.

(2) Subsection (1) does not limit the circumstances in which the current acquisition would, if put in effect, have the effect, or be likely to have the effect, of substantially lessening competition.

51ABZA Related restrictions

(1) If a notification of an acquisition of shares in the capital of a body corporate specifies a restriction as mentioned in subsection 51ABR(4):

(a) a reference in this Division to the effect of the acquisition is taken to include a reference to the combined effect of the acquisition and the restriction; and

(b) a determination under subsection 51ABW(1) in respect of the notification may include a declaration that paragraph 51(2)(e) does not apply to the restriction.

(2) The Commission must not include a declaration under paragraph (1)(b) of this section in relation to the restriction unless the Commission reasonably believes that the restriction:

(a) is not directly related to the acquisition; or

(b) is not solely for the protection of a principal party to the acquisition in respect of the goodwill of a business:

(i) acquired as part of the acquisition; or

(ii) carried on by the body corporate; or

(c) is not necessary for the protection of a principal party in that respect.

Note: For when the restriction is ***directly related*** to the acquisition, see section 51ABO.

Subdivision B—Process for considering acquisitions

51ABZB Time for making determinations

Earliest time for making determinations

(1) The Commission must not make a determination under subsection 51ABW(1) in respect of a notification of an acquisition earlier than 15 business days after the effective notification date of the notification.

Commission deemed to make determination at end of determination period

(2) The Commission is taken to determine under paragraph 51ABW(1)(a), at the end of the determination period for a notification of an acquisition, that the acquisition may be put into effect, unless the Commission makes a determination under subsection 51ABW(1) in respect of the notification before the end of that period.

(3) The ***determination period*** for a notification of an acquisition is:

(a) unless paragraph (b) applies—the phase 1 determination period for the notification; or

(b) if the notification is subject to phase 2 review—the phase 2 determination period for the notification.

(4) Subsection (5) applies if:

(a) the Commission purports to make a determination in respect of a notification of an acquisition under subsection 51ABW(1) before the end of the determination period; and

(b) the determination is invalid, or a court or the Tribunal:

(i) sets the determination aside; or

(ii) remits the decision to make the determination back to the Commission to be remade.

(5) A reference in subsection (2) of this section to making a determination before the end of the determination period includes a reference to purportedly making a determination as mentioned in paragraph (4)(a).

Note: The effect of subsection (5) is that the invalidity etc. does not result in the Commission being taken to have made a determination under subsection (2) at the end of the determination period.

51ABZC Meaning of *phase 1 determination period*

The ***phase 1 determination period*** for a notification of an acquisition that has an effective notification date:

(a) starts on the effective notification date; and

(b) subject to section 51ABZT (extensions of determination periods), ends 30 business days after it starts.

51ABZD Phase 2 review—when notifications are *subject to phase 2 review*

(1) During the phase 1 determination period for a notification of an acquisition, the Commission may, in writing, decide that the notification is to be subject to phase 2 review, if:

(a) the Commission reasonably suspects that the acquisition to which the notification relates would, if put into effect, have the effect, or be likely to have the effect, of substantially lessening competition in any market; and

(b) the Commission does not, before the end of the phase 1 determination period, make a determination in respect of the notification under paragraph 51ABW(1)(a) or (b).

Note: Deciding that the notification is to be subject to phase 2 review extends the time the Commission has to make a determination in respect of the notification under subsection 51ABW(1): see sections 51ABZB and 51ABZF.

(2) If the Commission decides that the notification is to be subject to phase 2 review:

(a) the notification is ***subject to phase 2 review***; and

(b) the Commission must give to the notifying party of the notification written notice of:

(i) the decision; and

(ii) the day by which, under paragraph (d), the fee (if any) mentioned in paragraph (c) must be paid; and

(c) the Commission must not make a determination in respect of the notification of the acquisition under subsection 51ABW(1) if the fee (if any) prescribed by the regulations for the purposes of this paragraph in relation to the notification has not been paid; and

(d) if the fee (if any) mentioned in paragraph (c) is not paid on or before the day prescribed by the regulations for the purposes of this paragraph in relation to the notification—the Commission is taken to decide under subsection 51ABV(2) on that day to cease considering the notification (if the Commission has not already made a decision under section 51ABV to cease considering the notification).

51ABZE Phase 2 review—notice of competition concerns

Notice of competition concerns

(1) If a notification of an acquisition is subject to phase 2 review, the Commission may, in accordance with subsection (2) of this section, give the notifying party of the notification a written notice (a ***notice of competition concerns***) that sets out:

(a) the Commission’s preliminary assessment of whether the acquisition, if put into effect, would have the effect, or be likely to have the effect, of substantially lessening competition in any market; and

(b) the grounds on which the Commission makes that assessment, including the relevant material facts and the material information and material evidence the Commission relies on in making the assessment.

(2) The notice of competition concerns must be given:

(a) no later than the 25th business day after the start of the phase 2 determination period for the notification of the acquisition; or

(b) if it is not practicable to give the notice of competition concerns by that day—as soon as practicable after that 25th business day.

Submissions

(3) If the Commission gives the notifying party a notice of competition concerns in relation to the notification, the Commission:

(a) must give the notifying party a reasonable opportunity to make, during the period:

(i) starting on the day on which the Commission gives the notice of competition concerns; and

(ii) ending on the 15th business day after that day;

oral or written submissions to the Commission in relation to the matters set out in the notice of competition concerns; and

(b) subject to subsection (4) of this section, in making a determination under subsection 51ABW(1) in respect of the notification of the acquisition, must not take into account submissions received, as mentioned in paragraph (a) of this subsection, after that period.

(4) For the purposes of subsection (3):

(a) the notifying party may, in writing, before the end of the period during which the notifying party may make submissions to the Commission in relation to the notice of competition concerns, request the Commission to extend the period; and

(b) if the notifying party does so—the Commission may, by written notice given to the notifying party, extend the period.

(5) To avoid doubt, the period may be extended more than once.

Determinations that acquisition may be put into effect

(6) This section does not limit the Commission’s ability to make a determination in respect of the notification of the determination under paragraph 51ABW(1)(a) at any time occurring before the end of the determination period for the notification.

51ABZF Meaning of *phase 2 determination period*

If a notification of an acquisition is subject to phase 2 review, the ***phase 2 determination period*** for the notification:

(a) starts immediately after the end of the phase 1 determination period for the notification; and

(b) subject to subsections (2) and (3) of this section and section 51ABZT (extensions of determination periods), ends 90 business days after it starts.

(2) If the Commission does not give the notice of competition concerns in relation to the notification of the application under subsection 51ABZE(1) before the end of the 25th business day after the start of the phase 2 determination period, the phase 2 determination period is extended by the number of days:

(a) occurring after that 25th business day; and

(b) on which the Commission has not given the notice of competition concerns.

(3) If, under paragraph 51ABZE(4)(b), the Commission extends the period for making submissions in relation to the notice of competition concerns, the phase 2 determination period is extended by the same number of days.

Division 4—Commission consideration of acquisitions: substantial public benefit

Subdivision A—Substantial public benefit applications

51ABZG Substantial public benefit applications

(1) The notifying party of a notification of an acquisition may apply to the Commission for a determination that the acquisition would be of substantial public benefit, if the Commission has made a determination under paragraph 51ABW(1)(b) or (c) in respect of the notification.

(2) The application must be:

(a) made no later than 21 days after the Commission makes the determination; and

(b) made in writing; and

(c) made in the form determined under paragraph (3)(a) of this section for the purposes of this paragraph in relation to the application; and

(d) include, or be accompanied by, any information or document determined under paragraph (3)(b) for the purposes of this paragraph in relation to the application; and

(e) accompanied by the fee (if any) prescribed by the regulations for the purposes of this paragraph in relation to the application.

(3) The Minister may, in writing, determine:

(a) a form for the purposes of paragraph (2)(c) in relation to the notification; or

(b) information or documents for the purposes of paragraph (2)(d) in relation to the notification.

(4) A determination made under subsection (3) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the instrument.

(5) To avoid doubt, the application is taken not to be made before the fee (if any) required by paragraph (2)(e) of this section is paid.

(6) The application is a ***substantial public benefit application*** in relation to the notification.

(7) The ***effective application date*** of the application is the day the application is made.

(8) The Commission must give the notifying party written notice:

(a) that the Commission has received the application; and

(b) of the effective application date.

Subdivision B—Powers of the Commission in response to incomplete or misleading substantial public benefit applications and changes of fact

51ABZH Substantial public benefit applications that are incomplete or misleading

(1) The Commission may determine in writing that a substantial public benefit application in relation to a notification of an acquisition should be taken not to have an effective application date, if:

(a) the Commission has not made a determination in respect of the application under subsection 51ABZL(1); and

(b) the Commission reasonably considers that subsection (2) of this section applies to the application.

(2) This subsection applies to the application if it:

(a) is materially incomplete; or

(b) is materially misleading; or

(c) contains information that is false in a material particular.

(3) The determination must be made within a reasonable period after the Commission begins to consider that subsection (2) applies to the application.

(4) In considering whether subsection (2) applies to the substantial public benefit application, the Commission may have regard to:

(a) the extent to which the application includes, or is accompanied by, any information or documents determined under subsection (5) for the purposes of this paragraph in relation to the application; and

(b) any additional information or documents given to the Commission as mentioned in section 51ABZI in response to any previous determination under subsection (1) of this section in relation to the application; and

(c) any change of fact:

(i) of which the Commission becomes aware after the notification is made; and

(ii) that is material to the Commission making a determination under subsection 51ABZL(1) in respect of the application.

(5) The Minister may, in writing, determine information or documents for the purposes of paragraph (4)(a) of this section in relation to the substantial public benefit application.

(6) A determination made under subsection (5) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the instrument.

Consequences of determination

(7) If the Commission makes a determination under subsection (1) of this section:

(a) the application is taken never to have had an ***effective application date***; and

(b) the Commission must give to the notifying party of the notification of the acquisition written notice:

(i) of the determination; and

(ii) the grounds on which the Commission considers that subsection (2) applies to the application.

Note: For review of the determination, see section 51ABZV.

(8) The Commission must not make a determination under subsection 51ABZL(1) in respect of the application if, because of a determination made under subsection (1) of this section, the application does not have an effective application date.

51ABZI Substantial public benefit applications that are incomplete or misleading—providing additional information and documents

(1) This section applies in relation to a substantial public benefit application in relation to a notification of an acquisition if:

(a) because of a determination made under subsection 51ABZH(1), the application does not have an effective application date; and

(b) the notifying party of the notification gives the Commission additional information or documents in response to the determination in accordance with subsection (2) of this section.

(2) The additional information or documents are given in accordance with this subsection if:

(a) in the case of information—the information is given in writing; and

(b) the information or documents are accompanied by the fee (if any) prescribed by the regulations for the purposes of this paragraph in relation to the information or documents and the application.

(3) To avoid doubt, the additional information or documents are taken not to be given before the fee (if any) required by paragraph (2)(b) is paid.

(4) The ***effective application date*** of the substantial public benefit application is the day the additional information or documents are given.

(5) The Commission must give the notifying party written notice of the effective application date.

51ABZJ Material changes of fact

(1) This section applies in relation to a substantial public benefit application in respect of a notification of an acquisition if:

(a) the Commission has not made a determination in respect of the application under subsection 51ABZL(1); and

(b) the Commission becomes aware of a change of fact.

(2) The Commission may, in writing, determine that the ***effective application date*** of the application is the date on which the Commission becomes aware of the change of fact, if the Commission reasonably considers the change to be material to the Commission making a determination under subsection 51ABZL(1) in respect of the application.

(3) The determination must be made within a reasonable period after the Commission becomes aware of the change of fact.

(4) If the Commission makes a determination under subsection (2), the Commission must give written notice of the determination to the notifying party of the notification.

Note: For review of the determination, see section 51ABZV.

Subdivision C—When Commission may cease considering substantial public benefit applications

51ABZK When Commission may cease considering substantial public benefit applications

(1) This section applies to a substantial public benefit application in relation to a notification of an acquisition if the Commission has not made a determination in respect of the application under subsection 51ABZL(1).

(2) The Commission must decide, in writing, to cease considering the application if requested to do so, in writing, by the notifying party of the notification.

(3) The Commission may also decide, in writing, to cease considering the application if the Commission reasonably believes that the parties to the acquisition no longer intend to put the acquisition into effect.

(4) Subsections (2) and (3) do not limit each other.

(5) If the Commission decides under subsection (2) or (3) to cease considering the application:

(a) the Commission must give written notice of its decision to the notifying party of the notification; and

(b) Subdivisions B and D do not apply to the application.

Note 1: An effect of making the decision is that the acquisition might not be able to be put into effect (see section 45AY, subsection 51ABI(3) and paragraphs 51ABJ(c) and (d)).

Note 2: For review of a decision under subsection (3) of this section, see section 51ABZV.

Subdivision D—Commission consideration of substantial public benefit applications

51ABZL Determinations on substantial public benefit applications

(1) If a substantial public benefit application in relation to a notification of an acquisition is made, the Commission may, in writing, determine:

(a) that the acquisition would be of substantial public benefit; or

(b) that the acquisition would be of substantial public benefit if specified conditions were complied with; or

(c) not to make the determination applied for.

Example: A condition that a specified person must give an undertaking to the Commission for the purposes of section 87B and comply with the undertaking.

(2) The Commission must not make a determination under paragraph (1)(a) unless the Commission is satisfied on reasonable grounds that, were the acquisition put into effect:

(a) the acquisition would result, or be likely to result, in a benefit to the public; and

(b) the benefit would substantially outweigh any detriment to the public that would result, or be likely to result, from the acquisition.

(3) The Commission must not make a determination under paragraph (1)(b) unless the Commission is satisfied on reasonable grounds that, were:

(a) the acquisition put into effect; and

(b) the specified conditions complied with;

both:

(c) the acquisition would result, or be likely to result, in a benefit to the public; and

(d) the benefit would substantially outweigh any detriment to the public that would result, or be likely to result, from the acquisition.

(4) The Commission must give written notice of the determination made under subsection (1) to the notifying party of the notification.

Note: An interested person may apply to the Tribunal under Division 1B of Part IX for review of the determination.

51ABZM Relevant matters

(1) This section sets out matters to which the Commission must or may have regard in making a determination under subsection 51ABZL(1) in respect of a substantial public benefit application in relation to a notification of an acquisition.

(2) The Commission must have regard to:

(a) the object of this Act; and

(b) all relevant matters, including the interests of consumers.

(3) Without limiting subsection (2), the Commission may have regard to:

(a) the contract, arrangement, understanding, or proposed contract etc., pursuant to which the acquisition is to take place; and

(b) any restriction under a contract, arrangement or understanding that:

(i) is directly related to, and necessary for, putting the acquisition into effect;

(ii) is not declared, under paragraph 51ABZA(1)(b), by the determination made in respect of the notification under subsection 51ABW(1), to be a restriction to which paragraph 51(2)(e) does not apply.

Matters relating to conditions

(4) Without limiting subsection (2), in making a determination under paragraph 51ABZL(1)(b) specifying conditions, the Commission may have regard to:

(a) the effect on the interests of consumers that compliance with the conditions would have, or be likely to have; or

(b) without limiting paragraph (a) of this subsection—any consumer benefits that would result, or be likely to result from compliance with the conditions.

51ABZN Commitments and undertakings

In making a determination under subsection 51ABZL(1) in respect of a substantial public benefit application in relation to a notification of an acquisition, the Commission must not have regard to a commitment or undertaking offered by a party to the acquisition unless subsection 51ABZT(3) applies to the commitment or undertaking in relation to the determination period for the substantial public benefit application.

51ABZO Related restrictions

If a notification of an acquisition of shares in the capital of a body corporate specifies a restriction as mentioned in subsection 51ABR(4), a reference in this Subdivision or Subdivision E to something that results from the acquisition is taken to include a reference to something that results from the restriction.

Subdivision E—Process for considering substantial public benefit applications

51ABZP Time for making determinations in respect of substantial public benefit applications

Earliest time for making determinations

(1) The Commission must not make a determination under subsection 51ABZL(1) in respect of a substantial public benefit application earlier than 15 business days after the effective application date of the application.

Commission deemed to make determination at end of determination period

(2) The Commission is taken to determine under paragraph 51ABZL(1)(c), at the end of the determination period for a substantial public benefit application, not to make the determination applied for, unless the Commission makes a determination in respect of the application under subsection 51ABZL(1) before the end of that period.

(3) Subsection (4) of this section applies if:

(a) the Commission purports to make a determination in respect of a substantial public benefit application under subsection 51ABZL(1) before the end of the determination period; and

(b) the determination is invalid, or a court or the Tribunal:

(i) sets the determination aside; or

(ii) remits the decision to make the determination back to the Commission to be remade.

(4) A reference in subsection (2) of this section to making a determination before the end of the determination period includes a reference to purportedly making the determination as mentioned in paragraph (3)(a).

Note: The effect of subsection (4) is that the invalidity etc. does not result in the Commission being taken to have made a determination under subsection (2) at the end of the determination period.

51ABZQ Substantial public benefit assessments

Substantial public benefit assessments

(1) If a substantial public benefit application in relation to a notification of an acquisition has an effective application date, the Commission must, in accordance with subsection (2), give the notifying party of the notification of the acquisition a written notice (a ***substantial public benefit assessment***) that sets out:

(a) the Commission’s preliminary assessment of the benefits and detriments to the public that the Commission has identified could result, or be likely to result, from the acquisition, including an assessment of the significance of those benefits and detriments; and

(b) the grounds on which the Commission makes that assessment, including the relevant material facts and the material information and material evidence the Commission relies on in making the assessment.

(2) The Commission must give the substantial public benefit assessment:

(a) no later than the 20th business day after the effective application date of the application; or

(b) if it is not practicable to give the substantial public benefit assessment by that day—as soon as practicable after that 20th business day.

Submissions

(3) The Commission:

(a) must give the notifying party a reasonable opportunity to make, during the period:

(i) starting on the day the Commission gives the substantial public benefit assessment; and

(ii) ending on the 15th business day after that day;

oral or written submissions to the Commission in relation to the matters set out in the substantial public benefit assessment; and

(b) subject to subsection (4) of this section, in making a determination under subsection 51ABZL(1) in respect of the application, must not take into account submissions received, as mentioned in paragraph (a) of this subsection, after that period.

(4) For the purposes of subsection (3):

(a) the notifying party may, in writing, before the end of the period during which the notifying party may make submissions to the Commission in relation to the substantial public benefit assessment, request the Commission to extend the period; and

(b) if the notifying party does so—the Commission may, by written notice given to the notifying party, extend the period.

(5) To avoid doubt, the period may be extended more than once.

51ABZR Meaning of *determination period*

(1) If a substantial public benefit application in relation to a notification of an acquisition has an effective application date, the ***determination period*** for the application:

(a) starts on the effective application date; and

(b) subject to subsections (2) and (3) of this section and section 51ABZT (extensions of determination periods), ends 50 business days after it starts.

(2) If the Commission does not give the substantial public benefit assessment in relation to the application under subsection 51ABZQ(1) before the end of the 20th business day after the start of the determination period, the determination period is extended by the number of days:

(a) occurring after that 20th business day; and

(b) on which the Commission has not given the substantial public benefit assessment.

(3) If, under paragraph 51ABZQ(4)(b), the Commission extends the period for making submissions in relation to the substantial public benefit assessment, the determination period is extended by the same number of days.

Division 5—Miscellaneous

Subdivision A—Miscellaneous matters relating to Commission consideration of notifications

51ABZS Information gathering

(1) This section applies in relation to the Commission making an acquisition determination in respect of a notification of an acquisition.

(2) Before making the acquisition determination, the Commission may do any of the following:

(a) give any persons who appear to the Commission to be interested a written notice inviting written submissions, to be made to the Commission within a specified period, in respect of the proposal to put the acquisition into effect;

(b) give any party to the acquisition a written notice requesting the party to give the Commission (orally or in writing), within a specified period, additional information relevant to making the determination;

(c) give a person a written notice requesting the person to give the Commission (orally or in writing), within a specified period, particular information relevant to making the determination;

(d) consult with such persons as the Commission considers reasonable and appropriate for the purposes of making the determination.

(3) In making the acquisition determination, the Commission:

(a) must take into account any submissions or information received under paragraph (2)(a), (b) or (c) within the period specified in the notice mentioned in that paragraph; and

(b) subject to subsection (4) may, but need not, take into account any submissions or information received after the end of those periods; and

(c) subject to subsection (4), must take into any information obtained from consultations under paragraph (2)(d).

(4) The Commission must not take into account submissions or information received or obtained later than 10 business days before the end of:

(a) if the determination is made under subsection 51ABW(1) and the notification is subject to phase 2 review—the phase 2 determination period for the notification; or

(b) if the determination is made under subsection 51ABZL(1) in respect of a substantial public benefit application—the determination period in relation to the application.

Note: This subsection does not apply during the phase 1 determination period.

(5) Subsections (3) and (4) of this section do not limit:

(a) subsections 51ABZE(3) to (5) (submissions in response to notice of competition concerns); or

(b) subsections 51ABZQ(3) to (5) (submissions in response to substantial public benefit assessment).

51ABZT Extensions of determination periods

(1) For the purposes of making an acquisition determination in respect of a notification of an acquisition, this section applies to any of the following periods (the ***determination period***):

(a) if the determination is a determination under subsection 51ABW(1):

(i) the phase 1 determination period for the notification; or

(ii) the phase 2 determination period for the notification;

(b) if the determination is a determination under subsection 51ABZL(1)—the determination period for a substantial public benefit application in respect of the notification.

(2) The Commission may, during the determination period, give the notifying party of the notification of the acquisition a written notice extending the determination period for a specified period, if any of the following paragraphs apply:

(a) all of the following subparagraphs apply:

(i) a party to the acquisition offers, in writing, to make a commitment or undertaking (including giving an undertaking for the purposes of section 87B) in connection with the making of the acquisition determination;

(ii) subsection (3) of this section applies to the commitment or undertaking;

(iii) the extension is of no more than 15 business days;

(b) all of the following subparagraphs apply:

(i) the Commission, before the end of the determination period, requests the notifying party, in writing, to give to the Commission, by a specified day, additional information relevant to making the acquisition determination;

(ii) the notifying party does not give the additional information to the Commission by the specified day;

(iii) the extension is of no more than the number of days occurring after the specified day on which the notifying party has not given the additional information to the Commission;

(c) both:

(i) before the end of the determination period, a party to the acquisition is served a notice under subsection 155(1) requiring the party to furnish information, produce documents or appear before the Commission relating to the making of the acquisition determination; and

(ii) the extension is of the number of days in the period commencing on the day on which the notice is served and ending on the day on which the party furnishes the information, produces the documents or appears before the Commission;

(d) both:

(i) before the end of the determination period, the notifying party requests the Commission, in writing, to extend the period by a specified number of days; and

(ii) the extension is of no more than that number of days.

(3) This subsection applies to a commitment or undertaking that is offered during the following period:

(a) if subparagraph (1)(a)(i) applies—the period:

(i) starting at the start of the determination period; and

(ii) ending 20 business days after it starts;

(b) if subparagraph (1)(a)(ii) applies—the period:

(i) starting on the 40th business day occurring on or after the start of the determination period; and

(ii) ending on the 50th business day occurring on or after the start of the determination period;

(c) if paragraph (1)(b) applies—the period:

(i) starting at the start of the determination period; and

(ii) ending 35 business days after it starts.

(4) However, if the determination period is extended under paragraph (2)(b), (c) or (d) by a number of days, subsection (3) applies, in relation to a commitment or undertaking offered after that extension, as if the period mentioned in subsection (3) were extended by the same number of days.

51ABZU Consequences of setting aside etc. acquisition determinations

(1) This section applies if:

(a) a court or the Tribunal sets aside:

(i) a determination in respect of a notification of an acquisition made under subsection 51ABW(1); or

(ii) a determination in respect of a substantial public benefit application made under subsection 51ABZL(1); or

(b) a court remits a decision to make such a determination back to the Commission to be made again.

(2) Division 3 or 4 applies in relation to the notification or application with the following modifications:

(a) paragraphs 51ABW(3)(a) and (b) and sections 51ABZD and 51ABZE do not apply;

(b) the phase 1 determination period for the notification, or the determination period for the application, is taken to start on the day the court or the Tribunal sets aside the determination or remits the decision as mentioned in subsection (1) of this section.

51ABZV Internal review of decisions

(1) This section applies to any of the following decisions (a ***reviewable decision***):

(a) a determination under subsection 51ABS(1) or 51ABU(2) in respect of a notification of an acquisition;

(b) a decision under subsection 51ABV(3) in respect of a notification of an acquisition;

(c) a determination under subsection 51ABZH(1) or 51ABZJ(2) in respect of a substantial public benefit application in relation to a notification of an acquisition;

(d) a decision under subsection 51ABZK(3) in respect of a substantial public benefit application in relation to a notification of an acquisition.

Applications for internal review

(2) The notifying party of the notification may apply in writing to the Commission for review (an ***internal review***) of the reviewable decision, if the decision was made by a delegate of the Commission.

(3) An application for an internal review must be made within 28 days after the day on which the decision was made.

Reconsideration by Commission

(4) Within 90 days after receiving an application under subsection (3) for internal review, the Commission must:

(a) review the decision; and

(b) affirm, vary or revoke the decision; and

(c) if the Commission revokes the decision—make such other decision (if any) that the Commission thinks appropriate.

(5) The Commission must, as soon as practicable after making a decision under subsection (4), give the notifying party a written statement of the Commission’s reasons for the decision.

(6) If the Commission’s functions under subsections (4) and (5) are performed by a delegate of the Commission, the delegate who makes the decision under subsection (4):

(a) must not have been involved in making the original reviewable decision; and

(b) must hold a position or perform duties of a higher level than the delegate who made the original reviewable decision.

Review by the Tribunal

(7) The notifying party may apply under Division 1A of Part IX to the Tribunal for review of the following decisions relating to the notification of the acquisition:

(a) a reviewable decision made by the Commission itself;

(b) an internal review decision made under subsection (4).

51ABZW Consequences of setting aside etc. determinations about effective notification and application dates

(1) This section applies if a court or the Tribunal sets aside, or the Commission revokes under subsection 51ABZV(4):

(a) a determination in respect of a notification of an acquisition made under subsection 51ABS(1) or 51ABU(2); or

(b) a decision in relation to a notification of an acquisition made under subsection 51ABV(3); or

(c) a determination in respect of a substantial public benefit application made under subsection 51ABZH(1) or 51ABZJ(2); or

(d) a decision in relation to a substantial public benefit application made under subsection 51ABZK(3).

(2) The ***effective notification date*** of the notification, or the ***effective application date*** of the application, (whichever is relevant) is the day the court or the Tribunal sets aside the determination or the Commission revokes the determination.

Subdivision B—Acquisitions register

51ABZX Acquisitions register

(1) The Commission must keep a register of notified acquisitions.

(2) The acquisitions register must include, for each notified acquisition:

(a) a copy of each acquisition determination (if any) made in respect of the notification, and a statement of the Commission’s reasons for making the determination; and

(b) a copy of the decision (if any) under subsection 51ABZD(1) that the notification is to be subject to phase 2 review; and

(c) any other information or documents prescribed by the regulations for the purposes of this paragraph in relation to the acquisition.

(3) Information or documents to which paragraph (2)(a) or (b) applies must be included on the acquisitions register on the day the relevant determination or decision is made.

(4) Information or documents to which paragraph (2)(c) applies must be included on the acquisitions register by the time prescribed by the regulations for the purposes of this subsection in relation to the information or documents.

(5) Without limiting subsection (4), regulations made for the purposes of that subsection:

(a) may prescribe a time by reference to a decision of the Commission in relation to the information or documents; and

(b) may provide for review of such a decision.

(6) The acquisitions register must be made available for public inspection on the internet.

(7) The Commission may correct or update information or documents on the acquisitions register.

Subdivision C—Partnerships and trusts

51ABZY Treatment of partnerships

(1) The acquisition provisions apply to a partnership as if it were a person, but with the changes set out in this section.

(2) An obligation that would otherwise be imposed on the partnership by the acquisitions provisions is imposed on each partner instead, but may be discharged by any of the partners.

(3) An offence against the acquisitions provisions that would otherwise have been committed by the partnership is taken to have been committed by each partner in the partnership, at the time the offence was committed, who:

(a) did the relevant act or made the relevant omission; or

(b) aided, abetted, counselled or procured the relevant act or omission; or

(c) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner).

(4) This section applies to a contravention of a civil penalty provision in a corresponding way to the way in which it applies to an offence.

(5) A reference in the acquisitions provisions to a corporation is taken to include a reference to the partnership if all of the partners are corporations.

(6) For the purposes of the acquisitions provisions, a change in the composition of a partnership does not affect the continuity of the partnership.

51ABZZ Treatment of unit trusts

(1) The acquisitions provisions apply to a unit trust as if it were a person, but with the changes set out in this section.

Trusts with a single trustee

(2) If the unit trust has a single trustee:

(a) an obligation that would otherwise be imposed on the trust by the acquisitions provisions is imposed on the trustee instead; and

(b) an offence against the acquisitions provisions that would otherwise have been committed by the trust is taken to have been committed by the trustee; and

(c) a reference in the acquisitions provisions to a corporation is taken to include a reference to the trust if the trustee is a corporation.

Trusts with multiple trustees

(3) If the unit trust has 2 or more trustees:

(a) an obligation that would otherwise be imposed on the trust by the acquisitions provisions is imposed on each trustee instead, but may be discharged by any of the trustees; and

(b) an offence against the acquisitions provisions that would otherwise have been committed by the trust is taken to have been committed by each trustee of the trust, at the time the contravention was committed, who:

(i) did the relevant act or made the relevant omission; or

(ii) aided, abetted, counselled or procured the relevant act or omission; or

(iii) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the trustee); and

(c) a reference in the acquisitions provisions to a corporation is taken to include a reference to the unit trust if all of the trustees are corporations.

Contraventions of civil penalty provisions

(4) This section applies to a contravention of a civil penalty provision in a corresponding way to the way in which it applies to an offence.

Subdivision D—Miscellaneous

51ABZZA Delegation by Commission

(1) The Commission may, in writing, delegate any or all of the Commission’s functions or powers under an acquisitions provision to a member of the staff of the Commission who is an SES employee or an acting SES employee.

(2) The Commission may delegate a function or power to a person under subsection (1) only if the Commission is satisfied that the person has appropriate qualifications, training or experience to perform the function or exercise the power.

(3) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Commission.

51ABZZB Delegation by Minister

(1) The Minister may, in writing, delegate any or all of the Minister’s functions or powers under an acquisitions provision to an SES employee or acting SES employee in the Department, other than the Minister’s power under subsection 51ABH(1).

(2) The Minister may delegate a function or power to a person under subsection (1) only if the Minister is satisfied that the person has appropriate qualifications, training or experience to perform the function or exercise the power.

(3) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Minister.

51ABZZC Review of the operation of this Part etc.

(1) The Minister must cause a review to be conducted of the operation of:

(a) Division 1A of Part IV; and

(b) this Part; and

(c) Division 1B of Part IX.

(2) The persons who conduct the review must:

(a) commence it no earlier than 1 December 2028; and

(b) complete it, and give the Minister a written report of the review, no later than 31 December 2029.

(3) The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

Chapter 4—Provisions relating to particular industries, payment surcharges etc.

40 Before Part VI

Insert:

Chapter 5—Enforcement and remedies

41 Before section 75B

Insert:

Division 1—Preliminary

42 After section 75B

Insert:

Division 2—Pecuniary penalties

43 After subsection 76(4)

Insert:

(4AA) Subsection (3) does not apply to conduct to the extent it constitutes a contravention of both:

(a) section 45AW; and

(b) section 45AY.

44 After section 77C

Insert:

Division 3—Orders relating to acquisitions

77D Orders relating to failures to notify Commission of acquisitions

If, on application of the Commission, the Federal Court is satisfied that:

(a) a person has contravened section 45AW in relation to an acquisition; and

(b) the acquisition is not void under subsection 45AZA(2) (including because of an order made under section 77E);

the Court may order the principal party, or the principal parties, to the acquisition to notify the Commission of the acquisition in accordance with subsection 51ABR(1).

77E Orders relating to void acquisitions

(1) This section applies if an acquisition, or a directly related restriction:

(a) is void to any extent by force of subsection 45AZA(2); or

(b) would be void to any extent by force of that subsection apart from this section.

(2) The Federal Court may, on the application of the Commission or any other person, make any of the following orders that the Court considers appropriate:

(a) an order that subsection 45AZA(2) is to be taken not to apply, and never to have applied, to the acquisition or the restriction;

(b) such other order as the Court considers appropriate:

(i) to give effect to the voiding; or

(ii) to deal with the consequences of the voiding.

(3) The application must be made no later than 6 years after the acquisition was put into effect or purportedly put into effect.

(4) Before making an order under paragraph (2)(a), the Court must have regard to the seriousness of the related contravention of section 45AY, including the effect of the contravention on persons who are not parties to the acquisition.

Division 4—Offences

45 After section 79

Insert:

Division 5—Other provisions

46 Subsection 80(1A)

After “a contravention of,”, insert “Subdivision B of Division 1A of Part IV or”.

47 After section 80AC

Insert:

80AD Injunctions if acquisition determinations made on the basis of false or misleading information

(1) If, on the application of the Commission, the Federal Court is satisfied that:

(a) a person is proposing to put an acquisition into effect; and

(b) the Commission made an acquisition determination under paragraph 51ABW(1)(a) or (b) or 51ABZL(1)(a) or (b) in respect of a notification of the acquisition on the basis of information that was false or misleading in a material particular; and

(c) that information was given by:

(i) the person; or

(ii) if the person is a body corporate—a body corporate that was related to the person; and

(d) if that information had not been given, the determination would not have been made; and

(e) apart from the determination, putting the acquisition into effect would contravene Subdivision B of Division 1A of Part IV;

then the Court may grant an injunction in such terms as the Court determines to be appropriate.

(2) If, on the application of the Commission, the Federal Court is satisfied that:

(a) a person has engaged, or is proposing to engage, in conduct that did not or does not constitute any of the following:

(i) a contravention of a provision of Part IV;

(ii) attempting to contravene such a provision;

(iii) aiding, abetting, counselling or procuring a person to contravene such a provision;

(iv) inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene such a provision;

(v) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision;

(vi) conspiring with others to contravene such a provision; and

(b) the Commission made a determination under subsection 51ABW(1) on the basis of information that was false or misleading in a material particular; and

(c) that information was given by:

(i) the person; or

(ii) if the person is a body corporate—a body corporate that was related to the person; and

(d) if that information had not been given, the determination would have declared under paragraph 51ABZA(1)(b) that paragraph 51(2)(e) does not apply to a restriction; and

(e) had the determination included that declaration, the conduct would constitute, or would have constituted, any of the things mentioned in subparagraphs (a)(i) to (vi) of this subsection;

then the Court may grant an injunction in such terms as the Court determines to be appropriate.

48 After section 81A

Insert:

81B Divestiture etc. if acquisition determinations made on false etc. information or conditions not complied with

(1) This section applies in relation to a notification of an acquisition if the Federal Court is satisfied that:

(a) as part of putting the acquisition into effect, a notifying party of the notification, or a related body corporate, acquired a thing (including a share in the capital of body corporate or any assets of a person); and

(b) the Commission made an acquisition determination in respect of the notification; and

(c) apart from the determination, putting the acquisition into effect would have contravened Subdivision B of Division 1A of Part IV; and

(d) subsection (2) or (3) applies.

(2) This subsection applies if:

(a) the Commission made the determination on the basis of information that was false or misleading in a material particular; and

(b) the information was given by:

(i) the notifying party of the notification; or

(ii) a related body corporate; and

(c) the Court or another court has found that the person who gave the information contravened section 45AZB of this Act or Part 7.4 of the *Criminal Code* by giving that information; and

(d) if that information had not been given, the determination would not have been made.

(3) This subsection applies if:

(a) putting the acquisition into effect is subject to a condition; and

(b) the condition is not complied with.

Divestiture

(4) The Federal Court may, on the application of the Commission, by order, give directions for the purpose of securing the disposal of anything acquired as mentioned in paragraph (1)(a).

Declaration that acquisition void

(5) The Federal Court may, on the application of the Commission, by order, declare that the acquisition mentioned in paragraph (1)(a) is void as from the day on which it occurred.

(6) However, the Court may make an order under subsection (5) only if, in addition to the Court being satisfied of the matters in subsection (1), the Court, or another court, has found that the person (the ***vendor***) from whom the thing was acquired was involved in:

(a) the contravention mentioned in paragraph (2)(c); or

(b) the non‑compliance mentioned in paragraph (3)(b).

(7) If the Court makes an order under subsection (5) in relation to an acquisition of a thing, then:

(a) the thing is taken not to have been disposed of by the vendor; and

(b) the vendor must refund to the acquirer any amount paid to the vendor for acquiring the thing.

Alternative to orders under subsections (4) and (5)

(8) If an application is made to the Court for an order under subsection (4) or (5) against a person, the Court may, instead of making an order of the kind mentioned in that subsection, accept, upon such conditions (if any) as the Court thinks fit, an undertaking by the person to dispose of any other thing owned by the person.

When application for orders under this section must be made

(9) An application under subsection (4) or (5) may be made at any time within 3 years after the day on which the acquisition was put into effect.

Court may make orders even if not satisfied of all matters

(10) If an application for an order under subsection (4) or (5) is made, the Court may, if the Court determines it to be appropriate, make an order by consent of all the parties to the proceedings, whether or not the Court is satisfied of:

(a) for an order under subsection (4)—the matters in subsection (1); and

(b) for an order under subsection (5)—the matters in subsections (1) and (6).

49 Subsections 88(1) and (2)

Before “Part IV”, insert “Division 1 or 2 of”.

50 At the end of section 88

Add:

Acquisitions

(8) This section does not apply in relation to section 45 to the extent that section 45 applies to, or in relation to:

(a) a contract, arrangement or understanding to the extent that the contract, arrangement or understanding directly or indirectly provides for; or

(b) a proposed contract, arrangement or understanding to the extent that the proposed contract, arrangement or understanding would directly or indirectly provide for; or

(c) a concerted practice to the extent that the practice directly involves;

an acquisition:

(d) of shares in the capital of a body corporate; or

(e) of any assets of a person;

to which the acquisitions provisions apply.

Note: For the acquisitions to which the acquisitions provisions apply, see Subdivision B of Division 1 of Part IVA.

51 Before Part VII

Insert:

Chapter 6—Other provisions

52 Subsections 95AA(1) and (5)

Before “Part IV”, insert “Division 1 or 2 of”.

53 Part IX (heading)

Omit “**Determinations**”, substitute “**decisions**”.

54 Before Division 1 of Part IX

Insert:

Division 1A—Applications for review: general

100A Applications for review

(1) This section applies if a provision of this Act provides that a person may apply under this Division for review of a decision of the Commission.

(2) The person may, as prescribed and within the time allowed by or under the regulations, apply to the Tribunal for a review of the decision.

(3) The Tribunal must review the decision.

(4) For the purposes of the review, this Act applies in relation to the Tribunal in like manner as it applies in relation to the Commission.

100B Functions and powers of Tribunal

(1) On a review under section 100A, the Tribunal:

(a) may make a decision affirming, setting aside or varying the decision of the Commission; and

(b) for the purposes of the review, may perform all the functions and exercise all the powers of the Commission.

(2) A decision of the Tribunal affirming, setting aside or varying a decision of the Commission is, for the purposes of this Act other than this Part, to be taken to be a decision of the Commission.

(3) For the purposes of a review by the Tribunal under this Division, the member of the Tribunal presiding at the review may require the Commission to give such information, make such reports and provide such other assistance to the Tribunal as the member specifies.

(4) For the purposes of a review under this Division, the Tribunal may have regard to any information given, documents produced or evidence given to the Commission in connection with the making of the decision by the Commission to which the review relates.

(5) Subsection (4) does not apply to information, documents or evidence to which the Commission was not be permitted to have regard in making the determination.

Division 1B—Applications for review: acquisition determinations

Subdivision A—Review

100C Applications for review

(1) A person dissatisfied with an acquisition determination in respect of a notification of an acquisition may:

(a) as prescribed; and

(b) within the period of 14 days after the day the determination is made;

apply to the Tribunal for a review of the determination.

(2) If:

(a) the applicant was the notifying party of the notification; or

(b) the Tribunal is satisfied that the applicant has a sufficient interest;

the Tribunal must review the acquisition determination.

(3) Subject to subsection (4) of this section, subsection 51ABW(2), paragraph 51ABW(3)(c) and subsections 51ABW(4) and 51ABZL(2) and (3) apply in relation to the Tribunal in like manner as they apply in relation to the Commission.

(4) The Tribunal may, if the Tribunal determines it to be appropriate, make a determination by consent of:

(a) the applicant; and

(b) if the applicant is not the notifying party—the notifying party; and

(c) all persons (if any) who have been permitted under subsection 109(2) to intervene in the proceedings for review;

even if the Tribunal does have the belief or satisfaction referred to in subsection 51ABW(2), paragraph 51ABW(3)(c) or subsection 51ABZL(2) or (3) (whichever is relevant).

100D Meaning of *fast track review*

A review of an acquisition determination under this Division is a ***fast track review*** if:

(a) the application for the review is made within 7 days after the day the determination is made; and

(b) at the end of those 7 days, all of the following consent to the review being a fast track review:

(i) if paragraph 100C(2)(a) applies—the applicant;

(ii) if the relevant notifying party is not the applicant, but is participating in the proceedings for review as mentioned in subsection 109(1AA)—the notifying party;

(iii) each person (if any) who, during those 7 days, was permitted under subsection 109(2) to intervene in the proceedings for review.

100E Applicants may withdraw applications

(1) The applicant may, at any time, by giving written notice to the Tribunal, withdraw an application for review made to the Tribunal under subsection 100C(1).

(2) If the application is withdrawn, a participant in the proceedings for review (other than the applicant) may apply to the Tribunal for reinstatement of the application within 7 days after the person receives notice that the application is dismissed (or such longer period as the Tribunal, in special circumstances, allows).

(3) If:

(a) a participant applies under subsection (2); and

(b) the Tribunal considers it appropriate to reinstate the application for review;

the Tribunal may reinstate the application and make such orders as appear to the Tribunal to be appropriate in the circumstances.

100F Tribunal may dismiss applications if parties consent

The Tribunal may, at any time, dismiss an application for review made to the Tribunal under subsection 100C(1) if the Tribunal has the consent of the participants in the proceedings for review.

100G Tribunal may dismiss applications if fees not paid

The Tribunal may dismiss an application made to the Tribunal under subsection 100C(1) if a fee payable by the applicant to the Tribunal in respect of the application is not paid by the time prescribed by regulations made for the purposes of this section.

100H Tribunal may dismiss applications if applicants fail to comply with order etc.

The Tribunal may dismiss an application for review made to the Tribunal under subsection 100C(1) if the applicant fails to do either of the following within a reasonable time:

(a) proceed with the application;

(b) comply with this Act or an order of the Tribunal in relation to the proceedings for review.

100J Tribunal may dismiss frivolous or vexatious applications

The Tribunal may dismiss an application made to the Tribunal under subsection 100C(1) if the Tribunal is satisfied that the application is frivolous or vexatious.

Note: See also section 111.

100K Certain participants may seek to withdraw from being participants

General rule

(1) The Tribunal may order that a participant in a proceeding before the Tribunal under this Division ceases to be a participant in the proceeding if the participant gives written notice to the Tribunal that the participant wishes to cease being a participant in the proceeding.

Exception

(2) However, subsection (1) does not apply in relation to the applicant.

Note: The applicant may withdraw the application (see section 100E).

100L Notice of withdrawals and dismissals

If, under this Subdivision:

(a) an applicant withdraws an application for review; or

(b) the Tribunal dismisses an application;

the Tribunal must give each participant in the proceedings for review notice of the withdrawal or dismissal.

Subdivision B—Functions and powers

100M Functions and powers of Tribunal

(1) On a review of a determination under this Division in relation to an acquisition determination, the Tribunal:

(a) may make a determination affirming, setting aside or varying the acquisition determination; and

(b) for the purposes of the review, may perform all the functions and exercise all the powers of the Commission.

Time within which Tribunal must make determination on review

(2) The Tribunal must make its determination on the review within the period:

(a) starting on the day after the latter of:

(i) the last day on which an application for review of the acquisition determination could have been made under subsection 100C(1); and

(ii) if regulations made for the purposes of this subparagraph require the applicant to give to the Tribunal additional information or documents in relation to the application—the day the applicant gives the additional information or documents to the Tribunal; and

(b) ending:

(i) if the review is a fast track review—60 days after it starts; or

(ii) otherwise—at the time specified by subsection (3).

(3) For the purposes of subparagraph (2)(b)(ii), the period ends:

(a) if paragraphs (b) and (c) of this subsection do not apply—90 days after it starts; or

(b) if the Tribunal allows new information, documents or evidence under subsection 100N(5), and paragraph (c) of this subsection does not apply—180 days after it starts; or

(c) if an extended period is determined under subsection (4) or (6)—at the end of the extended period.

(4) Before the end of the period (the ***initial period***) otherwise applying under subsection (3), the Tribunal may determine, in writing, that:

(a) the matter cannot be dealt with properly before the end of the initial period:

(i) because of the matter’s complexity; or

(ii) because of other special circumstances; and

(b) an extended period applies for the review, which consists of the initial period and a further specified period of not more than 90 days.

The Tribunal must, before the end of the initial period, give the parties to the proceedings for review written notice of any determination under this subsection.

(5) The Tribunal must not make a determination under subsection (4) in relation to the review more than once.

(6) Before the end of the period (the ***initial period***) otherwise applying under subsection (3), the Tribunal may determine, in writing, that:

(a) the matter cannot be dealt with properly before the end of the initial period because of the volume of information, documents and evidence before the Tribunal in relation to the matter; and

(b) an extended period applies for the review, which consists of the initial period and a further specified period of not more than 60 days.

The Tribunal must, before the end of the initial period, give the parties to the proceedings for review written notice of any determination made under this subsection.

(7) The Tribunal must not make a determination under subsection (6) in relation to the review more than once.

Consequences of not giving Tribunal additional information or documents

(8) If:

(a) regulations made for the purposes of subparagraph (2)(a)(ii) require the applicant to give to the Tribunal additional information or documents in relation to the application; and

(b) the applicant does not give the information or documents to the Tribunal by the end of the period starting on the day mentioned in subparagraph (2)(a)(i) and ending:

(i) if the review is a fast track review—14 days later; or

(ii) otherwise—30 days later;

the applicant is taken to withdraw the application under subsection 100E(1) at the end of that period.

Determinations of Tribunal taken to be determinations of Commission

(9) A determination of the Tribunal affirming, setting aside or varying an acquisition determination is, for the purposes of this Act other than this Part, to be taken to be a determination of the Commission.

100N Functions and powers of Tribunal—reviews other than fast track reviews

(1) For the purposes of a standard review, the Tribunal:

(a) may consult, in such a manner as it sees fit, any consumer associations or consumer interest groups; and

(b) may have regard to any information furnished, documents produced or evidence given to the Commission in connection with such consultation.

(2) For the purposes of a standard review, the member of the Tribunal presiding at the review may require the Commission to give such information, make such reports and provide such other assistance to the Tribunal as the member specifies.

(3) For the purposes of a standard review, the Tribunal may have regard to any information furnished, documents produced or evidence given to the Commission in connection with the making of the determination to which the review relates.

(4) Subsection (3) does not apply to information, documents or evidence to which the Commission was not permitted to have regard in making the determination.

(5) For the purposes of a standard review, the Tribunal may allow a person to provide new information, documents or evidence that the Tribunal is satisfied was not in existence at the time the Commission made the determination to which the review relates.

(6) Despite subsection 100M(1), the Tribunal must not, for the purposes of a standard review, have regard to any information, documents or evidence other than:

(a) information that was referred to in the Commission’s reasons for making the determination to which the review relates; and

(b) the information or documents referred to in subparagraph 100M(2)(a)(ii); and

(c) the information, documents or evidence referred to in paragraph (1)(b) of this section; and

(d) any information or report given to the Tribunal under subsection (2); and

(e) the information, documents or evidence referred to in subsection (3); and

(f) information given to the Tribunal as a result of the Tribunal seeking such relevant information, and consulting with such persons, as it considers reasonable and appropriate for the sole purpose of clarifying the information, documents or evidence referred to in subsection (5); and

(g) any information, documents or evidence referred to in subsection (5).

100P Functions and powers of Tribunal—fast track reviews

(1) Despite subsection 100M(1), the Tribunal must not, for the purposes of a fast track review, have regard to any information, documents or evidence other than:

(a) information that was referred to in the Commission’s reasons for making the determination to which the review relates; or

(b) the information or documents referred to in subparagraph 100M(2)(a)(ii).

(2) Despite subsection 100M(1), the Tribunal must not, for the purposes of a fast track review, make a finding of fact that is inconsistent with a finding of fact made by the Commission in making the determination to which the review relates.

Subdivision C—Miscellaneous

100R Financial assistance to consumer associations etc.

(1) The Minister may authorise the grant of financial assistance by the Commonwealth to a consumer association or a consumer interest group if:

(a) the association or group is a participant in proceedings for review under this Division, or has been permitted under subsection 109(2) to intervene in such proceedings; and

(b) the financial assistance would assist the association or group to participate in the proceedings, or continue to participate in the proceedings; and

(c) the association or group would not be able to participate in the proceedings, or continue to participate in the proceedings, without the financial assistance.

(2) The grant may be subject to conditions.

55 Division 1 of Part IX (at the end of the heading)

Add “**: determinations by the Commission under Part VII**”.

56 Subsection 101(2)

Repeal the subsection.

57 Before section 103

Insert:

102A Reviews are re‑hearings

A review by the Tribunal under this Part is a re‑hearing of the matter, unless it is a review of:

(a) a determination by the Commission:

(i) in relation to an application for a merger authorisation or a minor variation of a merger authorisation; or

(ii) in relation to the revocation of a merger authorisation, or the revocation of a merger authorisation and the substitution of another merger authorisation; or

(b) an acquisition determination.

58 Before subsection 109(1A)

Insert:

(1AA) A notifying party of a notification of an acquisition is entitled to participate in any proceedings before the Tribunal under Division 1B instituted by another person in relation to an acquisition determination in respect of the notification.

59 At the end of Division 2 of Part IX

Add:

111 Tribunal may order costs be awarded

(1) If the Tribunal is satisfied that it is appropriate to do so, the Tribunal may order that a participant in proceedings for review under Division 1A or 1B pay all or a specified part of the costs of another participant in the proceedings.

(2) If the Tribunal makes an order under subsection (1), it may make further orders that it considers appropriate in relation to the assessment or taxation of the costs.

(3) The regulations may make provision for and in relation to fees payable for the assessment or taxation of costs ordered by the Tribunal to be paid.

(4) If a participant (the ***first participant***) is ordered to pay some or all of the costs of another participant under subsection (1), the amount of the costs may be recovered in the Federal Court as a debt due by the first participant to the other participant.

112 Tribunal may charge fees

(1) For the purposes of Division 1A or 1B, the Tribunal may, on behalf of the Commonwealth, charge fees prescribed by regulations for the purposes of this subsection.

(2) Regulations made for the purposes of subsection (1) may provide for fees to be payable in respect of the following:

(a) applications to the Tribunal under Division 1A or 1B;

(b) proceedings in the Tribunal under Division 1A or 1B;

(c) taxation of costs by the Tribunal in relation to such proceedings.

(3) Without limiting the scope of regulations that may be made for the purposes of subsection (1), those regulations may prescribe, or prescribe matters relating to, any or all of the following:

(a) the circumstances in which a fee is to be paid;

(b) who must pay;

(c) the time when payment is required;

(d) remittal, refund and waiver of fees.

(4) Regulations made for the purposes of subsection (1) may do any or all of the following:

(a) prescribe fees in respect of a particular class or classes of applications, costs or proceedings;

(b) prescribe different fees in respect of different classes of applications, costs or proceedings;

(c) prescribe the amount of, or a method for working out the amount of, a fee;

(d) make provision in relation to the whole or a part of a fee;

(e) provide for the Tribunal to make orders relating to the payment of a fee in relation to a proceeding.

(5) A fee must not be such as to amount to taxation.

(6) A fee charged under subsection (1):

(a) is a debt due to the Tribunal, on behalf of the Commonwealth; and

(b) is recoverable by the Tribunal, on behalf of the Commonwealth, in a court of competent jurisdiction.

60 At the end of subsections 10.49A(2), 10.60(2) and 10.65(2)

Add “(but not of Division 1A of Part IV)”.

61 Subsection 150C(2)

Omit “particular, references to corporations are to include references to persons who are not corporations.”, substitute:

particular:

(a) references to corporations are to include references to persons who are not corporations; and

(b) paragraphs 51ABB(c) and (d) are to be omitted.

62 Section 150J

After “notification”, insert “, determination”.

63 Before Part XIB

Insert:

Chapter 7—Further provisions relating to particular industries etc.

64 Section 151AI (heading)

After “**IV**”, insert “**, IVA**”.

65 Section 151AI

After “IV”, insert “, IVA”.

66 Section 152AK (heading)

After “**IV**”, insert “**, IVA**”.

67 Section 152AK

After “IV”, insert “, IVA”.

68 Before Part XID

Insert:

Chapter 8—Miscellaneous

69 After subparagraph 155(2)(b)(ii)

Insert:

(iia) the making of an acquisition determination by the Commission; or

70 Subsection 155AAA(21) (paragraph (a) of the definition of *core statutory provision*)

After “IV,”, insert “IVA,”.

71 Paragraph 157(1)(c)

After “80AC,”, insert “80AD,”.

72 Paragraph 157(1)(c)

Omit “or 81A”, substitute “, 81A or 81B”.

73 At the end of Part XIII

Add:

Division 6—Application of amendments made by the Treasury Laws Amendment Bill 2024

188 Application of amendments

Contracts, arrangements or understandings that restrict dealings or affect competition

(1) Subsections 45(4A) to (4C) apply to an acquisition that is put into effect on or after 1 January 2026.

Acquisitions not required to be notified before 1 January 2026

(2) Section 51ABG applies in relation to an acquisition that is put into effect on or after 1 January 2026.

Notifications may be made on or after 1 December 2025

(3) Division 2 of Part IVA applies in relation to a notification made on or after 1 December 2025.

Applications for authorisations

(4) Subsection 88(8) applies in relation to an acquisition that is put into effect on or after 1 January 2026.

189 Acquisition of property

(1) The amendments made by Schedule 1 to the *Treasury Laws Amendment Bill 2024* do not apply in relation to an acquisition if:

(a) apart from this section, the operation of the amendments in relation to the acquisition would result in an acquisition of property from a person otherwise than on just terms; and

(b) the acquisition of property would be invalid because of paragraph 51(xxxi) of the Constitution.

(2) In this section:

***acquisition of property*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

***just terms*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

74 After section 45AM of Schedule 1

Insert:

45AMA Acquisition subject to notification

(1) Sections 45AF and 45AJ do not apply in relation to the making of a contract that contains a cartel provision, in so far as the cartel provision provides directly or indirectly for:

(a) an acquisition of shares in the capital of a body corporate; or

(b) an acquisition of any assets of a person;

if:

(c) the contract is subject to a condition that the provision will not come into force unless and until the acquisition becomes a notified acquisition; and

(d) the acquisition becomes a notified acquisition within 30 days after the contract is made.

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

75 At the end of section 45AT of Schedule 1

Add:

(3) Sections 45AF, 45AG, 45AJ and 45AK do not apply in relation to a contract, arrangement or understanding containing a cartel provision, in so far as the cartel provision provides directly or indirectly for an acquisition, if the acquisition is a notified acquisition.

(4) A person who wishes to rely on subsection (3) bears an evidential burden in relation to that matter.

76 After Division 1 of Part 1 of Schedule 1

Insert:

Division 1A—Acquisitions

Subdivision A—Preliminary

45AV Purportedly putting acquisitions into effect

(1) A reference in this Division to putting an acquisition into effect includes a reference to purportedly putting the acquisition into effect.

(2) A person ***purportedly puts into effect*** an acquisition if the person engages in conduct that, apart from this Division, would constitute putting the acquisition into effect.

Subdivision B—Obligations

45AW Commission must be notified of acquisitions

A person contravenes this section if:

(a) the person is a principal party to an acquisition; and

(b) the acquisition is required to be notified; and

(c) the acquisition is put into effect; and

(d) when the acquisition is put into effect:

(i) the acquisition is not a notified acquisition; or

(ii) no notification of the acquisition has an effective notification date (see section 51ABS); or

(iii) the latest notification of the acquisition that has an effective notification date is stale.

Note 1: For when an acquisition is ***required to be notified***, see section 51ABG.

Note 2: For when an acquisition is ***stale***, see section 51ABK.

Note 3: For enforcement, see Part VI.

45AX Commission must be notified of material changes of fact in relation to notified acquisitions

(1) This section applies if:

(a) a person is the notifying party of a notification of an acquisition; and

(b) a change of fact occurs;

(c) the person becomes aware of the change of fact at a time:

(i) occurring on or after the time specified in subsection (2); and

(ii) at which the Commission has not decided to cease considering the notification under section 51ABV; and

(iii) at which the Commission has not made a determination in respect of the notification under subsection 51ABW(1); and

(d) the change of fact is material to the Commission making a determination under subsection 51ABW(1) in respect of the notification.

(2) For the purposes of subparagraph (1)(c)(i) of this section, the time is:

(a) if the acquisition is required to be notified under section 51ABG—the time at which the notification is made; or

(b) otherwise—the later of:

(i) the time at which the notification is made; and

(ii) the start of the effective notification date of the notification.

(3) This section also applies if:

(a) a person is the notifying party of a notification of an acquisition; and

(b) a change of fact occurs;

(c) the person becomes aware of the change of fact at a time at which:

(i) the Commission has made a determination in respect of the notification under subsection 51ABW(1); and

(ii) the notifying party has not made a substantial public benefit application in respect of the notification; and

(iii) the period during which the notifying party could make a substantial public benefit application in respect of the notification under section 51ABZG has not ended; and

(d) were the notifying party to make a substantial public benefit application in respect of the notification, the change of fact would be material to the Commission making a determination under subsection 51ABZL(1) in respect of the application.

(4) The person contravenes this subsection if the Commission is not notified of the change of fact, as soon as practicable after the person becomes aware of the change, by:

(a) if the person is the only notifying party of the notification of the acquisition—the person; or

(b) otherwise—all of the notifying parties jointly.

Note: For enforcement, see Part VI.

(5) For the purposes of this section, a person who ought reasonably to be aware of a change is taken to be aware of the change.

45AY Stayed acquisitions must not be put into effect

A person contravenes this section if:

(a) the person puts an acquisition into effect; and

(b) the acquisition is stayed.

Note 1: For when an acquisition is ***stayed***, see section 51ABI.

Note 2: For enforcement, see Part VI.

45AZ Conditions must be complied with

(1) This section applies to a person who puts a notified acquisition into effect, if putting the acquisition into effect is subject to conditions.

Note: For when putting an acquisition into effect is ***subject*** to conditions, see section 51ABL.

(2) The person contravenes this subsection if any of those conditions are not complied with.

Note: For enforcement, see Part VI.

Subdivision C—Acquisitions void if put into effect while stayed

45AZA Acquisitions void if put into effect while stayed

(1) This section applies to an acquisition if, when the acquisition is put into effect, the acquisition is stayed.

Note: For when an acquisition is ***stayed***, see section 51ABI.

(2) The acquisition, and any directly related restriction, is, and is taken always to have been, void by force of this subsection.

Note: For when a restriction is ***directly related***, see section 51ABO.

Subdivision D—Miscellaneous

45AZB Providing false or misleading information

(1) A person contravenes this subsection if:

(a) the person gives information to the Commission or the Tribunal under an acquisition provision; and

(b) the person is negligent as to whether the information is false or misleading in a material particular.

Note: For enforcement, see Part VI.

(2) For the purposes of subsection (1), proof that the person knew, or was reckless as to whether, the information was false or misleading in a material particular is taken to be proof that the person was negligent as to whether the information was false or misleading in a material particular.

77 After subsection 45(4) of Schedule 1

Insert:

Acquisitions

(4A) For the purposes of subsection (1), and without limiting that subsection, a provision of:

(a) a contract, arrangement or understanding; or

(b) a proposed contract, arrangement or understanding;

is taken to have the purpose of substantially lessening competition if:

(c) the provision directly or indirectly provides for:

(i) an acquisition of shares in the capital of a body corporate; or

(ii) an acquisition of any assets of a person; and

(d) the purpose of the acquisition is to substantially lessen competition.

(4B) For the purposes of subsection (1), and without limiting that subsection, a concerted practice is taken to have the purpose of substantially lessening competition if:

(a) the concerted practice directly relates to:

(i) an acquisition of shares in the capital of a body corporate; or

(ii) an acquisition of any assets of a person; and

(b) the purpose of the acquisition is to substantially lessen competition.

(4C) For the purposes of subsection (4A) or (4B), an acquisition is taken to have a particular purpose if:

(a) the acquisition is put into effect for that purpose or for purposes that included or include that purpose; and

(b) that purpose was or is a substantial purpose.

Contracts etc. to which this section does not apply

78 At the end of subsection 45(7) of Schedule 1

Add “on or before 31 December 2025”.

79 After subsection 45(7) of Schedule 1

Insert:

(7A) This section does not apply to or in relation to:

(a) a contract, arrangement or understanding to the extent that the contract, arrangement or understanding directly or indirectly provides for; or

(b) a proposed contract, arrangement or understanding to the extent that the proposed contract, arrangement or understanding would directly or indirectly provide for; or

(c) a concerted practice to the extent that the practice directly involves;

a notified acquisition.

(7B) The making by a person of a contract is not a contravention of subsection (1) to the extent that the contract directly or indirectly provides for:

(a) an acquisition of shares in the capital of a body corporate; or

(b) an acquisition of any assets of a person;

if:

(c) the contract is subject to a condition that the provision will not come into force unless and until the acquisition becomes a notified acquisition; and

(d) the acquisition becomes a notified acquisition within 30 days after the contract is made;

but nothing in this subsection prevents the giving effect by a person to such a provision from constituting a contravention of subsection (1).

80 After subsection 50(5A) of Schedule 1

Insert:

(5B) This section does not apply to a notified acquisition.

81 Paragraph 51(2)(e) of Schedule 1

Before “to any provision”, insert “subject to subsection (2AAA),”.

82 After subsection 51(2) of Schedule 1

Insert:

(2AAA) Paragraph (2)(e) does not apply to a provision of a contract to the extent to which:

(a) the protection referred to in that paragraph is by means of a restriction that is directly related to an acquisition; and

(b) the acquisition:

(i) is required to be notified under section 51ABG; or

(ii) is a notified acquisition;

if:

(c) subject to subsection (2AAB) of this section, the acquisition is not a notified acquisition; or

(d) the acquisition is stayed; or

(e) the restriction is not specified in the latest notification of the acquisition as mentioned in subsection 51ABR(4); or

(f) the restriction is declared in a determination made under subsection 51ABW(1) in respect of the latest notification of the acquisition to be a restriction to which paragraph (2)(e) of this section does not apply.

Note: For when a restriction is ***directly related***, see section 51ABO.

(2AAB) Paragraph (2AAA)(c) does not apply if:

(a) the restriction is subject to a condition that the restriction will not come into force unless and until the acquisition becomes a notified acquisition; and

(b) the acquisition becomes a notified acquisition within 30 days after the contract is made.

Part 3—Amendments commencing 1 January 2026

Division 1—Main amendments

Competition and Consumer Act 2010

83 Subsection 4(1)

Repeal the following definitions:

(a) definition of ***merger authorisation***;

(b) definition of ***overseas merger authorisation***.

84 Paragraph 6(2)(h)

Omit “50, 50A,”.

85 Paragraph 6(2)(h)

Omit “81,”.

86 Subsection 46A(6)

Omit “, 49 and 50”, substitute “and 49”.

87 Sections 50 and 50A

Repeal the sections.

88 Paragraph 51(1C)(b)

Repeal the paragraph.

89 Paragraph 56ET(5)(c)

Omit “section 50A,”.

90 Subsection 75B(1)

Omit “, 60K or 92”, substitute “or 60K”.

91 Subparagraph 76(1)(a)(iii)

Repeal the subparagraph.

92 Subsection 76(1A) (table item 12)

Repeal the item.

93 Section 76A

Repeal the section.

94 Subsections 76B(2), (3) and (4)

Omit “or 92”.

95 Paragraph 76B(5)(a)

Omit “or 92”.

96 Subsection 80(1)

Omit “subsections (1A), (1AAA) and (1B)”, substitute “subsection (1A)”.

97 Subsection 80(1A)

Omit “50,”.

98 Subsections 80(1AAA) and (1B)

Repeal the subsections.

99 Sections 80AC, 81 and 81A

Repeal the sections.

100 Subparagraph 83(1)(a)(i)

Omit “81,”.

101 Subsection 86C(4) (paragraph (a) of the definition of *contravening conduct*)

Omit “, 60K or 92”, substitute “or 60K”.

102 Subsections 87B(1A), 88(4) and 89(1AA)

Repeal the subsections.

103 Subsection 90(5)

Omit “other than a merger authorisation”.

104 Subsection 90(6A) (note)

Omit “Unless the application is for a merger authorisation, the”, substitute “The”.

105 Subsection 90(9A)

Omit “or for a merger authorisation”.

106 Subsection 90(10)

Omit “(other than an application for a merger authorisation)”.

107 Subsections 90(10B) to (13)

Repeal the subsections.

108 Subsections 90(15) and 90A(1)

Omit “(other than an application for a merger authorisation)”.

109 Subsection 91(1A)

Omit “or (11)” (wherever occurring).

110 Subsections 91A(5) and 91B(5A)

Repeal the subsections.

111 Subsection 91C(5)

Omit “other than a merger authorisation”.

112 Paragraph 91C(6)(a)

Omit “(other than an application for a merger authorisation)”.

113 Paragraph 91C(6)(a)

Omit “(other than a merger authorisation)”.

114 Subsection 91C(7A)

Repeal the subsection.

115 Section 92

Repeal the section.

116 Subsection 101(1)

Omit “or under subsection (1B), as the case may be”.

117 Subsections 101(1B) and (1C)

Repeal the subsections.

118 Subsection 102(1) (note)

Repeal the note.

119 Subsections 102(1AA) to (1C) and (8) to (10)

Repeal the subsections.

120 Section 102A

Repeal the section, substitute:

102A Reviews are re‑hearings

A review by the Tribunal under this Part is a re‑hearing of the matter, unless it is a review of an acquisition determination.

121 Subparagraph 155(2)(b)(iii)

Repeal the subparagraph.

122 Paragraph 157(1)(c)

Omit “, 80, 80AC, 81 or 81A”, substitute “or 80”.

123 Paragraph 165(2)(a)

Omit “a declaration under section 50A or”.

124 Subsection 165(6)

Omit “a declaration under section 50A or”.

125 Paragraph 170(3)(b)

Repeal the paragraph, substitute:

(b) a reference to a proceeding before the Tribunal is a reference to an application for a review of a determination, or of the giving of a notice, by the Commission.

126 Subsection 172(2B)

Repeal the subsection.

127 Section 173

Repeal the section.

128 Section 50 of Schedule 1

Repeal the section.

129 Paragraph 51(1C)(b) of Schedule 1

Repeal the paragraph.

Financial Sector (Transfer and Restructure) Act 1999

130 Subsection 43(9)

Omit “section 50 and related provisions of the *Competition and Consumer Act 2010*”, substitute “the acquisitions provisions (within the meaning of the *Competition and Consumer Act 2010*)”.

Division 2—Application of amendments

Competition and Consumer Act 2010

131 At the end of section 188

Add:

Repeal of sections 50 and 50A

(5) The amendments made by Division 1 of Part 3 of Schedule 1 to the *Treasury Laws Amendment Bill 2024* apply in relation to an acquisition that occurs on or after 1 January 2026.

Schedule 2—Other amendments

Part 1—Penalty for false or misleading information

Competition and Consumer Act 2010

1 After subparagraph 76(1)(a)(iiib)

Insert:

(iiic) paragraph 155(5)(b);

2 Subsection 76(1A) (after table item 13A)

Insert:

|  |  |  |  |
| --- | --- | --- | --- |
| 13B | paragraph 155(5)(b) | 1,000 penalty units | 200 penalty units |

3 At the end of subsection 155(5)

Add:

Note: Under section 76, the Court may order a person who contravenes paragraph (b) to pay a pecuniary penalty.

4 Application of amendments

The amendments made by this Part apply in relation to a contravention of paragraph 155(5)(b) of the *Competition and Consumer Act 2010* that occurs on or after the commencement of this item, whether the relevant notice under section 155 was given before, on or after that commencement.

Part 2—Duties imposed by Competition Code

Competition and Consumer Act 2010

5 After subsection 150FA(5)

Insert:

(5A) To avoid doubt, neither this Act (nor any other law of the Commonwealth) imposes a duty on the Commonwealth entity to the extent to which imposing such a duty would:

(a) contravene any constitutional doctrine restricting the duties that may be imposed on a Commonwealth entity; or

(b) otherwise exceed the legislative power of the Commonwealth.

6 After section 150FA

Insert:

150FAA Imposing a duty under State or Territory law

(1) This section:

(a) applies only for the purposes of the application of the provisions of the Competition Code or another law of the Commonwealth (with or without modification) as a law of a participating State or participating Territory by a provision of an application law; and

(b) does not apply for those purposes if the application law otherwise provides.

(2) If the application law purports to impose a duty on a Commonwealth entity to do a particular thing, the duty is taken to be imposed by the application law to the extent to which imposing the duty:

(a) is within the legislative powers of the State or Territory; and

(b) is consistent with the constitutional doctrines restricting the duties that may be imposed on a Commonwealth entity.

(3) To avoid doubt, the application law does not impose the duty on the Commonwealth entity to the extent to which imposing the duty would:

(a) contravene any constitutional doctrine restricting the duties that may be imposed on a Commonwealth entity; or

(b) otherwise exceed the legislative powers of the State or Territory.

(4) If imposing on the Commonwealth entity the duty to do that thing would:

(a) contravene any constitutional doctrine restricting the duties that may be imposed on a Commonwealth entity; or

(b) otherwise exceed the legislative powers of both the State or Territory and the Commonwealth;

the application law is taken instead to confer on the Commonwealth entity a power to do that thing at the discretion of the Commonwealth entity.

Part 3—Divisions of the Commission

Competition and Consumer Act 2010

7 Subsection 19(1)

Omit “the Chairperson and such other”, substitute “such”.

8 Subsection 19(4)

Repeal the subsection.

9 Transitional provision

(1) This item applies to a direction that:

(a) was given under subsection 19(1) of the *Competition and Consumer Act 2010*; and

(b) was in force immediately before the commencement of this item.

(2) The direction has effect, on and after that commencement, as if it specified the Chairperson as one of the members of the relevant Division.

(3) Subitem (2) of this item does not limit the Chairperson’s powers under subsection 19(2A) of the *Competition and Consumer Act 2010*.

Part 4—Delegation

Competition and Consumer Act 2010

10 Subsections 155(8B) and (8C)

Repeal the subsections.

11 After section 155

Insert:

155AAAA Power to obtain information, documents and evidence—delegation

(1) This section applies in relation to a function or power of any of the following (the ***delegator***) under section 155:

(a) the Commission;

(b) the Chairperson;

(c) a Deputy Chairperson;

(d) a member of the Commission.

(2) The delegator may, in writing, delegate any or all of the delegator’s functions or powers under section 155 to a member of the staff of the Commission who is an SES employee or an acting SES employee.

(3) The delegator may delegate a function or power to a person under subsection (2) only if the delegator is satisfied that the person has appropriate qualifications, training or experience to perform the function or exercise the power.

(4) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the delegator.

12 Transitional provision

(1) Subitem (2) applies to a delegation that:

(a) was given under subsection 155(8B) of the *Competition and Consumer Act 2010*; and

(b) was in force immediately before the commencement of this item.

(2) The delegation has effect, on and after that commencement, as if it had been given under subsection 155AAAA(2) of the *Competition and Consumer Act 2010*, as amended by this Part.

(3) Subitem (4) applies to a direction that:

(a) was given under subsection 155(8C) of the *Competition and Consumer Act 2010*; and

(b) was in force immediately before the commencement of this item.

(4) The direction has effect, on and after that commencement, as if it had been given under subsection 155AAAA(4) of the *Competition and Consumer Act 2010*, as amended by this Part.