

TRADE PRACTICES ACT 1974

No. 51 of 1974

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TRADE PRACTICES ACT 1974

No. 51 of 1974

An Act relating to certain Trade Practices.

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

PART I—PRELIMINARY

- Short title. 1. This Act may be cited as the *Trade Practices Act 1974*.¹
- Commence-
ment. 2. (1) Sections 1 and 2 shall come into operation on the day on which this Act receives the Royal Assent.¹
- (2) Section 55 shall come into operation on a date to be fixed by Proclamation, being a date not earlier than the date on which the Paris Convention for the Protection of Industrial Property as revised at Stockholm on 14 July 1967 enters into force for Australia.
- (3) Subject to sub-section (4), the remaining provisions of this Act shall come into operation on a date to be fixed by Proclamation.
- (4) Sub-sections 45 (1) and (2), except so far as they relate to contracts, arrangements and understandings referred to in sub-section 88 (2), and sub-sections 47 (1) and 49 (1), shall not come into operation until the expiration of 4 months after the date fixed under sub-section (3).
- (5) A reference in sub-section 45 (1) or (2) to the commencement of the sub-section concerned shall be read—
- (a) for the purposes of the application of the sub-section concerned in relation to a contract, arrangement or understanding referred to in sub-section 88 (2)—as a reference to the date fixed under sub-section (3) of this section; and
- (b) for the purposes of the application of the sub-section concerned in relation to any other contract, arrangement or understanding—as a reference to the expiration of the period referred to in sub-section (4) of this section.
- (6) The power of the Governor-General to make appointments of members of the Commission or to make regulations under this Act may be exercised at any time after the day on which this Act receives the Royal Assent but any appointment or regulation so made shall not take effect until the date fixed under sub-section (3).
- Repeal. 3. The *Restrictive Trade Practices Act 1971* and the *Restrictive Trade Practices Act 1972* are repealed.

4. (1) In this Act, unless the contrary intention appears— Interpretation.
- “authorization” means an authorization under Division 1 of Part VII granted by the Commission or by the Tribunal on a review of a determination of the Commission;
- “Chairman” means the Chairman of the Commission and includes a person acting as Chairman of the Commission;
- “commencing date” means the date fixed under sub-section 2 (3);
- “Commission” means the Trade Practices Commission established by this Act, and includes a member of that Commission or a Division of that Commission performing functions of that Commission;
- “Companies Ordinance” means the *Companies Ordinance* 1962-1974 of the Australian Capital Territory;
- “competition” includes competition from imported goods or from services rendered by persons not resident or not carrying on business in Australia;
- “conduct”, when used as a noun, includes doing, refusing to do, or refraining from doing, any act, including making a contract or arrangement or entering into an understanding;
- “corporation” means a body corporate that—
- (a) is a foreign corporation;
 - (b) is a trading corporation formed within the limits of Australia or is a financial corporation so formed;
 - (c) is incorporated in a Territory; or
 - (d) is the holding company of a body corporate of a kind referred to in paragraph (a), (b) or (c);
- “Court” means the Superior Court of Australia;
- “Deputy Chairman” means the Deputy Chairman of the Commission;
- “Deputy President” means a Deputy President of the Tribunal, and includes a person appointed to act as a Deputy President of the Tribunal;
- “Deputy Registrar” means a Deputy Registrar of the Tribunal, and includes a person appointed to act as a Deputy Registrar of the Tribunal;
- “document” includes—
- (a) a book, plan, paper, parchment or other material on which there is writing or printing, or on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them; and
 - (b) a disc, tape, paper or other device from which sounds or messages are capable of being reproduced;
- “engage in conduct” includes do, refuse to do, or refrain from doing, any act, including the making of a contract or arrangement or

- the entering into an understanding, and “engaging in conduct” has a corresponding meaning;
- “financial corporation” means a financial corporation within the meaning of paragraph 51 (xx) of the Constitution and includes a body corporate that carries on the business of banking or insurance as its sole or principal business;
- “foreign corporation” means a foreign corporation within the meaning of paragraph 51 (xx) of the Constitution and includes a body corporate that is incorporated in an external Territory;
- “full-time member of the Commission” means a member of the Commission who is appointed as a full-time member of the Commission;
- “give effect to”, in relation to a contract, arrangement or understanding, includes do an act or thing in pursuance of or in accordance with or enforce or purport to enforce;
- “goods” includes—
- (a) ships, aircraft and other vehicles;
 - (b) animals, including fish;
 - (c) minerals, trees and crops, whether on, under or attached to land or not; and
 - (d) gas and electricity;
- “market” means a market in Australia;
- “meeting”, in relation to the Commission, includes a public hearing held by the Commission;
- “member of the Commission” includes the Chairman and a person appointed to act as a member of the Commission;
- “member of the Tribunal” includes the President and a person appointed to act as a member of the Tribunal;
- “person” includes a body corporate, whether a corporation or not, as well as a natural person;
- “practice of exclusive dealing” means the practice of exclusive dealing referred to in sub-section 47 (2), (3) or (4);
- “practice of resale price maintenance” means the practice of resale price maintenance referred to in Part VIII;
- “President” means the President of the Tribunal and includes a person appointed to act as President of the Tribunal;
- “presidential member” or “presidential member of the Tribunal” means President or a Deputy President;
- “price” includes a charge of any description;
- “Registrar” means the Registrar of the Tribunal and includes a person appointed to act as the Registrar of the Tribunal;
- “send” includes deliver, and “sent” and “sender” have corresponding meanings;

“services” includes, without limiting the generality of that expression, the rights or benefits that are to be provided under—

(a) a contract for—

(i) the performance of work (including work of a professional nature but not including work under a contract of service), whether with or without the supply of goods;

(ii) the provision of, or of the use or enjoyment of facilities for, amusement, entertainment, recreation or instruction; or

(iii) the conferring of rights or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction;

(b) a contract of insurance; or

(c) a contract between a banker and a customer of the banker entered into in the course of the carrying on by the banker of the business of banking, or any other contract for or in relation to the loan of moneys;

“share” includes an interest in a share, and also includes stock or an interest in stock;

“special price”, in relation to an advertisement for the supply of goods or services, means—

(a) a price that is represented in the advertisement to be a special or bargain price, by reference to an ordinary price or otherwise; or

(b) a price that a person who reads, hears or sees the advertisement would reasonably understand to be a special or bargain price having regard to the prices at which the goods or services advertised or like goods or services are ordinarily supplied;

“supply”, when used as a verb, includes—

(a) in relation to goods—supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and

(b) in relation to services—provide, grant or confer,

and, when used as a noun, has a corresponding meaning, and “supplied” and “supplier” have corresponding meanings;

“Territory” means an internal Territory;

“trade or commerce” means trade or commerce within Australia or between Australia and places outside Australia;

“trading corporation” means a trading corporation within the meaning of paragraph 51 (xx) of the Constitution;

“Tribunal” means the Trade Practices Tribunal continued in existence by this Act, and includes a member of that Tribunal or a Division of that Tribunal performing functions of that Tribunal;

“unsolicited goods” means goods sent to a person without any request made by him or on his behalf.

(2) For the purposes of this Act—

(a) the question whether a body corporate is the holding company of another body corporate shall be determined in the same manner as the question whether a corporation is the holding company of another corporation is determined under the Companies Ordinance; and

(b) the question whether corporations or other bodies corporate are related to each other shall be determined in the same manner as the question whether corporations are related to each other is determined under the Companies Ordinance.

(3) For the purposes of this Act, unless the contrary intention appears—

(a) a person who acquires goods shall be taken to be a consumer of the goods if the goods are of a kind ordinarily acquired for private use or consumption and the person does not acquire the goods or hold himself out as acquiring the goods for the purposes of re-supply; and

(b) a person who acquires services shall be taken to be a consumer of the services if the services are of a kind ordinarily acquired for private use or consumption and the person does not acquire the services for the purposes of, or in the course of, a profession, business, trade or occupation or for a public purpose.

(4) Where it is alleged in any proceeding under this Act that a person was a consumer in relation to particular goods or services, it shall be presumed, unless the contrary is established, that the person was a consumer in relation to those goods or services.

Extended application of Parts IV and V.

5. (1) Parts IV and V extend to the engaging in conduct outside Australia by bodies corporate incorporated or carrying on business within Australia or by Australian citizens or persons ordinarily resident within Australia.

(2) In addition to the extended operation that sections 47 and 48 have by virtue of sub-section (1), those sections extend to the engaging in conduct outside Australia by any persons in relation to the supply by those persons of goods or services to persons within Australia.

Additional operation of Act.

6. (1) Without prejudice to its effect apart from this section, this Act also has effect as provided by this section.

(2) This Act, other than Part X, has, by force of this sub-section, the effect it would have if—

- (a) any references in this Act other than in section 55 to trade or commerce were, by express provision, confined to trade or commerce—
 - (i) between Australia and places outside Australia;
 - (ii) among the States;
 - (iii) within a Territory, between a State and a Territory or between two Territories; or
 - (iv) by way of the supply of goods or services to Australia or an authority or instrumentality of Australia;
- (b) section 46, Part V (other than section 55) and Part VIII were, by express provision, confined in their operation to engaging in conduct to the extent to which the conduct takes place in the course of or in relation to—
 - (i) trade or commerce between Australia and places outside Australia;
 - (ii) trade or commerce among the States;
 - (iii) trade or commerce within a Territory, between a State and a Territory or between two Territories; or
 - (iv) the supply of goods or services to Australia or an authority or instrumentality of Australia;
- (c) any reference in Division 2 of Part V to a contract for the supply of goods or services were, by express provision, confined to a contract made—
 - (i) in the course of, or in relation to, trade or commerce between Australia and places outside Australia;
 - (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 two Territories;
- (d) in sub-sections 45 (1) and 87 (3) the words “in so far as it confers rights or benefits or imposes duties or obligations on a corporation” were omitted;
- (e) a reference to a corporation in sub-section 46 (2) included a reference to a body corporate not being a corporation;
- (f) in section 60 the words “cause or permit a servant or agent of the corporation to” were omitted;
- (g) sub-section 96 (2) were omitted; and
- (h) subject to paragraphs (d), (e), (f) and (g), a reference in this Act to a corporation, except a reference in section 4, 48, 50 or 81, sub-section 88 (7) or 89 (7) or section 94, included a reference to a person not being a corporation.

(3) In addition to the effect that this Act, other than Part X, has as provided by sub-section (2), Division 1 of Part V has, by force of this sub-section, the effect it would have if—

- (a) that Division (other than section 55) were, by express provision, confined in its operation to engaging in conduct to the extent to which the conduct involves the use of postal, telegraphic or telephonic services or takes place in a radio or television broadcast;
- (b) in section 60 the words “cause or permit a servant or agent of the corporation to” were omitted; and
- (c) subject to paragraph (b), a reference in that Division to a corporation included a reference to a person not being a corporation.

PART II—THE TRADE PRACTICES COMMISSION

Constitution
of
Commission.

7. (1) There is hereby established a Trade Practices Commission, which shall consist of a Chairman and such number of other members as are from time to time appointed in accordance with this Act.

(2) The members of the Commission shall be appointed by the Governor-General.

(3) A member of the Commission other than the Chairman may be appointed as a full-time member or as a part-time member.

(4) For the purposes of sub-sections 4 (3A) and (4) of the *Superannuation Act 1922-1973* the Chairman and the full-time members of the Commission shall each be deemed to be required, by the terms of his appointment, to give the whole of his time to the duties of his office.

(5) A person shall not be appointed as a member of the Commission unless he appears to the Governor-General to be qualified for appointment by virtue of his knowledge of, or experience in, industry, commerce or public administration.

Terms and
conditions of
appointment.

8. (1) Subject to this Part, a member of the Commission holds office for such period, not exceeding 7 years, as is specified in the instrument of his appointment and on such terms and conditions as the Governor-General determines, but is eligible for re-appointment.

(2) A person who has attained the age of 65 years shall not be appointed or re-appointed as the Chairman or as a full-time member of the Commission, and a person shall not be appointed or re-appointed as the Chairman or as a full-time member of the Commission for a period that extends beyond the date on which he will attain the age of 65 years.

Remuneration
of members
of
Commission.

9. (1) A member of the Commission shall be paid such remuneration as is determined by the Remuneration Tribunal, but, until that remuneration is so determined, he shall be paid such remuneration as is prescribed.

(2) Subject to the *Remuneration Tribunal Act 1973*, a member of the Commission shall be paid such allowances as are prescribed.

10. (1) The Governor-General may appoint a person who is, or is to be, a full-time member of the Commission to be the Deputy Chairman of the Commission. Deputy
Chairman.

(2) A person appointed under this section holds office as Deputy Chairman until the expiration of his period of appointment as a member of the Commission or until he sooner ceases to be a member of the Commission.

(3) Where a member of the Commission appointed as Deputy Chairman is, upon ceasing to be Deputy Chairman by virtue of the expiration of the period of his appointment as a member, re-appointed as a member, he is eligible for re-appointment as Deputy Chairman.

(4) The Deputy Chairman may resign his office of Deputy Chairman by writing signed by him and delivered to the Governor-General.

11. (1) Where there is a vacancy in the office of Chairman, the Governor-General may appoint a person to act as Chairman until the filling of the vacancy. Acting
Chairman.

(2) Where the Chairman is absent from duty or from Australia—

(a) the Deputy Chairman shall act as Chairman during the absence; or

(b) if there is no Deputy Chairman or the Deputy Chairman is not available to act as Chairman, the Attorney-General may appoint a member of the Commission to act as Chairman during the absence of the Chairman, but any such appointment ceases to have effect if a person is appointed as Deputy Chairman or the Deputy Chairman becomes available to act as Chairman.

(3) A person acting as Chairman shall act in that capacity on such terms and conditions as the Governor-General determines and has all the powers and duties, and shall perform all the functions, conferred on the Chairman by this Act.

12. The Attorney-General may grant leave of absence to the Chairman or a full-time member of the Commission upon such terms and conditions as to remuneration or otherwise as the Attorney-General determines. Leave of
absence.

13. (1) The Governor-General may terminate the appointment of a member of the Commission by reason of misbehaviour or physical or mental incapacity. Termination
of
appointment.

(2) If—

(a) a member of the Commission—

(i) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or

(ii) fails to comply with his obligations under section 17; or

(b) the Chairman or a full-time member of the Commission—

(i) engages in any paid employment outside the duties of his office; or

(ii) is absent from duty, except on leave of absence granted by the Attorney-General, for 14 consecutive days or for 28 days in any 12 months,

the Governor-General shall terminate the appointment of the member of the Commission concerned.

Retirement. 14. The termination of the appointment of the Chairman or of a full-time member of the Commission by reason of physical or mental incapacity shall be deemed, for the purposes of the *Superannuation Act 1922-1973*, to be retirement on the ground of invalidity.

Resignation. 15. A member of the Commission may resign his office by writing signed by him and delivered to the Governor-General.

Arrangement of business. 16. The Chairman may give directions as to the arrangement of the business of the Commission.

Disclosure of financial interests of members of Commission. 17. (1) Where a member of the Commission other than the Chairman has or acquires any direct or indirect pecuniary interest in any business carried on in Australia, or in any body corporate carrying on any such business, being an interest that could be in conflict with his duties as a member, the member shall, to the best of his knowledge, disclose that interest to the Chairman.

(2) Where an interest is so disclosed to the Chairman and—

(a) in the case of an interest in a business—the person carrying on the business; or

(b) in the case of an interest in a body corporate—that body corporate, is concerned in an application before the Commission, being an application in the hearing and determination of which the member who has the interest is or will be participating, the Chairman shall cause the interest to be disclosed to the public.

(3) The Chairman shall give written notice to the Attorney-General of all direct and indirect pecuniary interests that he has or acquires in any business carried on in Australia or in any body corporate carrying on any such business.

18. (1) Subject to this section, the Chairman shall convene such Meetings of the Commission as he thinks necessary for the efficient performance of the functions of the Commission.

(2) Meetings of the Commission shall be held at such places as the Chairman determines.

(3) The Chairman shall preside at all meetings of the Commission at which he is present.

(4) In the absence of the Chairman from a meeting of the Commission, the Deputy Chairman shall preside.

(5) Subject to this Act and the regulations, the member presiding at a meeting of the Commission may give directions regarding the procedure to be followed at or in connexion with the meeting.

(6) At a meeting of the Commission—

- (a) three members (including the Chairman or the Deputy Chairman) form a quorum;
- (b) all questions shall be decided by a majority of votes of the members present and voting; and
- (c) the member presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

19. (1) The Chairman may, by writing signed by him, direct that the powers of the Commission under this Act in relation to a matter shall be exercised by a Division of the Commission constituted by the Chairman and such other members (not being less than two in number) as are specified in the direction. Chairman may direct Commission to sit in Divisions.

(2) Where the Chairman has given a direction under sub-section (1), he may, by writing signed by him, at any time before the Division of the Commission specified in the direction has made a determination in relation to the matter, revoke the direction or amend the direction in relation to the membership of the Division or in any other respect, and where the membership of a Division of the Commission is changed, the Division as constituted after the change may complete the determination of the matter.

(3) For the purposes of the determination of a matter specified in a direction given under sub-section (1), the Commission shall be deemed to consist of the Division of the Commission specified in the direction.

(4) The Chairman is not required to attend a meeting of a Division of the Commission if he does not think fit to do so.

(5) At a meeting of a Division of the Commission at which neither the Chairman nor the Deputy Chairman is present, a member of the Commission nominated for the purpose by the Chairman shall preside.

(6) Notwithstanding section 18, at a meeting of a Division of the Commission, two members form a quorum.

(7) A Division of the Commission may exercise powers of the Commission under this Act notwithstanding that another Division of the Commission is exercising powers of the Commission at the same time.

Power to take evidence on oath.

20. (1) The Commission may, at a public hearing, take evidence on oath or affirmation and for that purpose a member of the Commission may administer an oath or affirmation.

(2) A member of the Commission may summon a person to appear before the Commission at a public hearing to give evidence and to produce such documents (if any) as are referred to in the summons.

Procedure at public hearings by Commission.

21. At a public hearing by the Commission—

- (a) the proceedings shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and a proper consideration of the matters before the Commission permit;
- (b) the Commission is not bound by the rules of evidence; and
- (c) the Commission may, upon such conditions as it thinks fit, permit a person to intervene in the proceedings.

Hearing in private in certain circumstances.

22. (1) Where, at a public hearing by the Commission, the Commission is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason, the Commission may—

- (a) direct that the hearing or a part of the hearing shall take place in private and give directions as to the persons who may be present; or
- (b) give directions prohibiting or restricting the publication of evidence given before the Commission or of matters contained in documents lodged with the Commission.

(2) A reference in this Act to a public hearing by the Commission includes a reference to a hearing by the Commission in respect of which a direction is in force under paragraph (1) (a).

Evidence in form of written statement.

23. The Commission may permit a person appearing as a witness before the Commission to give evidence by tendering, and, if the Commission thinks fit, verifying by oath or affirmation, a written statement.

Representation at public hearings by Commission.

24. At a public hearing by the Commission—

- (a) a person other than a body corporate may appear in person or may be represented by an employee of the person approved by the Commission;

- (b) a body corporate may be represented by an employee, or a director or other officer, of the body corporate approved by the Commission;
- (c) an unincorporated association of persons or a member of an unincorporated association of persons may be represented by a member or officer of the association approved by the Commission; and
- (d) any person may be represented by a barrister or a solicitor of the Supreme Court of a State or Territory or of the High Court.

25. (1) The Commission may, by resolution, delegate to a member of the Commission, either generally or otherwise as provided by the instrument of delegation, any of its powers under this Act, other than this power of delegation and its powers to grant, revoke or vary an authorization. Delegation
by
Commission.

(2) A power so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation.

(3) A delegation under this section is revocable at will and does not prevent the exercise of a power by the Commission.

26. If a person appointed as Chairman or as a full-time member of the Commission was, immediately before his appointment, an officer of the Australian Public Service or a person to whom the *Officers' Rights Declaration Act 1928-1973* applied— Rights of
public
servant
appointed as
Chairman or
full-time
member.

- (a) he retains his existing and accruing rights;
- (b) for the purpose of determining those rights, his service as Chairman or as a full-time member of the Commission shall be taken into account as if it were service in the Australian Public Service; and
- (c) the *Officers' Rights Declaration Act 1928-1973* applies as if this Act and this section had been specified in the Schedule to that Act.

27. (1) The staff necessary to assist the Commission shall be persons appointed or employed under the *Public Service Act 1922-1973*. Staff of
Commission.

(2) The Chairman of the Commission has all the powers of, or exercisable by, a Permanent Head under the *Public Service Act 1922-1973* so far as those powers relate to the branch of the Australian Public Service comprising the staff referred to in sub-section (1) as if that branch were a separate Department of the Australian Public Service.

(3) For the purposes of sub-sections 25 (5) and (6) of the *Public Service Act 1922-1973*, the Chairman shall be deemed to be a Permanent Head.

Functions of Commission in relation to dissemination of information, law reform and research.

28. (1) In addition to any other functions conferred on the Commission by this Act, the Commission has the following functions:—

- (a) to make available to persons engaged in trade or commerce and other interested persons general information for their guidance with respect to the carrying out of the functions, or the exercise of the powers, of the Commission under this Act;
- (b) to examine critically, and report to the Attorney-General on, the laws in force in Australia relating to the protection of consumers in respect of matters referred to the Commission by the Attorney-General, being matters with respect to which the Parliament has power to make laws;
- (c) to conduct research in relation to matters affecting the interests of consumers, being matters with respect to which the Parliament has power to make laws;
- (d) to make available to the public general information in relation to matters affecting the interests of consumers, being matters with respect to which the Parliament has power to make laws; and
- (e) to make known for the guidance of consumers the rights and obligations of persons under provisions of laws of Australia or of the Territories that are designed to protect the interests of consumers.

(2) Where a matter of a kind mentioned in paragraph (1) (b) is referred by the Attorney-General to the Commission for examination and report—

- (a) the Commission shall cause to be published in the *Gazette* and in such newspapers and other journals as the Commission considers appropriate a notice—
 - (i) stating that the reference has been made and specifying the matter to which the reference relates; and
 - (ii) inviting interested persons to furnish to the Commission their views on that matter and specifying the time and manner within which those views are to be furnished;
- (b) the Commission shall not furnish its report to the Attorney-General until a reasonable opportunity has been given to interested persons to furnish to the Commission their views on the matter to which the reference relates; and
- (c) the Commission shall include in its report to the Attorney-General any recommendations that it considers desirable with respect to the reform of the law relating to the matter to which the reference relates, whether those recommendations relate to the amendment of existing laws or the making of new laws.

(3) The Attorney-General shall cause a copy of each report furnished to him by the Commission in relation to a matter referred to the

Commission under paragraph (1) (b) to be laid before each House of the Parliament as soon as practicable after the report is received by him.

29. (1) The Attorney-General may give directions to the Commission in connexion with the performance of its functions or the exercise of its powers under this Act other than its functions and powers related directly or indirectly to Part VII, and the Commission shall comply with any directions so given.

Commission to comply with directions of Attorney-General and requirements of Parliament.

(2) Any direction given to the Commission under sub-section (1) shall be in writing and the Attorney-General shall cause a copy of the direction to be published in the *Gazette* as soon as practicable after the direction is given.

(3) If either House of the Parliament or a Committee of either House, or of both Houses, of the Parliament requires the Commission to furnish to that House or Committee any information concerning the performance of the functions of the Commission under this Act, the Commission shall comply with the requirement.

PART III—THE TRADE PRACTICES TRIBUNAL

30. (1) The Trade Practices Tribunal in existence immediately before the commencing date continues in existence as the Trade Practices Tribunal.

Constitution of Tribunal.

(2) The Trade Practices Tribunal so continued in existence shall consist of a President and such number of Deputy Presidents and other members as are appointed in accordance with this section.

(3) A member of the Tribunal shall be appointed by the Governor-General.

31. (1) A person shall not be appointed as a presidential member of the Tribunal unless he is—

Qualifications of members of Tribunal.

(a) a Judge of a Federal Court, not being the High Court or a court of an external Territory; or

(b) a person who has the status of a Judge of the Court.

(2) A person shall not be appointed as a member of the Tribunal other than a presidential member unless he appears to the Governor-General to be qualified for appointment by virtue of his knowledge of, or experience in, industry, commerce or public administration.

32. Subject to this Part, a member of the Tribunal holds office for such period, not exceeding 7 years, as is specified in the instrument of his appointment and on such terms and conditions as the Governor-General determines, but is eligible for re-appointment.

Terms and conditions of appointment.

Remuneration of members of Tribunal.

33. (1) The President shall, if he is not the Chief Justice of the Court, the Chief Judge of the Australian Industrial Court or the President of the Australian Conciliation and Arbitration Commission, be paid additional remuneration at the rate of \$2,200 per annum and an additional annual allowance at the rate of \$500 per annum.

(2) A member of the Tribunal other than a presidential member shall be paid such remuneration as is determined by the Remuneration Tribunal, but, until that remuneration is so determined, he shall be paid such remuneration as is prescribed.

(3) Subject to the *Remuneration Tribunal Act 1973*, a member of the Tribunal shall be paid such allowances as are prescribed.

(4) Any additional remuneration payable to the President under sub-section (1) forms part of his salary as a Judge for the purposes of the *Judges' Pensions Act 1968-1973*.

(5) The *Remuneration Tribunal Act 1973* does not apply in relation to the presidential members.

Acting appointments.

34. (1) Where the President is, or is expected to be, absent from duty, or there is a vacancy in the office of President, the Attorney-General may appoint a Deputy President or an acting Deputy President to act as President during the absence or until the filling of the vacancy.

(2) Where a presidential member (including the President) of the Tribunal is, or is expected to be, absent from duty, the Governor-General may appoint a person qualified to be appointed as a presidential member to act as a Deputy President during the absence from duty of the member.

(3) Where a member of the Tribunal other than a presidential member is, or is expected to be, absent from duty, the Governor-General may appoint a person qualified to be appointed as a member of the Tribunal other than a presidential member to act as such a member during the absence from duty of the member.

(4) Where a person has been appointed under sub-section (2) or (3), the Governor-General may, by reason of pending proceedings or other special circumstances, direct, before the absent member of the Tribunal resumes duty, that the person so appointed shall continue to act under the appointment after the resumption of duty by the absent member until the Governor-General terminates the appointment, but a person shall not continue to act as a member of the Tribunal by virtue of this sub-section for more than 12 months after the resumption of duty by the absent member.

(5) Where a person has been appointed under this section to act as a member of the Tribunal during the absence from duty of a member of the Tribunal, and that member ceases to hold office without having resumed duty, the period of appointment of the person so appointed

shall be deemed to continue until it is terminated by the Governor-General, or until the expiration of 12 months from the date on which the absent member ceases to hold office, whichever first happens.

35. (1) The Governor-General may suspend a member of the Tribunal from office on the ground of misbehaviour or physical or mental incapacity.

Suspension and removal of members of Tribunal.

(2) The Attorney-General shall cause a statement of the ground of the suspension to be laid before each House of the Parliament within 7 sitting days of the House after the suspension.

(3) Where such a statement has been laid before a House of the Parliament, that House may, within 15 sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the member of the Tribunal should be restored to office and, if each House so passes a resolution, the Governor-General shall terminate the suspension.

(4) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House has not passed such a resolution, the Governor-General may remove the member of the Tribunal from office.

(5) If a member of the Tribunal becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit, the Governor-General shall remove him from office.

(6) A member of the Tribunal shall not be removed from office except as provided by this section.

(7) A presidential member of the Tribunal ceases to hold office if he no longer holds office as a person referred to in paragraph 31 (1) (a) or (b).

36. A member of the Tribunal may resign his office by writing signed by him and delivered to the Governor-General.

Resignation.

37. The Tribunal shall, for the purpose of hearing and determining proceedings, be constituted by a Division of the Tribunal consisting of a presidential member of the Tribunal and two members of the Tribunal who are not presidential members.

Constitution of Tribunal for particular matters.

38. The validity of a determination of the Tribunal shall not be affected or called in question by reason of any defect or irregularity in the constitution of the Tribunal.

Validity of determinations.

39. The President may give directions as to the arrangement of the business of the Tribunal and the constitution of Divisions of the Tribunal.

Arrangement of business.

Disclosure of financial interests of members of Tribunal.

40. (1) When a member of the Tribunal, other than a presidential member, is informed by the President that the President proposes that the member shall be a member of a Division of the Tribunal in any proceedings, the member shall, to the best of his knowledge, disclose to the President any direct or indirect pecuniary interest that the member has in any business carried on in Australia, or in any body corporate carrying on any such business, being an interest that could be in conflict with his duties as a member of the Tribunal in those proceedings.

(2) Where an interest is so disclosed to the President and—

- (a) in the case of an interest in a business—the person carrying on the business; or
- (b) in the case of an interest in a body corporate—that body corporate,

is concerned in the proceedings, the President shall cause the interest to be disclosed to the public.

Presidential member to preside.

41. The presidential member who is a member of a Division shall preside at proceedings of that Division.

Decision of questions.

42. (1) A question of law arising in a matter before a Division of the Tribunal (including the question whether a particular question is one of law) shall be determined in accordance with the opinion of the presidential member presiding.

(2) Subject to sub-section (1), a question arising in proceedings before a Division of the Tribunal shall be determined in accordance with the opinion of a majority of the members constituting the Division.

Member of Tribunal ceasing to be available.

43. (1) This section applies where the hearing of any proceedings has been commenced or completed by the Tribunal but, before the matter to which the proceedings relate has been determined, one of the members constituting the Tribunal for the purposes of the proceedings has ceased to be a member of the Tribunal or has ceased to be available for the purposes of the proceedings.

(2) Where the President is satisfied that this section applies in relation to proceedings, the president may direct that a specified member of the Tribunal shall take the place of the member referred to in sub-section (1) for the purposes of the proceedings.

(3) Where this section applies in relation to proceedings that were being dealt with before the Tribunal, the President may, instead of giving a direction under sub-section (2), direct that the hearing and determination, or the determination, of the proceedings be completed by the Tribunal constituted by the members other than the member referred to in sub-section (1).

(4) Where the President has given a direction under sub-section (3), he may, at any time before the determination of the proceedings, direct

that a third member be added to the Tribunal as constituted in accordance with sub-section (3).

(5) The Tribunal as constituted in accordance with any of the provisions of this section for the purposes of any proceedings may have regard to any record of the proceedings before the Tribunal as previously constituted.

44. (1) There shall be a Registrar of the Tribunal and such Deputy Registrars of the Tribunal as are appointed in accordance with this section. Staff of Tribunal.

(2) The Registrar and the Deputy Registrars shall be appointed by the Attorney-General and shall have such duties and functions as are provided by this Act and the regulations and such other duties and functions as the President directs.

(3) The Registrar and the Deputy Registrars, and the staff necessary to assist them, shall be persons appointed or employed under the *Public Service Act 1922-1973*.

PART IV—RESTRICTIVE TRADE PRACTICES

45. (1) A contract in restraint of trade or commerce that was made before the commencement of this sub-section is unenforceable in so far as it confers rights or benefits or imposes duties or obligations on a corporation. Contracts, arrangements or understandings in restraint of trade or commerce.

(2) A corporation shall not—

- (a) make a contract or arrangement, or enter into an understanding, in restraint of trade or commerce; or
- (b) give effect to a contract, arrangement or understanding to the extent that it is in restraint of trade or commerce, whether the contract or arrangement was made or the understanding was entered into before or after the commencement of this sub-section.

(3) A contract, arrangement or understanding having the purpose or effect of fixing, controlling or maintaining the price for, or any discount, allowance or rebate in relation to, any goods or services supplied by the parties to the contract, arrangement or understanding, or by any of them, in competition with each other to persons not being parties to the contract, arrangement or understanding is not in restraint of trade or commerce for the purposes of this Act if the restraint has such a slight effect on competition between the parties to the contract, arrangement or understanding, and on competition between those parties or any of them and other persons, as to be insignificant.

(4) A contract, arrangement or understanding that is not of the kind referred to in sub-section (3) is not in restraint of trade or commerce for

the purposes of this Act unless the restraint has or is likely to have a significant effect on competition between the parties to the contract, arrangement or understanding or on competition between those parties or any of them and other persons.

(5) This section does not apply to a contract, arrangement or understanding in so far as—

- (a) the contract, arrangement or understanding is of a kind referred to in sub-section 47 (2) or constitutes the practice of exclusive dealing as mentioned in sub-section 47 (3) or (4); or
- (b) the contract, arrangement or understanding is prohibited by section 48 or would be prohibited by that section if this Act defined the acts constituting the practice of resale price maintenance by reference to the maximum price at which goods are to be sold.

(6) This section does not apply to a contract in so far as the contract provides for the acquisition of shares in the capital, or of assets, of a body corporate, being an acquisition that does not constitute a contravention of section 50 by reason that an authorization is in force in respect of the acquisition or by reason of the operation of section 94.

(7) This section does not apply to a contract, arrangement or understanding the only parties to which are two or more bodies corporate that are related to each other.

(8) The making by a corporation of a contract in relation to which sub-section 88 (1) applies is not a contravention of sub-section (2) if—

- (a) the contract is subject to a condition that the contract will not come into force unless and until—
 - (i) the corporation is granted an authorization to continue to be a party to the contract; or
 - (ii) the Commission gives a notice in writing to the corporation under sub-section 92 (2) in relation to the contract; and
- (b) the corporation either applies for the grant of such an authorization, or gives a notice to the Commission under sub-section 92 (1) in relation to the contract, within 7 days after the contract is made,

but nothing in this sub-section prevents the giving effect by a corporation to such a contract from constituting a contravention of sub-section (2).

Monopolization.

46. (1) A corporation that is in a position substantially to control a market for goods or services shall not take advantage of the power in relation to that market that it has by virtue of being in that position—

- (a) to eliminate or substantially to damage a competitor in that market or in another market;

- (b) to prevent the entry of a person into that market or into another market; or
- (c) to deter or prevent a person from engaging in competitive behaviour in that market or in another market.

(2) For the purposes of this section, a corporation shall be deemed to be in a position substantially to control a market for goods or services if that corporation and any related corporation or related corporations are together in a position substantially to control that market.

(3) For the purposes of this section, a reference to a corporation being in a position substantially to control a market for goods or services includes a reference to a corporation which, by reason of its share of the market, or of its share of the market combined with availability of technical knowledge, raw materials or capital, has the power to determine the prices, or control the production or distribution, of a substantial part of the goods or services in that market.

- (4) This section does not prevent a corporation from—
 - (a) engaging, during the period of 4 months immediately following the date fixed under sub-section 2 (3), in conduct that is of a kind referred to in sub-section 45 (2) or 47 (1) but to which that sub-section does not apply by reason of the fact that the conduct is engaged in before the expiration of that period; or
 - (b) engaging, after the expiration of that period, in conduct that does not constitute a contravention of any of the following sections, namely, sections 45, 47 and 50, by reason that an authorization is in force in respect of the conduct or by reason of the operation of section 92, 93 or 94.

47. (1) Subject to this section, a corporation shall not, in trade or commerce, engage in the practice of exclusive dealing. Exclusive dealing.

(2) A corporation engages in the practice of exclusive dealing if the corporation—

- (a) supplies any goods or services;
- (b) charges a price for the supply of any goods or services; or
- (c) gives or allows a discount, allowance, rebate or credit in relation to the supply of any goods or services,

on the condition, or subject to a contract, arrangement or understanding, that the person to whom the corporation supplies the goods or services—

- (d) will not, or will to a limited extent only, acquire goods or services from a competitor of the corporation; or
- (e) in the case where the corporation supplies goods—
 - (i) will not, or will to a limited extent only, supply any of the goods to particular persons or to persons included in a particular class of persons; or

(ii) will not, or will to a limited extent only, in particular places supply any of the goods to other persons.

(3) A corporation also engages in the practice of exclusive dealing if the corporation requires, as a condition of the supply to a person of goods or services of a kind that it could not lawfully supply but for the issue or grant to the corporation of a licence, permit, authority or registration under a law of Australia, that the person acquire all or a part of his requirements of other goods or services directly or indirectly from the corporation.

(4) A corporation also engages in the practice of exclusive dealing if the corporation requires, as a condition of the supply to a person of goods or services, that the person acquire all or a part of his requirements of other goods or services directly or indirectly from a second person.

(5) Sub-section (1) does not apply to the practice of exclusive dealing constituted by a corporation engaging in conduct of a kind referred to in sub-section (2) unless the engaging by the corporation in that conduct is likely to have the effect of substantially lessening competition in a market for goods or services.

(6) This section does not apply with respect to any conduct engaged in by a body corporate by way of restricting dealings by another body corporate if those bodies corporate are related to each other.

Resale price maintenance.

48. A corporation or other person shall not engage in the practice of resale price maintenance.

Price discrimination.

49. (1) A corporation shall not, in trade or commerce, discriminate between purchasers of goods of like grade and quality in relation to—

- (a) the prices charged for the goods;
- (b) any discounts, allowances, rebates or credits given in relation to the supply of the goods;
- (c) the provision of services or facilities in respect of the goods; or
- (d) the making of payments for services or facilities provided in respect of the goods,

if the discrimination is of such magnitude or is of such a recurring or systematic character that it is likely to have the effect of substantially lessening competition in a market for goods, being a market in which the corporation supplies, or those persons supply, goods.

- (2) Sub-section (1) does not apply in relation to a discrimination if—
 - (a) the discrimination makes only reasonable allowance for differences in the cost or likely cost of manufacture, distribution, sale or delivery resulting from the differing places to which, methods by which or quantities in which the goods are supplied to the purchasers; or

- (b) the discrimination is constituted by the doing of an act in good faith to meet a price or benefit offered by a competitor of the supplier.

(3) In any proceeding for a contravention of sub-section (1), the onus of establishing that that sub-section does not apply in relation to a discrimination by reason of sub-section (2) is on the party asserting that sub-section (1) does not so apply.

- (4) A person shall not, in trade or commerce—

- (a) knowingly induce or attempt to induce a corporation to discriminate in a manner prohibited by sub-section (1); or
- (b) enter into any transaction that to his knowledge would result in his receiving the benefit of a discrimination that is prohibited by that sub-section.

(5) In any proceeding against a person for a contravention of sub-section (4), it is a defence if that person establishes that he reasonably believed that, by reason of sub-section (2), the discrimination concerned was not prohibited by sub-section (1).

50. (1) A corporation shall not acquire, directly or indirectly, any shares in the capital, or any assets, of a body corporate where the acquisition is likely to have the effect of substantially lessening competition in a market for goods or services. Mergers.

(2) This section does not apply to an acquisition of assets of a body corporate in the ordinary course of business.

- (3) Where—

- (a) a corporation has entered into a contract to acquire shares in the capital, or assets, of a body corporate;
- (b) the contract is subject to a condition that the contract will not come into force unless and until—
 - (i) the corporation is granted an authorization to acquire the shares or assets; or
 - (ii) sub-section 94 (3) applies in relation to the acquisition of the shares or assets; and
- (c) the corporation applied for the grant of such an authorization, or gave a notice of the proposed acquisition to the Commission under sub-section 94 (1), before the expiration of 7 days after the contract was entered into or the expiration of 14 days after the commencing date, whichever was the later,

an acquisition of the shares or assets shall not be regarded for the purposes of this Act as having taken place in pursuance of the contract before—

- (d) in a case where the corporation applied for the grant of an authorization—the application for the authorization is disposed of;

- (e) in a case where the corporation gave a notice to the Commission under sub-section 94 (1)—
 - (i) the Commission gives notice to the corporation as mentioned in paragraph 94 (3) (a); or
 - (ii) a period of 30 days elapses after the corporation gave the notice to the Commission; or
- (f) the contract ceases to be subject to the condition, whichever first happens.

(4) For the purposes of sub-section (3), an application for an authorization shall be taken to be disposed of—

- (a) in a case to which paragraph (b) of this sub-section does not apply—at the expiration of 14 days after the period in which an application may be made to the Tribunal for a review of the determination by the Commission of the application for the authorization; or
- (b) if an application is made to the Tribunal for a review of the determination by the Commission of the application for the authorization—at the expiration of 14 days after the date of the making by the Tribunal of a determination on the review.

Exceptions.

51. (1) In determining whether a contravention of a provision of this Part has been committed, regard shall not be had—

- (a) to any act or thing that is, or is of a kind, specifically authorized or approved by, or by regulations under, an Act other than an Act relating to patents, trade marks, designs or copyrights;
- (b) in the case of acts or things done in a State—except as provided by the regulations, to any act or thing that is, or is of a kind, specifically authorized or approved by, or by regulations under, an Act passed by the Parliament of that State; or
- (c) in the case of acts or things done in a Territory—to any act or thing that is, or is of a kind, specifically authorized or approved by, or by regulations under, an Ordinance of that Territory.

(2) In determining whether a contravention of a provision of this Part other than section 48 has been committed, regard shall not be had—

- (a) to any act done, or to any provision of a contract, in relation to the remuneration, conditions of employment, hours of work or working conditions of employees, or to any act done by employees or by an organisation of employees not being an act done in the course of the carrying on of a business of the employer of those employees or of a business of that organisation;
- (b) to any provision of a contract, being a contract of service or a contract for the provision of services, under which a person, not being a body corporate, agrees to accept restrictions as to the work, whether as an employee or otherwise, in which he may engage during, or after the termination of, the contract;

- (c) to any provision of a contract, or any arrangement or understanding, obliging a person to comply with or apply standards of dimension, design, quality or performance prepared or approved by the Standards Association of Australia or by a prescribed association or body;
- (d) to any provision of a contract, or any arrangement or understanding, between partners none of whom is a body corporate in relation to the terms of the partnership or the conduct of the partnership business or in relation to competition between the partnership and a party to the contract, arrangement or understanding while he is, or after he ceases to be, a partner;
- (e) in the case of a contract for the sale of a business or of shares in the capital of a body corporate carrying on a business—to any provision of the contract that is solely for the protection of the purchaser in respect of the goodwill of the business;
- (f) to any acts done, otherwise than in the course of trade or commerce, in concert by ultimate users or consumers of goods or services against the suppliers of those goods or services; or
- (g) to any act or thing that relates exclusively to the export of goods from Australia or to the supply of services outside Australia, being an act or thing done in pursuance of an agreement of which full and accurate particulars were furnished to the Commission before the act or thing was done.

(3) In determining whether a contravention of a provision of this Part other than section 46 or 48 has been committed, regard shall not be had—

- (a) in the case of a contract for or in respect of—
 - (i) a licence granted or to be granted by the proprietor, licensee or owner of a patent, a registered design or a copyright or by a person who has applied for a patent or for the registration of a design; or
 - (ii) an assignment of a patent, a registered design or a copyright or of the right to apply for a patent or for the registration of a design,

to any condition of the licence or assignment relating exclusively to—

- (iii) the invention to which the patent or application for a patent relates or articles made by the use of that invention;
- (iv) goods in respect of which the design is or is proposed to be registered and to which it is applied; or
- (v) the work or other subject matter in which the copyright subsists;

- (b) in the case of a contract authorizing the use of a certification trade mark—to any provision included in the contract in accordance with rules applicable under Part XI of the *Trade Marks Act 1955-1973*; or
- (c) in the case of a contract between the registered proprietor of a trade mark other than a certification trade mark and a person authorized by the contract to use the trade mark subject to registration as a registered user under Part IX of the *Trade Marks Act 1955-1973*—to any provision of the contract with respect to the kinds, qualities or standards of goods bearing the mark that may be produced or supplied.

PART V—CONSUMER PROTECTION

Division 1—Unfair Practices

Misleading
or deceptive
conduct.

52. (1) A corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive.

(2) Nothing in the succeeding provisions of this Division shall be taken as limiting by implication the generality of sub-section (1).

False
representations.

53. A corporation shall not, in trade or commerce, in connexion with the supply or possible supply of goods or services or in connexion with the promotion by any means of the supply or use of goods or services—

- (a) falsely represent that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model;
- (b) falsely represent that goods are new;
- (c) represent that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have;
- (d) represent that the corporation has a sponsorship, approval or affiliation it does not have;
- (e) make false or misleading statements concerning the existence of, or amounts of, price reductions;
- (f) make false or misleading statements concerning the need for any goods, services, replacements or repairs; or
- (g) make false or misleading statements concerning the existence or effect of any warranty or guarantee.

Offering gifts
and prizes.

54. A corporation shall not, in trade or commerce, in connexion with the supply or possible supply of goods or services or in connexion with the promotion by any means of the supply or use of goods or services, offer gifts, prizes or other free items with the intention of not providing them as offered.

55. A person shall not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of any goods.

Misleading conduct to which Industrial Property Convention applies.

56. A corporation shall not, in trade or commerce, advertise for supply at a special price goods or services that the corporation does not intend to offer for supply at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the corporation carries on business and the nature of the advertisement.

Bait advertising.

57. A corporation shall not, in trade or commerce, induce a consumer to acquire goods or services by representing that the consumer will, after the contract for the acquisition of the goods or services is made, receive a rebate, commission or other benefit in return for giving the corporation the names of prospective customers or otherwise assisting the corporation to supply goods or services to other consumers, if receipt of the rebate, commission or other benefit is contingent on an event occurring after that contract is made.

Referral selling.

58. A corporation shall not, in trade or commerce, accept payment or other consideration for goods or services where at the time of the acceptance it intends—

Accepting payment without intending to supply as ordered.

- (a) not to supply the goods or services; or
- (b) to supply goods or services materially different from the goods or services in respect of which the payment or other consideration is accepted.

59. A corporation shall not, in trade or commerce, make a false or misleading statement concerning the profitability or risk or any other material aspect of any business activity that the corporation has represented as one that can be, or can be to a considerable extent, carried on at a person's place of residence.

Misleading statements about home-operated businesses.

60. A corporation shall not cause or permit a servant or agent of the corporation to use, at a place of residence, physical force, undue harassment or coercion in connexion with the supply or possible supply of goods or services to a consumer or the payment for goods or services by a consumer.

Coercion at place of residence.

61. (1) A corporation contravenes this section if—

- (a) the corporation is the promoter of, or (if there are more than one) one of the promoters of, or is a participant in, a trading scheme to which this section applies; and
- (b) a person who is a participant in that trading scheme, or has applied or been invited to become a participant in that trading

Pyramid selling.

scheme, makes any payment to or for the benefit of the corporation, being a payment that he is induced to make by reason that the prospect is held out to him of receiving payments or other benefits in respect of the introduction (whether by himself or by another person) of other persons who become participants in that trading scheme.

- (2) A corporation also contravenes this section if—
- (a) the corporation is the promoter of, or (if there are more than one) one of the promoters of, is a participant in, or is otherwise acting in accordance with, a trading scheme to which this section applies; and
 - (b) the corporation, by holding out to any person the prospect of receiving payments or other benefits in respect of the introduction (whether by himself or by another person) of other persons who become participants in that trading scheme, attempts to induce that person—
 - (i) if he is already a participant in that trading scheme, to make any payment to or for the benefit of the promoter or any of the promoters or to or for the benefit of a participant in that trading scheme; or
 - (ii) if he is not already a participant in that trading scheme, to become such a participant and to make a payment of a kind mentioned in sub-paragraph (i).
- (3) For the purposes of sub-section (1) or (2)—
- (a) a prospect of a kind mentioned in that sub-section shall be taken to be held out to a person whether it is held out so as to confer on him a legally enforceable right or not;
 - (b) in determining whether an inducement or attempt to induce is made by holding out a prospect of a kind mentioned in that sub-section, it is sufficient if a prospect of that kind constitutes or would constitute a substantial part of the inducement; and
 - (c) any reference to the making of a payment to or for the benefit of a person shall be construed as including the making of a payment partly to or for the benefit of that person and partly to or for the benefit of one or more other persons.
- (4) For the purposes of this section, a scheme is a trading scheme to which this section applies if the scheme includes the following elements:—
- (a) goods or services, or both, are to be provided by the person promoting the scheme (in this section referred to as the “promoter”) or, in the case of a scheme promoted by two or more persons acting in concert (in this section referred to as the “promoters”), are to be provided by one or more of those persons; and

- (b) the goods or services so provided are to be supplied to or for other persons under transactions effected by persons (other than the promoter or any of the promoters) who participate in the scheme (each of whom is in this section referred to as a “participant”).
- (5) For the purposes of sub-section (4)—
 - (a) a scheme shall be taken to include the element referred to in paragraph (4) (b) whether the transactions referred to in that paragraph are to be effected by participants in the capacity of servants or agents of the promoter or of one of the promoters or in any other capacity;
 - (b) a scheme includes any arrangements made in connexion with the carrying on of a business, whether those arrangements are made or recorded wholly or partly in writing or not; and
 - (c) any reference to the provision of goods or services by a person shall be construed as including a reference to the provision of goods or services under arrangements to which that person is a party.

62. (1) A corporation shall not, in trade or commerce, supply goods that are intended to be used, or are of a kind likely to be used, by a consumer, being goods of a kind in respect of which a consumer product safety standard has been prescribed, if those goods do not comply with that standard. Product safety standards.

(2) The regulations may, in respect of goods of a particular kind, prescribe a consumer product safety standard consisting of such requirements as to—

- (a) performance, composition, contents, design, construction, finish or packaging of the goods; and
- (b) the form and content of markings, warnings or instructions to accompany the goods,

as are reasonably necessary to prevent or reduce risk of injury to persons using the goods.

(3) Where—

- (a) the supplying of goods by a corporation constitutes a contravention of this section by reason that the goods do not comply with a prescribed consumer product safety standard;
- (b) a person suffers loss or damage by reason of a defect in the goods or by reason of his not having particular information in relation to the goods; and
- (c) the person would not have suffered the loss or damage if the goods had complied with that standard,

the person shall be deemed for the purposes of this Act to have suffered the loss or damage by the supplying of the goods.

Product
information
standards.

63. (1) A corporation shall not, in trade or commerce, supply goods that are intended to be used, or are of a kind likely to be used, by a consumer, being goods of a kind in respect of which a consumer product information standard has been prescribed, unless the corporation has complied with that standard in relation to those goods.

(2) The regulations may, in respect of goods of a particular kind, prescribe a consumer product information standard consisting of such requirements as to—

- (a) the disclosure of information relating to the performance, composition, contents, design, construction, finish or packaging of the goods; and
- (b) the form and manner in which that information is to be disclosed on or with the goods,

as are reasonably necessary to give persons using the goods accurate information as to the quantity, quality, nature or value of the goods.

(3) Where—

- (a) the supplying of goods by a corporation constitutes a contravention of this section by reason that the corporation has not complied with a prescribed consumer product information standard in relation to the goods;
- (b) a person suffers loss or damage by reason of his not having particular information in relation to the goods; and
- (c) the person would not have suffered the loss or damage if the corporation had complied with that standard in relation to the goods,

the person shall be deemed, for the purposes of this Act, to have suffered the loss or damage by the supplying of the goods.

Assertion of
right to
payment for
unsolicited
goods or for
making entry
in directory.

64. (1) A corporation shall not, in trade or commerce, assert a right to payment from a person for unsolicited goods unless the corporation has reasonable cause to believe that there is a right to payment.

(2) Sub-section (1) does not apply in relation to the assertion of a right to payment from a person for unsolicited goods if the person ordinarily uses like goods in the course of his profession, business, trade or occupation.

(3) A corporation shall not assert a right to payment from any person of a charge for the making in a directory of an entry relating to the person or to his profession, business, trade or occupation unless the corporation knows or has reasonable cause to believe that the person has authorized the making of the entry.

(4) A person is not liable to make any payment to a corporation, and is entitled to recover by action in a court of competent jurisdiction

against a corporation any payment made by the person to the corporation, in full or part satisfaction of a charge for the making of an entry in a directory unless the person has authorized the making of the entry.

(5) For the purposes of this section, a corporation shall be taken to assert a right to a payment from a person for unsolicited goods or of a charge for the making of an entry in a directory if the corporation—

- (a) makes a demand for the payment or asserts a present or prospective right to the payment;
- (b) threatens to bring any legal proceedings with a view to obtaining the payment;
- (c) places or causes to be placed the name of the person on a list of defaulters or debtors, or threatens to do so, with a view to obtaining the payment;
- (d) invokes or causes to be invoked any other collection procedure, or threatens to do so, with a view to obtaining the payment; or
- (e) sends any invoice or other document stating the amount of the payment or setting out the price of the goods or the charge for the making of the entry and not stating as prominently (or more prominently) that no claim is made to the payment, or to payment of the price or charge, as the case may be.

(6) A person shall not be taken for the purposes of this section to have authorized the making of an entry in a directory unless—

- (a) a document authorizing the making of the entry has been signed by the person or by another person authorized by him;
- (b) a copy of the document has been given to the person before the right to payment of a charge for the making of the entry is asserted; and
- (c) the document specifies—
 - (i) the name of the directory;
 - (ii) the name and address of the person publishing the directory;
 - (iii) particulars of the entry; and
 - (iv) the amount of the charge for the making of the entry or the basis on which the charge is, or is to be, calculated.

(7) For the purposes of this section, an invoice or other document purporting to have been sent by or on behalf of a corporation shall be deemed to have been sent by that corporation unless the contrary is established.

(8) Sub-sections (3) and (4) do not apply to or in relation to a payment if the payment relates to—

- (a) a contract that was made before the commencing date; or

(b) a contract that is made on or after that date by reason of the acceptance after that date of an offer that was made before that date.

(9) In a proceeding against a corporation in respect of a contravention of this section—

(a) in the case of a contravention constituted by asserting a right to payment from a person for unsolicited goods—the burden lies on the corporation of proving that the corporation had reasonable cause to believe that there was a right to payment; or

(b) in the case of a contravention constituted by asserting a right to payment from a person of a charge for the making of an entry in a directory—the burden lies on the corporation of proving that the corporation knew or had reasonable cause to believe that the person had authorized the making of the entry.

(10) In this section—

“directory” includes any publication of a similar nature to a directory but does not include a newspaper published in good faith as a newspaper at regular intervals or a publication published, or to be published, by or under the authority of the Postmaster-General;

“making”, in relation to an entry in a directory, means including, or arranging for the inclusion of, the entry.

Liability of recipient of unsolicited goods.

65. (1) A person to whom unsolicited goods are supplied by a corporation, in trade or commerce, is not liable to make any payment for the goods and is not liable for the loss of or damage to the goods other than loss or damage resulting from the doing by him of a wilful and unlawful act in relation to the goods during the period specified in sub-section (4).

(2) Subject to sub-section (3), where, on or after the commencing date, a corporation sends, in trade or commerce, unsolicited goods to a person—

(a) neither the corporation nor any person claiming under the corporation is entitled after the expiration of the period specified in sub-section (4) to take action for the recovery of the goods from the person to whom the goods were sent; and

(b) upon the expiration of that period the goods become, by force of this section, the property of the person to whom the goods were sent freed and discharged from all liens and charges of any description.

(3) Sub-section (2) does not apply to or in relation to unsolicited goods sent to a person if—

(a) the person has at any time during the period specified in sub-section (4) unreasonably refused to permit the sender or the owner of the goods to take possession of the goods;

- (b) the sender or the owner of the goods has within that period taken possession of the goods; or
- (c) the goods were received by the person in circumstances in which the person knew, or might reasonably be expected to have known, that the goods were not intended for him.
- (4) The period referred to in the foregoing sub-sections is—
 - (a) if the person who receives the unsolicited goods gives notice with respect to the goods to the sender in accordance with sub-section (5)—
 - (i) the period of 1 month next following the day on which the notice is given; or
 - (ii) the period of 3 months next following the day on which the person received the goods,
 - whichever first expires; and
 - (b) in any other case—the period of 3 months next following the day on which the person received the goods.
- (5) A notice under sub-section (4) shall be in writing and shall—
 - (a) state the name and address of the person who received the goods;
 - (b) state the address at which possession may be taken of the goods if it is an address other than that of the person; and
 - (c) contain a statement to the effect that the goods are unsolicited goods.
- (6) This section does not apply in relation to a person who receives unsolicited goods if the person ordinarily uses like goods in the course of his profession, business, trade or occupation.

Division 2—Conditions and Warranties in Consumer Transactions

66. (1) In this Division—

- (a) a reference to the quality of goods includes a reference to the state or condition of the goods;
- (b) a reference to a contract does not include a reference to a contract made before the commencing date;
- (c) a reference to antecedent negotiations in relation to a contract for the supply by a corporation of goods to a consumer is a reference to any negotiations or arrangements conducted or made with the consumer by another person in the course of a business carried on by the other person whereby the consumer was induced to make the contract or which otherwise promoted the transaction to which the contract relates; and
- (d) a reference to the person by whom any antecedent negotiations were conducted is a reference to the person by whom the negotiations or arrangements concerned were conducted or made.

Interpretation.

(2) Goods of any kind are of merchantable quality within the meaning of this Division if they are as fit for the purpose or purposes for which goods of that kind are commonly bought as it is reasonable to expect having regard to any description applied to them, the price (if relevant) and all the other relevant circumstances.

Conflict of laws.

67. Where—

- (a) the proper law of a contract for the supply by a corporation of goods or services to a consumer would, but for a term that it should be the law of some other country or a term to the like effect, be the law of any part of Australia; or
- (b) a contract for the supply by a corporation of goods or services to a consumer contains a term that purports to substitute, or has the effect of substituting, provisions of the law of some other country or of a State or Territory for all or any of the provisions of this Division,

this Division applies to the contract notwithstanding that term.

Application of Division to contracts not to be excluded or modified.

68. (1) Any term of a contract for the supply by a corporation of goods or services to a consumer (including a term that is not set out in the contract but is incorporated in the contract by another term of the contract) that purports to exclude, restrict or modify or has the effect of excluding, restricting or modifying—

- (a) the application in relation to that contract of all or any of the provisions of this Division;
- (b) the exercise of a right conferred by such a provision; or
- (c) any liability of the corporation for breach of a condition or warranty implied by such a provision,

is void.

(2) A term of a contract shall not be taken to exclude, restrict or modify the application of a provision of this Division unless the term does so expressly or is inconsistent with that provision.

Implied undertakings as to title, encumbrances and quiet possession.

69. (1) In every contract for the supply of goods by a corporation to a consumer, other than a contract to which sub-section (3) applies, there is—

- (a) an implied condition that, in the case of a supply by way of sale, the supplier has a right to sell the goods, and, in the case of an agreement to sell or a hire-purchase agreement, the supplier will have a right to sell the goods at the time when the property is to pass;
- (b) an implied warranty that the consumer will enjoy quiet possession of the goods except so far as it may lawfully be disturbed by the supplier or by another person who is entitled to the

benefit of any charge or encumbrance disclosed or known to the consumer before the contract is made; and

- (c) in the case of a contract for the supply of goods under which the property is to pass or may pass to the consumer—an implied warranty that the goods are free, and will remain free until the time when the property passes, from any charge or encumbrance not disclosed or known to the consumer before the contract is made.

(2) A corporation is not, in relation to a contract for the supply of goods, in breach of the implied warranty referred to in paragraph (1) (c) by reason only of the existence of a floating charge over assets of the corporation unless and until the charge becomes fixed and enforceable by the person to whom the charge is given.

(3) In a contract for the supply of goods by a corporation to a consumer in the case of which there appears from the contract or is to be inferred from the circumstances of the contract an intention that the supplier should transfer only such title as he or a third person may have, there is—

- (a) an implied warranty that all charges or encumbrances known to the supplier and not known to the consumer have been disclosed to the consumer before the contract is made; and
- (b) an implied warranty that—
 - (i) the supplier;
 - (ii) in a case where the parties to the contract intend that the supplier should transfer only such title as a third person may have—that person; and
 - (iii) anyone claiming through or under the supplier or that third person otherwise than under a charge or encumbrance disclosed or known to the consumer before the contract is made,

will not disturb the consumer's quiet possession of the goods.

70. (1) Where there is a contract for the supply (otherwise than by way of sale by auction or sale by competitive tender) by a corporation in the course of a business of goods to a consumer by description, there is an implied condition that the goods will correspond with the description, and, if the supply is by reference to a sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description. Supply by description.

(2) A supply of goods is not prevented from being a supply by description for the purposes of sub-section (1) by reason only that, being exposed for sale or hire, they are selected by the consumer.

Implied
undertakings
as to quality
or fitness.

71. (1) Where a corporation supplies (otherwise than by way of sale by auction or sale by competitive tender) goods to a consumer in the course of a business, there is an implied condition that the goods supplied under the contract for the supply of the goods are of merchantable quality, except that there is no such condition by virtue only of this section—

- (a) as regards defects specifically drawn to the consumer's attention before the contract is made; or
- (b) if the consumer examines the goods before the contract is made, as regards defects which that examination ought to reveal.

(2) Where a corporation supplies (otherwise than by way of sale by auction or sale by competitive tender) goods to a consumer in the course of a business and the consumer, expressly or by implication, makes known to the corporation or to the person by whom any antecedent negotiations are conducted any particular purpose for which the goods are being acquired, there is an implied condition that the goods supplied under the contract for the supply of the goods are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, except where the circumstances show that the consumer does not rely, or that it is unreasonable for him to rely, on the skill or judgment of the corporation or of that person.

(3) Sub-sections (1) and (2) apply to a contract for the supply of goods made by a person who in the course of a business is acting as agent for a corporation as they apply to a contract for the supply of goods made by a corporation in the course of a business, except where that corporation is not supplying in the course of a business and either the consumer knows that fact or reasonable steps are taken to bring it to the notice of the consumer before the contract is made.

Supply by
sample.

72. Where in a contract for the supply (otherwise than by way of sale by auction or sale by competitive tender) by a corporation in the course of a business of goods to a consumer there is a term in the contract, expressed or implied, to the effect that the goods are supplied by reference to a sample—

- (a) there is an implied condition that the bulk will correspond with the sample in quality;
- (b) there is an implied condition that the consumer will have a reasonable opportunity of comparing the bulk with the sample; and
- (c) there is an implied condition that the goods will be free from any defect, rendering them unmerchantable, that would not be apparent on reasonable examination of the sample.

73. Where—

- (a) a corporation (in this section referred to as the “owner”) enters into a contract for the supply by way of lease, hire or hire-purchase of goods to a consumer;
- (b) antecedent negotiations in relation to the contract were conducted with the consumer by or on behalf of another corporation that is not related to the owner;
- (c) the other corporation supplied the goods, or caused the goods to be supplied, to the owner;
- (d) the owner did not take physical possession of the goods before they were delivered to the consumer; and
- (e) the consumer suffers loss or damage as a result of a breach of a condition that is implied in the contract by virtue of section 70, 71 or 72,

Liability for loss or damage from breach of certain contracts.

the owner is not under any liability to the consumer by reason of the breach of that condition but the consumer may recover the amount of the loss or damage by action in a court of competent jurisdiction against the other corporation.

74. (1) In every contract for the supply (otherwise than by way of competitive tender) by a corporation in the course of a business of services to a consumer there is an implied warranty that the services will be rendered with due care and skill and that any materials supplied in connexion with those services will be reasonably fit for the purpose for which they are supplied.

Warranties in relation to the supply of services.

(2) Where a corporation supplies (otherwise than by way of competitive tender) services to a consumer in the course of a business and the consumer, expressly or by implication, makes known to the corporation any particular purpose for which the services are required or the result that he desires the services to achieve, there is an implied warranty that the services supplied under the contract for the supply of the services and any materials supplied in connexion with those services will be reasonably fit for that purpose or are of such a nature and quality that they might reasonably be expected to achieve that result, except where the circumstances show that the consumer does not rely, or that it is unreasonable for him to rely, on the corporation’s skill or judgment.

(3) In this section, “services” means services by way of—

- (a) the construction, maintenance, repair, treatment, processing, cleaning or alteration of goods or of fixtures on land;
- (b) the alteration of the physical state of land;
- (c) the distribution of goods; or
- (d) the transportation of goods.

Division 3—Miscellaneous

Saving of
other laws
and
remedies.

75. (1) Except as provided by sub-section (2), this Part is not intended to exclude or limit the concurrent operation of any law of a State or Territory.

(2) Where an act or omission of a person is both an offence against section 79 and an offence under the law of a State or Territory and that person is convicted of either of those offences, he is not liable to be convicted of the other of those offences.

(3) Except as expressly provided by this Part, nothing in this Part shall be taken to limit, restrict or otherwise affect any right or remedy a person would have had if this Part had not been enacted.

PART VI—ENFORCEMENT AND REMEDIES

Pecuniary
penalties.

76. If the Court is satisfied that a person—

- (a) has contravened a provision of Part IV;
- (b) has attempted to contravene such a provision;
- (c) has aided, abetted, counselled or procured a person to contravene such a provision;
- (d) has induced, or attempted to induce, a person, whether by threats or promises or otherwise, to contravene such a provision;
- (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
- (f) has conspired with others to contravene such a provision,

the Court may order the person to pay to Australia such pecuniary penalty (not exceeding \$50,000 in the case of a person not being a body corporate, or \$250,000 in the case of a body corporate, in respect of each act or omission by the person to which this section applies) as the Court determines to be appropriate having regard to all relevant matters including the nature and extent of the act or omission and of any loss or damage suffered as a result of the act or omission, the circumstances in which the act or omission took place and whether the person has previously been found by the Superior Court of Australia or the Australian Industrial Court in proceedings under this Part to have engaged in any similar conduct.

Civil action
for recovery
of pecuniary
penalties.

77. (1) The Attorney-General or the Commission may institute a proceeding in the Court for the recovery on behalf of Australia of a pecuniary penalty referred to in section 76.

(2) A proceeding under sub-section (1) may be commenced within 6 years after the contravention.

- 78.** Criminal proceedings do not lie against a person by reason only that the person—
- (a) has contravened a provision of Part IV;
 - (b) has attempted to contravene such a provision;
 - (c) has aided, abetted, counselled or procured a person to contravene such a provision;
 - (d) has induced, or attempted to induce, a person, whether by threats or promises or otherwise, to contravene such a provision;
 - (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
 - (f) has conspired with others to contravene such a provision.

Criminal proceedings not to be brought for contraventions of Part IV.

- 79.** A person who contravenes a provision of Part V other than section 52 is guilty of an offence punishable on conviction—
- (a) in the case of a person not being a body corporate—by a fine not exceeding \$10,000 or by imprisonment for a period not exceeding 6 months; or
 - (b) in the case of a person being a body corporate—by a fine not exceeding \$50,000.

Offences against Part V.

80. (1) The Court may, on the application of—

Injunctions.

- (a) the Attorney-General;
- (b) the Commission; or
- (c) any other person,

grant an injunction restraining a person from engaging in conduct that constitutes or would constitute—

- (d) a contravention of a provision of Part IV or V;
- (e) attempting to contravene such a provision;
- (f) aiding, abetting, counselling or procuring a person to contravene such a provision;
- (g) inducing, or attempting to induce, a person, whether by threats, promises or otherwise, to contravene such a provision;
- (h) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
- (j) conspiring with others to contravene such a provision.

(2) Where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under sub-section (1).

(3) The Court may rescind or vary an injunction granted under sub-section (1) or (2).

- Divestiture.** **81.** If the Court finds that a corporation has contravened section 50, the Court, on the application of—
- (a) the Attorney-General;
 - (b) the Commission; or
 - (c) if the proceeding in which the Court finds that the corporation has contravened that section was instituted by a person other than the Attorney-General or the Commission—that person,
- may, by order, give directions for the purpose of securing the disposal by the corporation of all or any of the shares or assets acquired in contravention of that section.
- Actions for damages.** **82.** (1) A person who suffers loss or damage by an act of another person that was done in contravention of a provision of Part IV or V may recover the amount of the loss or damage by action against that other person.
- (2) An action under sub-section (1) may be commenced at any time within 3 years after the date on which the cause of action accrued.
- Finding in proceedings to be evidence.** **83.** In proceedings against a person under section 82, a finding of any fact by the Court made in proceedings under section 77, 80 or 81, or for an offence against section 79, in which that person has been found to have contravened a provision of Part IV or V is *prima facie* evidence of that fact and the finding may be proved by production of a document under the seal of the court from which the finding appears.
- Conduct by servants or agents of body corporate.** **84.** (1) Where, in a proceeding under this Part in respect of any conduct engaged in by a body corporate, being conduct in relation to which a provision of Part V applies, it is necessary to establish the intention of the body corporate, it is sufficient to show that a servant or agent of the body corporate by whom the conduct was engaged in had that intention.
- (2) Any conduct engaged in on behalf of a body corporate by a director, agent or servant of the body corporate or by any other person at the direction or with the consent or agreement (whether express or implied) of a director, agent or servant of the body corporate shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.
- Defences.** **85.** (1) Subject to sub-section (2), in a prosecution under this Part in relation to a contravention of a provision of Part V, it is a defence if the defendant establishes—
- (a) that the contravention in respect of which the proceeding was instituted was due to a mistake, to reliance on information supplied by another person, to the act or default of another person, to an accident or to some other cause beyond his control; and
 - (b) that he took reasonable precautions and exercised due diligence to avoid the contravention.

(2) If a defence provided by sub-section (1) involves an allegation that a contravention was due to reliance on information supplied by another person or to the act or default of another person, the defendant is not, without leave of the Court, entitled to rely on that defence unless he has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person by whom the proceeding was instituted a notice in writing giving such information that would identify or assist in the identification of the other person as was then in his possession.

(3) In a proceeding under this Part in relation to a contravention of a provision of Part V committed by the publication of an advertisement, it is a defence if the defendant establishes that he is a person whose business it is to publish or arrange for the publication of advertisements and that he received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to a contravention of a provision of that Part.

(4) In a proceeding under this Part in relation to a contravention of Part V committed by the supplying of goods that did not comply with a consumer product safety standard or in relation to which the supplier did not comply with a consumer product information standard, it is a defence if the defendant establishes—

- (a) that the goods were acquired by him for the purpose of re-supply and were so acquired from a person who carried on in Australia a business of supplying such goods otherwise than as the agent of a person outside Australia; and
- (b) that he did not know, and could not with reasonable diligence have ascertained, that the goods did not comply with that standard or that he had not complied with that standard in relation to the goods, as the case may be, or he relied in good faith on a representation by the person from whom he acquired the goods that a consumer product safety standard or a consumer product information standard, as the case may be, had not been prescribed in respect of the goods.

(5) A person is not, without leave of the Court, entitled to rely on the defence provided by sub-section (4) unless he has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person by whom the proceeding was instituted a notice in writing identifying the person from whom he acquired the goods.

(6) Where, in any proceedings against a person other than a body corporate under this Part, it appears to the Court that the person has or may have done an act in contravention of a provision of Part IV or an act referred to in paragraph 76 (b), (c), (d) or (e) but that the person acted honestly and reasonably and, having regard to all the circumstances of the case, ought fairly to be excused, the Court may relieve the person

either wholly or partly from liability to any penalty or damages on such terms as the Court thinks fit.

Jurisdiction
of Court.

86. Jurisdiction is conferred on the Court to hear and determine actions, prosecutions and other proceedings under this Part and that jurisdiction is exclusive of the jurisdiction of any other court, other than the jurisdiction of the High Court under section 75 of the Constitution.

Ancillary
orders.

87. (1) Where in a proceeding instituted under or for an offence against this Part the Court finds that there has been a contravention of a provision of Part IV or V, the Court may, in addition to imposing a penalty under section 77 or 79, granting an injunction under section 80 or making an order under section 82 in an action for the recovery of the amount of any loss or damage, make such other orders as it thinks fit to redress injury to persons caused by any conduct to which the proceeding relates or any like conduct engaged in by the defendant.

(2) The orders that may be made under sub-section (1) include, but are not limited to—

- (a) an order declaring the whole or any part of a contract or of a collateral arrangement relating to a contract to be void and, if the Court thinks fit, to have been void *ab initio* or at all times on and after such date before the date on which the order is made as is specified in the order;
- (b) an order varying a contract or such an arrangement in such manner as is specified in the order and, if the Court thinks fit, declaring the contract or arrangement to have had effect as so varied on and after such date before the date on which the order is made as is so specified;
- (c) an order directing the refund of money or the return of property; and
- (d) an order directing the payment to a person who has suffered loss or damage of the amount of the loss or damage.

(3) Where—

- (a) a contract made before the expiration of the period referred to in sub-section 2 (4) is unenforceable by reason of section 45 in so far as it confers rights or benefits or imposes duties or obligations on a corporation; or
- (b) the engaging in conduct by a corporation in pursuance of or in accordance with a contract made before the expiration of that period would constitute a contravention of section 47,

the Court may, on the application of a party to the contract, make an order—

- (c) varying the contract, or a collateral arrangement relating to the contract, in such manner as the Court considers just and equitable; or

- (d) directing another party to the contract to do any act in relation to the first-mentioned party that the Court considers just and equitable.

(4) The orders that may be made under sub-section (3) include an order directing the termination of a lease or the increase or reduction of any rent or premium payable under a lease.

(5) The powers conferred on the Court under this section in relation to a contract do not affect any powers that any other court may have in relation to the contract in proceedings instituted in that other court in respect of the contract.

PART VII—AUTHORIZATIONS AND CLEARANCES IN RESPECT OF RESTRICTIVE TRADE PRACTICES

Division 1—Authorizations

88. (1) Subject to this Part, the Commission may, upon application by or on behalf of a corporation, grant an authorization to the corporation to make a contract or arrangement, or enter into an understanding, that would be or might be in restraint of trade or commerce or to continue to be a party to a contract, arrangement or understanding that is or may be in restraint of trade or commerce, and, while such an authorization remains in force—

Power of Commission to grant authorizations.

- (a) in the case of an authorization to make a contract or arrangement or to enter into an understanding—sub-section 45 (2) does not prevent the corporation from making the contract or arrangement or entering into the understanding in accordance with the authorization and giving effect to the contract or arrangement so made or the understanding so entered into;
- (b) in the case of an authorization to continue to be a party to a contract—
- (i) the contract is not unenforceable by reason of sub-section 45 (1); and
 - (ii) sub-section 45 (2) does not prevent the corporation from giving effect to the contract; or
- (c) in the case of an authorization to continue to be a party to an arrangement or understanding—sub-section 45 (2) does not prevent the corporation from giving effect to the arrangement or understanding in accordance with the authorization.

(2) Sub-section (1) does not apply in relation to a contract, arrangement or understanding fixing or controlling, or providing for the fixing or controlling of, the price for, or any discount, allowance or rebate in relation to, any goods supplied by the parties to the contract, arrangement or understanding, or by any of them, in competition with each other, to persons not being parties to the contract, arrangement or understanding, other than a contract, arrangement or understanding between persons in

connexion with the supply of goods by those persons on a joint basis or the supply by those persons of goods that have been produced, manufactured, mined or acquired by them on a joint basis.

(3) An authorization under sub-section (1) to make a contract or arrangement or enter into an understanding, or to continue to be a party to a contract, arrangement or understanding, may be expressed so as to apply to a corporation that becomes a party to the contract, arrangement or understanding after the authorization is granted.

(4) The Commission does not have power to grant an authorization under sub-section (1) to a corporation to make a contract or arrangement, or to enter into an understanding, if the contract or arrangement has already been made or the understanding has already been entered into.

(5) The Commission does not have power to grant an authorization under sub-section (1) to a corporation to continue to be a party to a contract, arrangement or understanding unless—

- (a) in the case of a contract—the requirements of paragraphs 45 (8) (a) and (b) have been complied with; or
- (b) the contract or arrangement was made, or the understanding was entered into, before the expiration of the period referred to in sub-section 2 (4) and—
 - (i) the authorization is granted before the expiration of that period; or
 - (ii) the authorization is granted upon the expiration or revocation of another authorization granted to the corporation under sub-section (1) in relation to the contract, arrangement or understanding.

(6) Subject to this Part, the Commission may, upon application by a corporation, grant an authorization to the corporation to engage in conduct that would or may constitute engaging in the practice of exclusive dealing and, while such an authorization remains in force, section 47 does not prevent the corporation from engaging in that conduct in accordance with the authorization.

(7) Subject to this Part, the Commission may, upon application by a corporation, grant an authorization to the corporation to acquire shares in the capital, or to acquire assets, of a body corporate and, while such an authorization remains in force, section 50 does not prevent the corporation from acquiring shares in the capital, or from acquiring assets, of the body corporate in accordance with the authorization.

Procedure
for
applications.

89. (1) An application for an authorization shall be made in writing as prescribed.

(2) The Commission shall cause to be made public in such manner as it thinks fit notice of the receipt by the Commission of an application for an authorization.

(3) The Commission shall keep a register of applications for authorizations received by it.

(4) Subject to sub-sections (5) and (6), the register kept under sub-section (3) shall include—

- (a) any document furnished to the Commission in relation to an application for an authorization, including any notice by the Attorney-General in relation to the application under paragraph 90 (9) (b);
- (b) particulars of any oral submission made to the Commission in relation to such an application; and
- (c) the determination of the Commission on such an application and the statement of the reasons given by the Commission for that determination.

(5) Where the Commission is satisfied that it is desirable to do so by reason of the confidential nature of any document or for any other reason, the Commission may direct that a document referred to in paragraph (4) (a) or (b) shall not be included in the register kept under sub-section (3).

(6) A document shall not be included in the register kept under sub-section (3) if a direction in relation to that document is in force under paragraph 22 (1) (b).

(7) Where a corporation makes an application for an authorization under sub-section 88 (7) in relation to the acquisition of shares in the capital of a body corporate that is a company to which the *Companies (Foreign Take-overs) Act 1972-1973* applies, the corporation shall furnish a copy of the application to the Minister administering that Act.

90. (1) The Commission shall, in respect of an application for an authorization—

- (a) make a determination in writing granting such authorization as it considers appropriate; or
- (b) make a determination in writing dismissing the application.

(2) The Commission shall take into account any submissions in relation to the application made to it by the applicant or any other person and may, where it considers it appropriate to do so, hold a public hearing in relation to the application.

(3) Where the Commission decides to hold a public hearing in relation to an application, the Commission shall cause notice of the time and place at which the hearing is to commence to be made public in such manner as it thinks fit.

Determination
of
applications
for
authorizations.

(4) The Commission shall state in writing its reasons for a determination made by it.

(5) Subject to sub-sections (9) and (11), the Commission shall not make a determination granting an authorization unless it is satisfied that the contract, arrangement, understanding or conduct to which the application relates results, or is likely to result, in a substantial benefit to the public, being a benefit that would not otherwise be available, and that, in all the circumstances, that result, or that likely result, as the case may be, justifies the granting of the authorization.

(6) Subject to sub-sections (7) and (8), the Commission shall determine an application for an authorization under sub-section 88 (7) within 4 months from the prescribed date.

(7) If the applicant for an authorization under sub-section 88 (7) informs the Commission in writing before the expiration of the period referred to in sub-section (6) that the applicant agrees to the Commission taking a specified longer period for the determination of the application, that longer period shall be deemed to be substituted in sub-section (6) for the period referred to in that sub-section.

(8) For the purposes of an application of sub-section (7), a reference in that sub-section to the period referred to in sub-section (6) shall, if another period is deemed to have been substituted in sub-section (6) for that period by any other application or applications of sub-section (7), be construed as a reference to that other period.

(9) Subject to sub-section (10), where—

- (a) an application is made for an authorization under sub-section 88 (7) in relation to the acquisition of shares in the capital, or assets, of a body corporate; and
- (b) the Attorney-General by notice in writing to the Commission informs the Commission that the Australian Government considers that there are special considerations relating to the acquisition that make it desirable in the interests of national economic policy that an authorization be granted in respect of the acquisition,

the Commission shall grant the authorization.

(10) The Commission shall not begin to consider an application for an authorization under sub-section 88 (7) in relation to the acquisition of shares in the capital of a body corporate that is a company to which the *Companies (Foreign Take-overs) Act 1972-1973* applies unless the applicant has furnished to the Commission a certificate given in accordance with sub-section 17 (1) of that Act in respect of the shares.

(11) If the applicant for an authorization referred to in sub-section (10) furnishes to the Commission under that sub-section a certificate

given in accordance with paragraph 17 (1) (b) of the *Companies (Foreign Take-overs) Act 1972-1973* in respect of the shares to which the application relates, the Commission shall grant the authorization.

(12) Where the applicant for an authorization referred to in sub-section (10) has furnished a notice of a kind referred to in sub-section 13 (7) of the *Companies (Foreign Take-overs) Act 1972-1973* to the Minister administering that Act in relation to the acquisition of shares to which the application relates and that Minister—

- (a) has not, before the expiration of 1 month after the date on which the notice was received by him, made an order under section 13 of that Act in relation to the acquisition of those shares; or
- (b) has made an interim order under sub-section 13 (6) of that Act in relation to the acquisition of those shares and—
 - (i) has not, before the expiration of that interim order, made an order under sub-section 13 (2) or (3) of that Act; or
 - (ii) has revoked that interim order and has not forthwith made an order in relation to the acquisition of those shares under sub-section 13 (2) or (3) of that Act,

sub-section (10) does not apply in relation to the acquisition of those shares.

(13) If the applicant for an authorization referred to in sub-section (10) furnishes to the Commission a statutory declaration by a competent officer of the applicant in relation to a matter referred to in sub-section (12), that statutory declaration shall, in the absence of any evidence to the contrary, be accepted by the Commission as evidence of that matter.

(14) For the purposes of sub-section (6), the prescribed date is—

- (a) in the case of an application for an authorization in respect of a proposed acquisition of shares in the capital of a body corporate that is a company to which the *Companies (Foreign Take-overs) Act 1972-1973* applies—
 - (i) in a case to which sub-paragraphs (ii), (iii) and (iv) of this paragraph do not apply—the date on which a certificate given in respect of the shares in accordance with sub-section 17 (1) of that Act is furnished to the Commission;
 - (ii) in a case to which paragraph (12) (a) applies—the date referred to in sub-paragraph (i) of this paragraph or the last day of the period of 1 month referred to in paragraph (12) (a), whichever first occurs;
 - (iii) in a case to which sub-paragraph (12) (b) (i) applies—the date referred to in sub-paragraph (i) of this paragraph or the date of expiration of the interim order, whichever first occurs; or

- (iv) in a case to which sub-paragraph (12) (b) (ii) applies—the date referred to in sub-paragraph (i) of this paragraph or the date of revocation of the interim order, whichever first occurs; and
- (b) in any other case—the date on which the application is received by the Commission.

Grant,
revocation
and
variation of
authorizations.

91. (1) An authorization may be expressed to be in force for a period specified in the authorization and, if so expressed, remains in force for that period only.

- (2) If the Commission considers that it is appropriate to do so—
 - (a) for the purpose of enabling due consideration to be given to an application for an authorization;
 - (b) pending the expiration of the time allowed for the making of an application to the Tribunal for review of a determination by the Commission of an application for an authorization and, if such an application for a review is made, pending the making of a determination by the Tribunal on the review; or
 - (c) for any other reason,

the Commission may grant an authorization that is expressed to be an interim authorization, and the Commission may at any time revoke such an authorization.

(3) An authorization may be expressed to be subject to such conditions as are specified in the authorization.

(4) If, at any time after the Commission has granted an authorization, it appears to the Commission that the authorization was granted on the basis of evidence or information that was false or misleading in a material particular, that a condition to which the authorization was expressed to be subject has not been complied with or that there has been a material change of circumstances since the authorization was granted—

- (a) the Commission shall give notice accordingly to the corporation to which the authorization was given and any other persons who appear to the Commission to be interested and afford them a reasonable opportunity of making submissions to the Commission in the matter; and
- (b) where, after so notifying the corporation and other persons (if any) and considering any submissions made by those persons, the Commission is satisfied that the authorization was granted on the basis of evidence or information that was false or misleading in a material particular, that the condition has not been complied with or that there has been such a material change of circumstances, the Commission may make a determination revoking the authorization and, if it considers it appropriate to

do so, granting a further authorization in substitution for the authorization so revoked.

Division 2—Clearances

92. (1) A corporation that is a party to, or proposes to make, a contract or arrangement, or is a party to, or proposes to enter into, an understanding, that may be in restraint of trade or commerce, may give notice, as prescribed, of the contract, arrangement or understanding, or of the proposed contract, arrangement or understanding, to the Commission.

Clearance of contracts, arrangements or understandings in restraint of trade or commerce.

(2) Where a corporation so gives notice to the Commission, the Commission may at any time give notice in writing to the corporation stating that the Commission considers that any restraint of trade or commerce that results from the contract, arrangement or understanding or would result from the proposed contract, arrangement or understanding, does not have and is not likely to have, or would not have and would not be likely to have, a significant effect on competition, and, if the Commission gives such a notice, the contract, arrangement or understanding shall be deemed not to be in restraint of trade or commerce for the purposes of this Act.

(3) If, at any time after the Commission has given a notice under sub-section (2) to a corporation in relation to a contract, arrangement or understanding, or a proposed contract, arrangement or understanding, the Commission is satisfied that the notice was given on the basis of information that was false or misleading in a material particular or that there has been a material change of circumstances since the notice was given, the Commission may revoke the notice and, in that case, sub-section (2) ceases to operate, after the expiration of 30 days (or such longer period as the Commission by writing permits) after notice in writing of the revocation has been served on the corporation, to deem the contract, arrangement or understanding not to be in restraint of trade or commerce for the purposes of this Act.

93. (1) A corporation that proposes to engage in conduct of a kind referred to in sub-section 47 (2) may give notice, as prescribed, of the proposed conduct to the Commission.

Clearance of exclusive dealing.

(2) Where a corporation so gives notice to the Commission, the Commission may at any time give notice in writing to the corporation stating that the Commission considers that the engaging by the corporation in the proposed conduct would be likely to have the effect of substantially lessening competition in a market for goods or services.

(3) Where a corporation has given a notice to the Commission under sub-section (1), the engaging by the corporation in the conduct referred to in the notice shall not be taken, for the purposes of this Act, to be likely to have the effect of substantially lessening competition in a market for goods or services unless the Commission has given notice to

the corporation under sub-section (2) in relation to the conduct and the conduct takes place more than 30 days (or such longer period as the Commission by writing permits) after the day on which the Commission gave the notice.

(4) Where—

- (a) a corporation has given a notice to the Commission under sub-section (1) in relation to proposed conduct; and
- (b) the Commission has given notice in writing to the corporation stating that the Commission considers that the engaging by the corporation in the proposed conduct would be likely to have the effect of substantially lessening competition in a market for goods or services,

the corporation is not entitled to give a further notice under that sub-section to the Commission in relation to the same conduct or conduct to the like effect.

Clearance of
mergers.

94. (1) A corporation that proposes to acquire shares in the capital, or assets, of a body corporate the acquisition of which by the corporation may be in contravention of section 50 may give notice, as prescribed, of the proposed acquisition to the Commission.

(2) Where a corporation so gives notice to the Commission, the Commission may, within 30 days after receiving the notice, give notice in writing to the corporation stating whether or not the Commission considers that the proposed acquisition would be likely to have the effect of substantially lessening competition in a market for goods or services.

(3) Where a corporation has given a notice to the Commission under sub-section (1) and—

- (a) the Commission gives notice to the corporation in accordance with sub-section (2) stating that the Commission considers that the proposed acquisition would not be likely to have the effect of substantially lessening competition in a market for goods or services; or
- (b) the Commission does not, within 30 days after receiving the notice, give a notice to the corporation in accordance with sub-section (2) in relation to the proposed acquisition,

the acquisition of the shares or assets by the corporation shall, for the purposes of this Act, be deemed not to have the effect of substantially lessening competition in a market for goods or services.

Register in
relation to
clearances.

95. (1) The Commission shall keep a register containing—

- (a) notices given to the Commission under sections 92, 93 and 94;
- (b) documents furnished to the Commission in relation to such notices;
- (c) particulars of any oral submissions made to the Commission in relation to such notices;

- (d) particulars of notices given by the Commission to corporations by which notices under sections 92, 93 and 94 were given;
- (e) particulars of any notices of revocation served, or permits given, by the Commission under sub-section 92 (3); and
- (f) particulars of any permits given by the Commission under sub-section 93 (3).

(2) Where the Commission is satisfied that it is desirable to do so by reason of the confidential nature of any document or for any other reason, the Commission may direct that a document referred to in paragraph (1) (b) or (c) shall not be included in the register kept under sub-section (1).

PART VIII—RESALE PRICE MAINTENANCE

96. (1) Subject to this Part, a corporation (in this section called “the supplier”) engages in the practice of resale price maintenance if that corporation does an act referred to in any of the paragraphs of sub-section (3).

Acts
constituting
engaging in
resale price
maintenance.

(2) Subject to this Part, a person (not being a corporation and also in this section called “the supplier”) engages in the practice of resale price maintenance if that person does an act referred to in any of the paragraphs of sub-section (3) where the second person mentioned in that paragraph is a corporation.

(3) The acts referred to in sub-sections (1) and (2) are the following:—

- (a) the supplier making it known to a second person that the supplier will not supply goods to the second person unless the second person agrees not to sell those goods at a price less than a price specified by the supplier;
- (b) the supplier inducing, or attempting to induce, a second person not to sell, at a price less than a price specified by the supplier, goods supplied to the second person by the supplier or by a third person who, directly or indirectly, has obtained the goods from the supplier;
- (c) the supplier entering into an agreement, or offering to enter into an agreement, for the supply of goods to a second person, being an agreement one of the terms of which is, or would be, that the second person will not sell the goods at a price less than a price specified, or that would be specified, by the supplier;
- (d) the supplier withholding the supply of goods to a second person for the reason that the second person—
 - (i) has not agreed as mentioned in paragraph (a); or
 - (ii) has sold, or is likely to sell, goods supplied to him by the supplier, or goods supplied to him by a third person who, directly or indirectly, has obtained the goods from the

supplier, at a price less than a price specified by the supplier as the price below which the goods are not to be sold;

- (e) the supplier withholding the supply of goods to a second person for the reason that a third person who, directly or indirectly, has obtained, or wishes to obtain, goods from the second person—
 - (i) has not agreed not to sell those goods at a price less than a price specified by the supplier; or
 - (ii) has sold, or is likely to sell, goods supplied to him, or to be supplied to him, by the second person, at a price less than a price specified by the supplier as the price below which the goods are not to be sold; and
 - (f) the supplier using, in relation to any goods supplied, or that may be supplied, by the supplier to a second person, a statement of a price that is likely to be understood by that person as the price below which the goods are not to be sold.
- (4) For the purposes of sub-section (3)—
- (a) where a price is specified by another person on behalf of the supplier, it shall be deemed to have been specified by the supplier;
 - (b) where the supplier makes it known, in respect of goods, that the price below which those goods are not to be sold is a price specified by another person in respect of those goods, or in respect of goods of a like description, that price shall be deemed to have been specified, in respect of the first-mentioned goods, by the supplier;
 - (c) where a formula is specified by or on behalf of the supplier and a price may be ascertained by calculation from, or by reference to, that formula, that price shall be deemed to have been specified by the supplier; and
 - (d) where the supplier makes it known, in respect of goods, that the price below which those goods are not to be sold is a price ascertained by calculation from, or by reference to, a formula specified by another person in respect of those goods, or in respect of goods of a like description, that price shall be deemed to have been specified, in respect of the first-mentioned goods, by the supplier.
- (5) In sub-section (4), “formula” includes a set form or method.
- (6) For the purposes of sub-section (3), anything done by a person acting on behalf of, or by arrangement with, the supplier shall be deemed to have been done by the supplier.
- (7) A reference in any of paragraphs (3) (a) to (e), inclusive, including a reference in negative form, to the selling of goods at a price less

than a price specified by the supplier shall be construed as including references to—

- (a) the advertising of goods for sale at a price less than a price specified by the supplier as the price below which the goods are not to be advertised for sale;
- (b) the displaying of goods for sale at a price less than a price specified by the supplier as the price below which the goods are not to be displayed for sale; and
- (c) the offering of goods for sale at a price less than a price specified by the supplier as the price below which the goods are not to be offered for sale,

and a reference in paragraph (3) (d), (e) or (f) to a price below which the goods are not to be sold shall be construed as including a reference to the price below which the goods are not to be advertised for sale, to the price below which the goods are not to be displayed for sale and to the price below which the goods are not to be offered for sale.

97. For the purposes of paragraph 96 (3) (b), the supplier is not to be taken as inducing, or attempting to induce, a second person as mentioned in that paragraph in relation to any goods— Recom-
mended
prices.

- (a) by reason only of a statement of a price being applied to the goods as mentioned in paragraph 99 (1) (a) or being applied to a covering, label, reel or thing as mentioned in paragraph 99 (1) (b), provided that the statement is preceded by the words “recommended price”; or
- (b) by reason only of his having given notification in writing to the second person (not being a notification by way of a statement being applied as mentioned in paragraph (a)) of the price that he recommends as appropriate for the sale of those goods, provided that there is included in the notification, and in each writing that refers, whether expressly or by implication, to the notification, a statement to the following effect:—

“The price set out or referred to herein is a recommended price only and there is no obligation to comply with the recommendation.”.

98. (1) For the purposes of paragraph 96 (3) (d) or (e), the supplier shall be deemed to withhold the supply of goods to another person if— Withholding
the supply of
goods.

- (a) the supplier refuses or fails to supply those goods to, or as requested by, the other person;
- (b) the supplier refuses to supply those goods except on terms that are disadvantageous to the other person;
- (c) in supplying goods to the other person, the supplier treats that person less favourably, whether in respect of time, method or place of delivery or otherwise, than the supplier treats other persons to whom the supplier supplies the same or similar goods; or

- (d) the supplier causes or procures a person to withhold the supply of goods to the other person as mentioned in paragraph (a), (b) or (c) of this sub-section.

(2) Paragraph 96 (3) (d) does not apply in relation to the withholding by the supplier of the supply of goods to another person who, within the preceding year, has sold goods obtained, directly or indirectly, from the supplier at less than their cost to that other person—

- (a) for the purpose of attracting to the establishment at which the goods were sold persons likely to purchase other goods; or
- (b) otherwise for the purpose of promoting the business of that other person.

(3) For the purposes of sub-section (2), there shall be disregarded—

- (a) a genuine seasonal or clearance sale of goods that were not acquired for the purpose of being sold at that sale; or
- (b) a sale of goods that took place with the consent of the supplier.

Statements
as to the
minimum
price of
goods.

99. (1) For the purposes of paragraph 96 (3) (f), if—

- (a) a statement is applied to goods, whether by being woven in, impressed on, worked into or annexed or affixed to the goods or otherwise;
- (b) a statement is applied to a covering, label, reel or thing in or with which goods are supplied; or
- (c) a statement is used in a sign, advertisement, invoice, catalogue, business letter, business paper, price list or other document or otherwise in a manner likely to lead to the belief that it refers to goods,

the statement shall be deemed to have been used in relation to those goods.

(2) For the purposes of sub-section (1), “covering” includes a stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper and “label” includes a band or ticket.

Evidentiary
provisions.

100. (1) Where, in proceedings under this Act by a person (in this section referred to as “the plaintiff”) against another person (in this section referred to as “the defendant”), it is claimed that the defendant has engaged in the practice of resale price maintenance and it is established that—

- (a) the defendant has acted, in relation to the plaintiff, as mentioned in paragraph 98 (1) (a), (b), (c) or (d);
- (b) during a period ending immediately before the time when the defendant so acted, the defendant had been supplying goods of the kind withheld to the plaintiff or to another person carrying on a business similar to that of the plaintiff; and
- (c) during the period of 6 months immediately before the time when the defendant so acted, the defendant became aware of a

matter or circumstance capable of constituting a reason referred to in paragraph 96 (3) (d) or (e) for the defendant's so acting, then, subject to sub-section (2), it shall be presumed, unless the contrary is established, that that matter or circumstance was the reason for the defendant's so acting.

(2) Sub-section (1) does not apply where the plaintiff establishes the matter mentioned in paragraph 98 (1) (b) or (c) but the terms disadvantageous to the plaintiff, or the less favourable treatment of the plaintiff, consisted only of a requirement by the defendant as to the time at which, or the form in which, payment was to be made or as to the giving of security to secure payment.

(3) In the application of this section in proceedings by the Attorney-General or the Commission for an injunction, references to the plaintiff shall be construed as references to a person specified in the application for the injunction as the person in relation to whom the defendant is claimed to have acted as mentioned in paragraph (1) (a).

PART IX—REVIEW BY TRIBUNAL OF DETERMINATIONS OF COMMISSION

Division 1—Applications for Review

101. (1) A person dissatisfied with a determination by the Commission in relation to an application for, or in relation to the revocation of, an authorization, not being a determination granting an authorization in pursuance of the requirements of sub-section 90 (9) or (11), may, as prescribed and within the time allowed by or under the regulations, apply to the Tribunal for a review of the determination and, if the person was the applicant for the authorization or the Tribunal is satisfied that he has a sufficient interest, the Tribunal shall review the determination. Applications for review.

(2) A review by the Tribunal is a re-hearing of the matter and sub-section 90 (5) applies in relation to the Tribunal in like manner as it applies in relation to the Commission.

102. (1) Upon a review, the Tribunal may make a determination affirming, setting aside or varying the determination of the Commission and, for the purposes of the review, may perform all the functions and exercise all the powers of the Commission. Functions and powers of Tribunal.

(2) A determination by the Tribunal shall, for the purposes of this Act other than this Part, be deemed to be a determination by the Commission.

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

(4) For the purposes of a review of a determination by the Commission, the Tribunal may have regard to any information furnished, documents produced or evidence given to the Commission in connexion with the making of the determination.

Division 2—Procedure and Evidence

Procedure generally.

103. (1) In proceedings before the Tribunal—

- (a) the procedure of the Tribunal is, subject to this Act and the regulations, within the discretion of the Tribunal;
- (b) the proceedings shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and a proper consideration of the matters before the Tribunal permit; and
- (c) the Tribunal is not bound by the rules of evidence.

(2) The powers of the Tribunal with respect to matters of procedure in particular proceedings may be exercised by the Tribunal constituted by a presidential member.

Regulations as to certain matters.

104. The regulations may make provision—

- (a) for securing, by means of preliminary statements of facts and contentions, and by the production of documents, that all material facts and considerations are brought before the Tribunal by all persons participating in any proceedings before the Tribunal; and
- (b) with respect to the representation in any such proceedings of persons having a common interest in the proceedings.

Power to take evidence on oath.

105. (1) The Tribunal may take evidence on oath or affirmation and for that purpose a member of the Tribunal may administer an oath or affirmation.

(2) A member of the Tribunal may summon a person to appear before the Tribunal to give evidence and to produce such documents (if any) as are referred to in the summons.

Hearings to be in public except in special circumstances.

106. (1) Subject to this section, the hearing of proceedings before the Tribunal shall be in public.

(2) Where the Tribunal is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason, the Tribunal may—

- (a) direct that a hearing or part of a hearing shall take place in private and give directions as to the persons who may be present; or
- (b) give directions prohibiting or restricting the publication of evidence given before the Tribunal, whether in public or in private, or of matters contained in documents filed or lodged with the

Registrar, received in evidence by the Tribunal or placed in the records of the Tribunal.

(3) The powers of the Tribunal under this section may be exercised by the Tribunal as constituted for the purposes of the hearing or by the Tribunal constituted by a presidential member.

107. The Tribunal may permit a person appearing as a witness before the Tribunal to give evidence by tendering, and, if the Tribunal thinks fit, verifying by oath or affirmation, a written statement, which shall be filed with the Registrar. Evidence in form of written statement.

108. The Tribunal as constituted for the purposes of any proceedings in which evidence may be taken may authorize a presidential member to take evidence for the purposes of the proceedings on its behalf, with such limitations (if any) as the Tribunal so constituted directs, and, where such an authority is given— Taking of evidence by single member.

- (a) that member may take evidence accordingly; and
- (b) for the purposes of this Act, that member shall, in relation to the taking of evidence in accordance with the authority, be deemed to constitute the Tribunal.

109. (1) A person to whom an authorization was granted is entitled to participate in any proceedings before the Tribunal instituted by another person in relation to that authorization. Participants in proceedings before Tribunal.

(2) The Tribunal may, upon such conditions as it thinks fit, permit a person to intervene in proceedings before the Tribunal.

110. In proceedings before the Tribunal— Representation.

- (a) a person other than a body corporate may appear in person or may be represented by an employee of the person approved by the Tribunal;
- (b) a body corporate may be represented by an employee, or a director or other officer, of the body corporate approved by the Tribunal;
- (c) an unincorporated association of persons or a member of an unincorporated association of persons may be represented by a member or officer of the association approved by the Tribunal; and
- (d) any person may be represented by a barrister or a solicitor of the Supreme Court of a State or Territory or of the High Court.

PART X—OVERSEAS CARGO SHIPPING

Division 1—Preliminary

Interpretation.

111. (1) In this Part, unless the contrary intention appears—

“Australian flag shipping operator” means—

- (a) for the purposes of the making of an order under section 123—a person who carries on, or proposes to carry on, operations by way of overseas cargo shipping between ports between which any of the outwards cargo shipping to which the relevant conference agreement relates is carried on; or
- (b) for the purposes of the making of an order under section 129—a person who carries on, or proposes to carry on, operations by way of overseas cargo shipping between Australia and the port or ports to be specified in the order,

being a person who normally uses, or proposes normally to use, for the purposes of those operations, a ship or ships registered in Australia and no other ship, and being an Australian citizen or a body corporate incorporated by or under a law of Australia or of a State or Territory;

“Clerk” means the Clerk of Shipping Agreements appointed under this Part and includes a person appointed to act as Clerk of Shipping Agreements;

“conference agreement” means an agreement to which this Part applies;

“declared shipowner” means a shipowner in respect of whom an order under section 129 is in force;

“disapproved agreement” means a conference agreement in respect of which an order of disapproval under this Part is in force;

“outwards cargo shipping” means overseas cargo shipping commencing at a place in Australia;

“overseas cargo shipping” means the carriage of goods wholly or partly by sea from a place in Australia to a place outside Australia or from a place outside Australia to a place in Australia;

“shipowner” means a person who carries on the business of outwards cargo shipping, whether alone or in partnership with another person or other persons, and includes such a person irrespective of nationality or place of incorporation, residence or business;

“shipper body” means an association that, in the opinion of the Minister, represents the interests, in relation to outwards cargo shipping, of persons who are shippers of goods, or producers of goods of a kind exported from Australia.

(2) For the purposes of this Part—

- (a) an arrangement or understanding, whether formal or informal and whether express or implied, shall be deemed to be an agreement;
- (b) a reference to an agreement shall be read as including a reference to an agreement made outside Australia and to an agreement made before the commencement of this Part; and
- (c) a reference to an agreement shall be read as including a reference to an agreement that is not enforceable by legal proceedings whether or not it was intended to be so enforceable.

112. Part IV does not apply in relation to overseas cargo shipping engaged in by a shipowner in pursuance of a conference agreement, including a disapproved agreement. Part IV not to apply.

113. (1) Subject to this section, an agreement is an agreement to which this Part applies if the agreement, whether as originally made or by reason of a subsequent variation, is one the parties to which are or include two or more persons carrying on two or more businesses that include outwards cargo shipping and is one that makes provision, in relation to outwards cargo shipping, having the purpose or effect of restricting, preventing or hindering— Agreements to which Part applies.

- (a) competition between any of the parties to the agreement; or
- (b) competition between persons other than those parties and those parties or any of them,

including provision for—

- (c) the fixing or regulation of freight rates;
- (d) the giving to shippers, or the withholding from shippers, of special rates or other special privileges or advantages;
- (e) the pooling or apportioning of earnings, losses or traffic;
- (f) the allocation of ports or the restriction or other regulation of the number and character of sailings between ports; or
- (g) the restriction or other regulation of the volume or character of goods to be carried.

(2) An agreement is not an agreement to which this Part applies by reason only of any provision as between shipowners of the one part and shippers of the other part with respect to the terms and conditions that are to be applicable to contracts for outwards cargo shipping.

Shipowners may be required to be represented by agent and give address for service.

114. (1) The Minister may, by notice in writing to a shipowner served as prescribed, request the shipowner to comply with the provisions of this section, and, where such a request has been made, the provisions of sub-sections (2) to (7) apply.

(2) The shipowner (not being a natural person resident in Australia) shall, at all times after the expiration of 14 days from the date of service of the notice, be represented for the purposes of this Part by a person (not being a body corporate) resident in Australia and appointed by the shipowner as the agent of the shipowner for the purposes of this Part.

(3) The appointment shall not be deemed to be duly made or revoked until the shipowner has given notice in writing of the appointment or revocation to the Minister, specifying the name, and, in the case of an appointment, the place of residence, of the agent.

(4) Everything done by the agent in his representative capacity shall, for the purposes of this Part, be deemed to have been done by the shipowner, but not so as to affect any liability of the agent under this Part.

(5) The shipowner shall, at all times after the expiration of 14 days from the date of service of the notice, have an address in Australia for service for the purposes of this Part.

(6) The address does not become the address for service of the shipowner until the shipowner has given notice in writing of the address to the Minister, and an address so notified continues to be the address for service of the shipowner until another address has been so notified.

(7) A document or notice required or permitted to be served on, or given to, the shipowner under or for the purposes of this Part, including process of the Court, may, notwithstanding any other law, be served or given by leaving it at his address for service or by serving it by registered post on the shipowner at that address.

(8) Where a shipowner has given notice in writing to the Minister of the appointment of an agent of the shipowner, or of an address in Australia of the shipowner for service, for the purposes of this Part, the notice shall, for the purposes of sub-section (4) or (7), as the case requires, be deemed to have been given in accordance with a request made by the Minister in pursuance of sub-section (1).

(9) Failure to comply with this section is not an offence but entails the consequences specified in this Part.

Division 2—Filing of Conference Agreements

Clerk of Shipping Agreements.

115. (1) There shall be a Clerk of Shipping Agreements, who shall be appointed by the Governor-General.

(2) Where the Clerk of Shipping Agreements is, or is expected to be, absent from duty or the office of Clerk of Shipping Agreements is vacant, the Governor-General may appoint a person to act as Clerk of Shipping Agreements during the absence or until the filling of the vacancy, as the case may be.

(3) The Clerk, and any staff necessary to assist him, shall be persons employed under the *Public Service Act 1922-1973*.

116. (1) An agreement made before the commencing date that is, on that date, an agreement to which this Part applies becomes subject to filing on that date. Agreements subject to filing.

(2) An agreement made on or after that date that is, when made, an agreement to which this Part applies becomes subject to filing upon the making of the agreement.

(3) An agreement to which this Part applies, whether made before or after that date, that becomes subject to filing at a time after the making of the agreement, being a time on or after the commencing date, becomes subject to filing at that time.

117. (1) Where a conference agreement has become subject to filing, particulars of the agreement, in accordance with this section and verified as required by this section, shall be furnished to the Clerk within the period of 30 days after the date on which the agreement became subject to filing. Particulars to be furnished of certain agreements, variations and determinations.

(2) In the case of a conference agreement that becomes subject to filing on a date after the date of making of the agreement, the particulars required to be furnished are particulars of the agreement as varied, whether in respect of the parties or in respect of the terms, by any variations made on or before the date on which the agreement becomes subject to filing.

(3) The duty to furnish particulars under this section in respect of a conference agreement that has become subject to filing is not affected by any subsequent variation or determination of the agreement and if, at any time after a conference agreement becomes subject to filing, the agreement is varied, whether in respect of the parties or in respect of the terms, or is determined otherwise than by effluxion of time, then, except as otherwise prescribed, particulars of the variation or determination, verified as required by this section, shall be furnished to the Clerk within the period of 30 days after the day on which the variation or determination occurs.

(4) The requirements of this section may be complied with—

- (a) in respect of an agreement—by any party to the agreement; or
- (b) in respect of a variation or determination of an agreement—by any person who was a party to the agreement immediately

before, or is a party immediately after, the variation or determination.

(5) Subject to the regulations, the particulars to be furnished of an agreement are—

- (a) the names of the parties to the agreement and the date of the agreement; and
- (b) the whole of the terms of the agreement, whether or not relating to overseas cargo shipping.

(6) The particulars to be furnished of an agreement, or of a variation or determination of an agreement, shall be furnished—

- (a) in so far as the particulars are contained in an instrument in writing by which the agreement, variation or determination was, in whole or in part, made or effected—by lodging with the Clerk a true copy of that instrument; and
- (b) in so far as the particulars are not contained in such an instrument, whether or not there is such an instrument—by lodging with the Clerk a memorandum of those particulars,

verified as a true copy or a full and correct memorandum, as the case requires, by statutory declaration of the person by whom the particulars are furnished or of a competent person authorized by that person.

(7) The regulations may provide for excluding any particulars from the particulars required to be furnished under this Division.

(8) A person referred to in sub-section (4) may, before the expiration of the time within which, but for this sub-section, the particulars are required to be furnished, apply in writing to the Minister for an extension of that time and, where such an application is made, the time within which the particulars are required to be furnished shall be taken not to expire—

- (a) whether or not the application is granted—before the expiration of 14 days after the date on which the Minister informs the applicant in writing of his decision on the application; or
- (b) if the application is granted—before the expiration of the period of the extension granted by the Minister.

Failure to furnish particulars to be an offence.

118. (1) If the requirements of section 117 are not complied with in respect of an agreement, each person who was a party to the agreement when it became subject to filing is guilty of an offence.

(2) If the requirements of section 117 are not complied with in respect of a variation or determination of an agreement, each person who was a party to the agreement immediately before, or immediately after, the variation or determination is guilty of an offence.

(3) The penalty for an offence against this section is a fine not exceeding \$2,000.

(4) It is a defence to a prosecution for an offence against this section if the person charged satisfies the Court that—

- (a) he did not, within the time allowed for the furnishing of the particulars, advert to the question whether particulars of the agreement, variation or determination were required by this Act to be furnished to the Clerk and his failure to advert to that question was not attributable to a desire to avoid, or to indifference to, his obligations;
- (b) he reasonably relied on another party to ensure that the required particulars were duly furnished; or
- (c) he believed in good faith that particulars of the agreement, variation or determination furnished to the Clerk by him within the time allowed complied with the requirements of this Act,

and that either the particulars, or the necessary further or amended particulars, were duly furnished, except as regards time, by himself or another party before the institution of the prosecution or he did not know or suspect, before the institution of the prosecution, that there had been default in compliance with the requirements of this Act with respect to the furnishing to the Clerk of particulars of the agreement, variation or determination.

119. (1) Where particulars of an agreement, or of a variation or determination of an agreement, are duly furnished to the Clerk in accordance with this Division, or where those particulars are duly furnished except that the time allowed for furnishing the particulars has expired, the Clerk shall file the document containing the particulars in a repository of such documents to be kept by him. Clerk to file particulars.

(2) The Clerk shall keep such records and indexes of documents received by him under this Division as he thinks necessary or as the Minister directs.

120. In proceedings under this Act before the Court, other than proceedings for an offence against a provision of this Division, particulars of an agreement, or of a variation or determination of an agreement, as appearing from a document filed by the Clerk are *prima facie* evidence of the agreement, variation or determination. Filed documents to be evidence.

121. (1) This section applies to every person who is or has been the Clerk or a member of the staff assisting the Clerk. Secrecy.

(2) Subject to this section, a person to whom this section applies shall not, either directly or indirectly, except in the performance of a duty under or in connexion with this Part—

- (a) make a record of, or divulge or communicate to any person, any information concerning the affairs of another person acquired by him by reason of his office or employment under or for the purposes of this Part; or

- (b) produce to any person a document furnished in pursuance of this Division.

Penalty: \$1,000 or imprisonment for 3 months.

(3) A person to whom this section applies shall not be required to produce in a court any document relating to the affairs of another person of which he has the custody, or to which he has access, by virtue of his office or employment under or for the purposes of this Part, or to divulge or communicate to any court any information concerning the affairs of another person obtained by him by reason of any such office or employment, unless it is necessary to do so for the purposes of, or of a prosecution under or arising out of, this Part.

(4) This section does not apply in relation to—

- (a) the communication of information to, or the production of a document to, the Tribunal for the purposes of an inquiry under this Part, the Minister or an officer acting on behalf of, and with the authority of, the Minister; or
- (b) the communication or production to a person of, or of information or documents concerning, particulars furnished to the Clerk of an agreement to which, according to those particulars, that person is or has been a party.

(5) For the purposes of paragraph (4) (b), the communication or production of any matter or document to a person authorized by writing under the common seal of a body corporate to represent the body corporate for the purposes of this section shall be deemed to be communication or production to that body corporate.

(6) In this section—

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“produce” includes permit access to and “production” has a corresponding meaning.

Division 3—Powers in relation to Conference Agreements

Minister may request undertakings.

122. (1) The Minister may serve on each of the parties to a conference agreement who carry on outwards cargo shipping to which the agreement relates a notice in accordance with this section.

(2) A notice to a party under sub-section (1) shall request the party to give to the Minister, not later than a date specified in the notice, an undertaking in writing executed by the party that, whenever the party is reasonably requested by the designated shipper body, by notice in writing, to take part in negotiations with that shipper body with regard to arrangements for, and the terms and conditions that are to be applicable to, outwards cargo shipping to which the conference agreement relates—

- (a) the party will take part in those negotiations and will have due regard to matters and considerations raised, and representations made, by the designated shipper body in the course of the negotiations;
- (b) the party will cause an officer designated from time to time by the Minister to be furnished with such information as the officer requires concerning the progress of the negotiations, will permit that officer to be present at any meetings in the course of the negotiations and will give consideration to any suggestions that he may make; and
- (c) if the designated shipper body requests the party to make available for the purposes of the negotiations any information that is reasonably necessary for those purposes and itself makes available for those purposes any such information that the parties or any of them request to be made available, the party will make available the information requested by the shipper body.

(3) An undertaking for the purposes of this section shall be deemed to be duly given notwithstanding that it contains qualifications or exceptions if they were permitted by the notice requesting the undertaking or have been accepted by the Minister by notice in writing to the party.

(4) A person on whom a notice has been served under sub-section (1) may, before the date specified in the notice, apply in writing to the Minister for an extension of the time for compliance with the notice and, where such an application is made, the time within which the notice is to be complied with shall be taken not to expire—

- (a) whether or not the application is granted—before the expiration of 14 days after the date on which the Minister informs the applicant in writing of his decision on the application; or
- (b) if the application is granted—before the expiration of the period of the extension granted by the Minister.

(5) The designated officer may appoint an officer or officers to be his deputy or deputies and any undertaking given for the purposes of this section by a party to a conference agreement shall be deemed to include an undertaking that the party will—

- (a) cause a deputy so appointed to be furnished with such information as the deputy requires concerning the progress of the negotiations with the designated shipper body; and
- (b) in the event of the absence of the designated officer from a meeting in the course of the negotiations, permit the deputy, or, if there is more than one deputy, one of the deputies, to be present at that meeting and give consideration to any suggestions that he may make.

(6) In this section—

“designated officer” means the officer designated by the Minister under paragraph (2) (b);

“designated shipper body” means the shipper body designated by the Minister in the notice requesting the undertaking.

Disapproval
of
agreements.

123. (1) The Governor-General may, by order, disapprove a conference agreement, whether or not particulars of the agreement have been furnished to the Clerk, on a ground specified in the order, being one of the following grounds:—

- (a) that a party to the agreement has, without reasonable excuse, failed to comply with section 114;
- (b) that there has been a failure to comply with a request for the giving of an undertaking made by the Minister under section 122 in relation to the agreement;
- (c) that the Governor-General is satisfied, after consideration of a report to the Minister by the Tribunal, that—
 - (i) there has been a failure to comply with an undertaking given under section 122 in relation to the agreement;
 - (ii) the agreement, or the manner in which it is being interpreted or applied by the parties, or the conduct of, or the provision of facilities by, the parties in relation to outwards cargo shipping to which the agreement relates does not have due regard to the need for services by way of overseas cargo shipping to be efficient, economical and adequate; or
 - (iii) the agreement, or the manner in which it is being interpreted or applied by the parties, or the conduct of the parties in relation to matters to which the agreement relates, is preventing a person from, or hindering a person in, engaging efficiently, to an extent that is reasonable, in overseas cargo shipping in relation to which he is an Australian flag shipping operator.

(2) For the purposes of sub-paragraph (1) (c) (ii), consideration shall be given to the need to ensure the continuing provision of services by way of overseas cargo shipping and, in that connexion, the conditions under which, on a long term view, shipowners may reasonably be expected to provide such services.

Effect of
disapproval.

124. (1) Where an agreement is disapproved under this Division, the agreement becomes, upon the date on which the order of disapproval takes effect, unenforceable as regards observance of the agreement, so far as it relates to outwards cargo shipping, on and after that date, but a transaction entered into, whether before or after the order takes effect, in pursuance of the agreement is not illegal or unenforceable by reason only of the making of the order.

- (2) A party to a disapproved agreement shall not—
- (a) do any act or thing in pursuance of, or enforce or purport to enforce, the agreement (including the agreement as varied by any later agreement) so far as it relates to outwards cargo shipping;
 - (b) enter into any other conference agreement (whether with the same parties or with other parties) that relates, in whole or in part, to the carriage of goods from Australia to a place outside Australia that is a place to the carriage of goods to which the disapproved agreement related; or
 - (c) do any act or thing in pursuance of, or enforce or purport to enforce, an agreement referred to in paragraph (b).

Penalty: \$50,000.

125. (1) Where, in his discretion, he considers it desirable to do so, the Governor-General may—

- (a) by order, revoke an order disapproving a conference agreement; or
- (b) approve the entering into by one or more of the parties to a disapproved agreement of another conference agreement, whether with or without parties who were not parties to the disapproved agreement.

Reinstatement of disapproved agreement or approval of substituted agreement.

(2) Paragraphs 124 (2) (b) and (c) do not apply in relation to a conference agreement in respect of which an approval has been given under this section and which has not been disapproved under this Division.

126. The Court is empowered, on the application of the Minister, to grant an injunction restraining a person who has been convicted of an offence against section 124 from further contravening that section.

Injunctions.

127. An order under this Division—

- (a) shall be published in the *Gazette*; and
- (b) takes effect on the date of publication or on such later date as is fixed by the order.

Publication and commencement of orders.

Division 4—Powers in relation to Individual Shipowners

128. (1) Subject to sub-section (2), the Minister may serve on a shipowner a notice requesting the shipowner to give to the Minister, not later than a date specified in the notice, an undertaking in writing executed by the shipowner that, whenever the shipowner is reasonably requested by the designated shipper body, by notice in writing, to take part in negotiations with that shipper body with regard to arrangements

Minister may request undertakings.

for, and the terms and conditions that are to be applicable to, outwards cargo shipping to which the notice relates—

- (a) the shipowner will take part in those negotiations and will have due regard to matters and considerations raised, and representations made, by the designated shipper body in the course of the negotiations;
- (b) the shipowner will cause an officer designated from time to time by the Minister to be furnished with such information as the officer requires concerning the progress of the negotiations, will permit that officer to be present at any meetings in the course of the negotiations and will give consideration to any suggestions that he may make; and
- (c) if the designated shipper body requests the shipowner to make available for the purposes of the negotiations any information that is reasonably necessary for those purposes and itself makes available for those purposes any such information that the shipowner requests to be made available, the shipowner will make available the information requested by the shipper body.

(2) A notice under sub-section (1) requesting an undertaking shall be expressed to relate to outwards cargo shipping by the shipowner to a specified port or to specified ports, not being outwards cargo shipping that is within the operation of a conference agreement, not being a disapproved agreement, particulars of which have been furnished under Division 2.

(3) An undertaking for the purposes of this section shall be deemed to be duly given notwithstanding that it contains qualifications or exceptions if they were permitted by the notice requesting the undertaking or have been accepted by the Minister by notice in writing to the shipowner.

(4) A shipowner on whom a notice has been served under sub-section (1) may, before the date specified in the notice, apply in writing to the Minister for an extension of the time for compliance with the notice and, where such an application is made, the time within which the notice is to be complied with shall be taken not to expire—

- (a) whether or not the application is granted—before the expiration of 14 days after the date on which the Minister informs the applicant in writing of his decision on the application; or
- (b) if the application is granted—before the expiration of the period of the extension granted by the Minister.

(5) The designated officer may appoint an officer or officers to be his deputy or deputies and any undertaking given for the purposes of this section by a shipowner shall be deemed to include an undertaking that the shipowner will—

- (a) cause a deputy so appointed to be furnished with such information as the deputy requires concerning the progress of the negotiations with the designated shipper body; and
- (b) in the event of the absence of the designated officer from a meeting in the course of the negotiations, permit the deputy, or, if there is more than one deputy, one of the deputies, to be present at that meeting and give consideration to any suggestions that he may make.

(6) In this section—

“designated officer” means the officer designated by the Minister under paragraph (1) (b);

“designated shipper body” means the shipper body designated by the Minister in the notice requesting the undertaking.

129. (1) Subject to this section, the Governor-General may, by order, declare a shipowner to be, in relation to outwards cargo shipping to a port or the ports specified in the order (in this section referred to as the “relevant shipping”), a shipowner to whom section 130 applies. Declaration
of
shipowners.

(2) The Governor-General shall not make such an order except on a ground specified in the order, being one of the following grounds:—

- (a) that the shipowner has, without reasonable excuse, failed to comply with section 114;
- (b) that the shipowner has failed to comply with a request for the giving of an undertaking made by the Minister under section 128 in relation to the relevant shipping;
- (c) that the Governor-General is satisfied, after consideration of a report to the Minister by the Tribunal, that—
 - (i) the shipowner has failed to comply with an undertaking given under section 128 in relation to the relevant shipping;
 - (ii) the conduct of, or provision of facilities by, the shipowner in relation to the relevant shipping does not have due regard to the need for services by way of overseas cargo shipping to be efficient, economical and adequate;
 - (iii) the conduct of the shipowner in relation to overseas cargo shipping between Australia and a port or the ports to be specified in the order is preventing a person from, or hindering a person in, engaging efficiently, to an extent that is reasonable, in overseas cargo shipping in relation to which he is an Australian flag shipping operator; or
 - (iv) a conference agreement to which the shipowner was a party, being an agreement that related in whole or in part to the relevant shipping, has been disapproved under this Part and the disapproval has not been revoked.

(3) For the purposes of sub-paragraph (2) (c) (ii), consideration shall be given to the need to ensure the continuing provision of services, by way of overseas cargo shipping and, in that connexion, the conditions under which, on a long term view, shipowners may reasonably be expected to provide such services.

(4) Where, in his discretion, he considers it desirable to do so, the Governor-General may, by order, revoke an order under sub-section (1).

(5) An order under this section—

(a) shall be published in the *Gazette*; and

(b) takes effect on the date of publication or on such later date as is fixed by the order.

Prohibitions
applicable to
declared
shipowner.

130. A declared shipowner shall not, in respect of outwards cargo shipping to a port specified in the order by virtue of which he is a declared shipowner—

(a) enter into a contract, or follow a practice, under which a shipper—

(i) is subject to restrictions with respect to, or is subject to any detriment by reason of or in the event of, his giving patronage to another shipowner; or

(ii) obtains or may obtain advantageous freight rates on condition that, or by reason that, he gives all or a part of his patronage to the shipowner, or to two or more particular shipowners;

(b) pay or allow, or make an agreement to pay or allow, to a shipper a deferred rebate, that is to say, a rebate of portion of any freight money upon fulfilment by the shipper of a condition with respect to confining patronage to the shipowner or to two or more particular shipowners;

(c) with the object of substantially damaging the business of another shipowner or preventing another shipowner from entering into competition with him, engage in freight-cutting, or use a vessel, whether alone or in conjunction with any other shipowner, to forestall the first-mentioned shipowner in the obtaining of cargoes; or

(d) retaliate, or threaten to retaliate, against a shipper for giving patronage to another shipowner—

(i) by refusing, or threatening to refuse, to carry goods of the shipper or to carry goods of the shipper otherwise than on terms disadvantageous to the shipper; or

(ii) by resorting to other discriminatory measures.

Penalty: \$50,000.

131. The Court is empowered, on the application of the Minister, to grant an injunction restraining a person who has been convicted of an offence against section 130 from further contravening that section. Injunctions.

Division 5—General

132. (1) The Minister may refer to the Tribunal for inquiry and report any matter relevant to the exercise of the power of the Governor-General to make an order upon a ground specified in paragraph 123 (1) (c) or 129 (2) (c), and the Tribunal shall hold an inquiry, and make a report accordingly. Minister may refer certain matters to Tribunal.

(2) For the purposes of an inquiry under this section—

- (a) the Tribunal shall, subject to section 43, be constituted by a Division of the Tribunal consisting of a presidential member and two members who are not presidential members;
- (b) section 43 applies as if the holding of the inquiry, and the making of a report on the inquiry, were the hearing and determining of proceedings; and
- (c) sections 109 and 110 do not apply.

133. The Minister shall not refer a matter to the Tribunal under section 132 unless he has first carried on, or endeavoured to carry on, either personally or through officers acting on his behalf and with his authority, consultations with the parties to the conference agreement concerned who carry on overseas cargo shipping, or with the shipowner concerned, as the case requires, with a view to securing such undertaking or action by those parties or by that shipowner as will render the proposed reference unnecessary. Minister to consult with shipowners before making reference.

134. (1) In an inquiry under this Division in respect of a matter arising under section 123, any party to the conference agreement concerned is entitled to be represented. Representation.

(2) In an inquiry under this Division in respect of a matter arising under section 129, the shipowner concerned is entitled to be represented.

(3) In an inquiry under this Division—

- (a) the Minister is entitled to be represented;
- (b) if the Tribunal is satisfied that a shipper body has a sufficient interest in the inquiry, the Tribunal shall grant to the shipper body leave to be represented; and
- (c) the Tribunal may grant to any person appearing to it to have a sufficient interest in the inquiry leave to be represented.

(4) The representation of a person or body in an inquiry under this Division shall be—

- (a) by a barrister or a solicitor of the Supreme Court of a State or Territory or of the High Court; or

(b) by a person approved by the Tribunal.

Undertakings
to Tribunal.

135. (1) In connexion with an inquiry under this Division, the Tribunal may receive an undertaking to the Tribunal by a shipowner with respect to a matter appearing to the Tribunal to be relevant to the operation of this Part.

(2) The Minister may withdraw a reference of a matter to the Tribunal under this Division upon the giving of an undertaking under subsection (1) to the satisfaction of the Minister.

(3) An undertaking to the Tribunal under this section shall not, unless the contrary intention appears expressly from the terms of the undertaking, be construed as an admission as to any matter.

(4) The Tribunal shall record in writing an undertaking received or given for the purposes of this section and the writing shall be placed in the records of the Tribunal.

Failure to
comply with
undertaking
to be
contempt of
Tribunal.

136. A person who—

- (a) fails to comply with an undertaking given to the Tribunal under this Part;
- (b) aids, abets, counsels or procures, or is in any way directly or indirectly knowingly concerned in, or party to, a failure to comply with such an undertaking; or
- (c) does an act or thing with the intention of evading or frustrating such an undertaking or causing or encouraging the evasion or frustration of such an undertaking,

is guilty of a contempt of the Tribunal.

Punishment
of contempt.

137. (1) A contempt of the Tribunal referred to in section 136 is punishable by the Court as if it were a contempt of the Court and jurisdiction is conferred on the Court to hear and determine proceedings in respect of such a contempt.

(2) Subject to this section, a proceeding in respect of such a contempt shall be instituted, carried on, heard and determined in accordance with the laws applicable to and in relation to the punishment of contempts of the Court.

(3) In so far as any such law is incapable of application, the Court may give a direction as to the manner of instituting, carrying on, hearing or determining a proceeding referred to in sub-section (2).

(4) For the purposes of proceedings under this section, the Court shall be constituted by not less than three Judges.

(5) Proceedings before the Court in accordance with this section shall not be instituted except with the consent in writing of the Minister.

(6) A reference in a law of Australia to an offence against a law of Australia shall be read as including a reference to a contempt referred to in this Part.

138. Where a person enters into, or purports to enter into, a transaction that involves a failure by him to comply with an undertaking given to the Tribunal, a person who is not bound by the undertaking has the same rights and title, whether as a party to the transaction or as a person claiming directly or indirectly under a party to the transaction, as he would have had if the transaction had not involved such a failure. Protection of certain persons.

139. (1) Where the Tribunal has made a report to the Minister under this Division, the Minister shall— Publication of reports of Tribunal.

- (a) upon the expiration of a period of 60 days after the date on which he received the report; or
- (b) if, before the expiration of that period, the Governor-General makes an order after consideration of the report, immediately after the making of the order,

direct the Registrar to make the report public.

(2) After a direction has been given under sub-section (1) in respect of a report, a person may, on payment of the prescribed fee (if any)—

- (a) inspect a copy of the report at the office of the Registrar; or
- (b) obtain a copy of the report certified to be a true copy under the hand of the Registrar or of a Deputy Registrar.

(3) Section 165 does not apply in relation to a report of the Tribunal under this Division.

140. (1) For the purpose of proceedings before the Court for an offence against this Part, the references in paragraph 163 (4) (b) to the Attorney-General shall be read as references to the Minister. Institution of prosecutions.

(2) Proceedings before the Court in respect of a contempt of the Court in relation to an injunction under this Part shall not be instituted except with the consent in writing of the Minister.

141. (1) A person who aids, abets, counsels or procures, or is in any way directly or indirectly knowingly concerned in, or party to— Aiding and abetting.

- (a) the commission of an offence against this Part; or
- (b) the doing of an act or thing outside Australia that would, if done within Australia, be an offence against this Part,

shall be deemed to have committed the offence and is punishable accordingly.

(2) The references in sub-section (1) to an offence against this Part shall be read as including references to a contempt of the Court in relation to an injunction under this Part.

Protection of certain persons.

142. Where a person enters into, or purports to enter into, a contract of carriage or other transaction that involves an offence by him against this Part or a breach by him of an injunction of the Court under this Part, a person who was not guilty of such an offence or breach in relation to the transaction has the same rights, whether as a party to the transaction or as a person claiming directly or indirectly under a party to the transaction, as he would have had if the contract or transaction had not involved such an offence or breach.

Constitution of Court.

143. For the purposes of proceedings in respect of a contempt of the Court consisting of failure to comply with an injunction under this Part, the Court shall be constituted by not less than three Judges.

Division 6—Civil Remedies in relation to Overseas Cargo Shipping

Actions for damages.

144. (1) Subject to this section, a shipper, shipowner or other person who suffers loss or damage by an act of another person done in contravention of section 124 or 130 may recover the amount of the loss or damage by action against that other person.

(2) Jurisdiction is conferred on the Court to hear and determine actions under this section and that jurisdiction is exclusive of the jurisdiction of any other court, other than the jurisdiction of the High Court under section 75 of the Constitution.

Deferment of action on application of Minister.

145. The court in which an action under this Division is instituted may, on the application of the Minister, defer or adjourn the hearing of the action where it is satisfied that it is in the interests of justice to do so having regard to any pending or possible prosecution or proceedings for an injunction or for contempt of the Court arising out of disobedience to an injunction.

Findings in contempt proceedings to be evidence.

146. In proceedings against a person under this Division, a finding of a fact by the Court in proceedings under, or arising out of, this Part in which—

- (a) that person has been found guilty of an offence against a provision of Division 3 or of Division 4;
- (b) an injunction has been granted against that person; or
- (c) that person has been found guilty of contempt of the Court,

is *prima facie* evidence of the fact and the finding may be proved by production of a document under the seal of the Court from which the finding appears.

PART XI—TRANSITIONAL

147. (1) A person named in an instrument of appointment to an office made under a provision of the *Restrictive Trade Practices Act 1971* or of that Act as amended, but not including a person who had ceased to hold his office before the commencing date, shall, if a corresponding office exists under this Act, be deemed to have been appointed to that corresponding office and holds office for the remainder of the period of his appointment under the *Restrictive Trade Practices Act 1971-1973* as if appointed under this Act.

Continuation of certain appointments and proceedings.

(2) Any proceedings instituted by the Commissioner of Trade Practices before the commencing date under section 102 of the *Restrictive Trade Practices Act 1971-1973* have effect as if they had been instituted by the Commission under section 80 of this Act on that date and everything done in relation to those proceedings before that date has effect as if it had been done under this Act or the regulations, as the case requires.

148. The Commission is entitled to obtain and retain custody of—

- (a) any document or copy of, or extract from, a document retained immediately before the commencing date by the Commissioner of Trade Practices under section 148 of the *Restrictive Trade Practices Act 1971-1973*;
- (b) any document furnished under section 42 of the *Restrictive Trade Practices Act 1971* or of that Act as amended;
- (c) any document produced under section 166 of the *Restrictive Trade Practices Act 1971* or of that Act as amended and retained immediately before the commencing date by the Commissioner of Trade Practices under section 167 of the *Restrictive Trade Practices Act 1971-1973*; and
- (d) any copy of, or extract from, a document made or taken under section 167 of the *Restrictive Trade Practices Act 1971* or of that Act as amended.

Commission may retain certain documents.

149. (1) Subject to sub-section (3), a member of the Commission or a member of the staff assisting the Commission shall not, either directly or indirectly, except in the performance of a duty under or in connexion with this Act—

Secrecy in relation to documents furnished under previous law.

- (a) make a record of, or divulge or communicate to any person, any information concerning the affairs of any other person acquired from—
 - (i) a document, copy or extract referred to in section 148; or
 - (ii) a document acquired by any person by reason of any office or employment under or for the purposes of the *Trade Practices Act 1965*, or that Act as amended, or the *Restrictive Trade Practices Act 1971*, or that Act as amended; or
- (b) produce to any person such a document, copy or extract.

Penalty: \$1,000 or imprisonment for 3 months.

(2) A member of the Commission or a member of the staff assisting the Commission shall not be required to produce in a court a document, copy or extract referred to in sub-section (1), or to divulge or communicate to any court any information concerning the affairs of any other person acquired by him from such a document, copy or extract.

(3) Nothing in sub-section (1) or (2) applies in relation to—

- (a) the communication of information to, or the production of a document, copy or extract to, the Attorney-General or an officer acting on behalf of, and with the authority of, the Attorney-General; or
- (b) the communication or production to a person of, or of information, documents, copies or extracts concerning, particulars of an agreement to which, according to those particulars, that person is or has been a party.

(4) In this section—

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“produce” includes permit access to and “production” has a corresponding meaning.

Certain notices continued.

150. (1) A notice served or deemed to have been served by the Minister under sub-section 108 (1) of the *Restrictive Trade Practices Act 1971* or of that Act as amended shall be deemed to have been served under sub-section 114 (1) of this Act.

(2) A person appointed or deemed to have been appointed under section 108 of the *Restrictive Trade Practices Act 1971* or of that Act as amended as the agent of a shipowner shall be deemed to have been appointed under section 114 of this Act.

(3) An address for service of a shipowner notified or deemed to have been notified under section 108 of the *Restrictive Trade Practices Act 1971* or of that Act as amended shall be deemed to have been notified under section 114 of this Act.

Particulars of agreements continued.

151. It is not necessary for particulars in respect of an agreement furnished under section 90G of the *Trade Practices Act 1965-1966* or of that Act as amended or under section 111 of the *Restrictive Trade Practices Act 1971* or of that Act as amended to be furnished as required by section 117 of this Act and this Act applies to and in relation to particulars so furnished, and to and in relation to the agreement in respect of which they were so furnished, as if the particulars had been furnished under section 117 of this Act.

152. The repository of documents kept under sub-section 113 (1) of the *Restrictive Trade Practices Act* 1971-1973 shall continue as the repository of documents referred to in sub-section 119 (1) of this Act, and documents filed or deemed to have been filed in the first-mentioned repository shall be deemed to have been filed in the second-mentioned repository.

Repository of documents continued.

153. The application of section 121 of this Act extends to information and documents referred to in section 90L of the *Trade Practices Act* 1965-1971 or section 115 of the *Restrictive Trade Practices Act* 1971-1973.

Extension of section 121.

154. (1) A notice served or deemed to have been served by the Minister under section 116 of the *Restrictive Trade Practices Act* 1971 or of that Act as amended shall be deemed to have been served under section 122 of this Act.

Undertakings continued.

(2) An undertaking given or deemed to have been given as requested in a notice referred to in sub-section (1) shall be deemed to have been given as requested in a notice under section 122 of this Act.

PART XII—MISCELLANEOUS

155. (1) Where the Commission, the Chairman or the Deputy Chairman has reason to believe that a person is capable of furnishing information, producing documents or giving evidence relating to a matter that constitutes, or may constitute, a contravention of this Act, a member of the Commission may, by notice in writing served on that person, require that person—

Power of Commission to obtain information, documents and evidence.

- (a) to furnish to the Commission, by writing signed by that person or, in the case of a body corporate, by a competent officer of the body corporate, within the time and in the manner specified in the notice, any such information;
- (b) to produce to the Commission, or to a person specified in the notice acting on its behalf, in accordance with the notice, any such documents; or
- (c) to appear before the Commission at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents.

(2) Where the Commission, the Chairman or the Deputy Chairman has reason to believe that a person has engaged or is engaging in conduct that constitutes, or may constitute, a contravention of this Act, a member of the Commission may, for the purpose of ascertaining by the examination of documents in the possession or control of the person whether the person has engaged or is engaging in that conduct, authorize, by writing signed by the member, a member of the staff assisting the Commission (in this section referred to as an “authorized officer”) to enter any premises, and to inspect any documents in the possession or under the control

of the person and make copies of, or take extracts from, those documents.

(3) The Commission may require the evidence referred to in paragraph (1) (c) to be given on oath or affirmation and for that purpose any member of the Commission may administer an oath or affirmation.

(4) Where—

(a) particulars of an agreement were furnished to the Commissioner of Trade Practices under section 42 of the *Restrictive Trade Practices Act 1971* or of that Act as amended; or

(b) particulars of an agreement were furnished to the Commissioner of Trade Practices under section 42 of the *Trade Practices Act 1965* or of that Act as amended, being particulars that would have been required to be furnished under section 42 of the *Restrictive Trade Practices Act 1971* if that Act had been in force when they were furnished,

and it appears to a member of the Commission that the agreement would, if still in force—

(c) constitute a contract, arrangement or understanding to which section 45 of this Act applies; or

(d) provide for the engaging in conduct that is prohibited by this Act,

the member of the Commission may, by notice in writing served on a person who appeared from those particulars to be a party to the agreement, require that person to inform the Commission, by writing signed by that person or, in the case of a body corporate, by a competent officer of the body corporate, within the time and in the manner specified in the notice, whether any action was taken by the parties to the agreement to terminate the agreement and, if so, the nature and full particulars of that action.

(5) A person shall not—

(a) refuse or fail to comply with a notice under this section to the extent that the person is capable of complying with it;

(b) in purported compliance with such a notice, knowingly furnish information or give evidence that is false or misleading; or

(c) obstruct or hinder an authorized officer acting in pursuance of sub-section (2).

Penalty: \$1,000 or imprisonment for 3 months.

(6) The occupier or person in charge of any premises that an authorized officer enters in pursuance of sub-section (2) shall provide the authorized officer with all reasonable facilities and assistance for the effective exercise of his powers under that sub-section.

Penalty: \$1,000 or imprisonment for 3 months.

(7) A person is not excused from furnishing information or producing or permitting the inspection of a document in pursuance of this section on the ground that the information or document may tend to incriminate the person, but the answer by a person to any question asked in a notice under this section or the furnishing by a person of any information in pursuance of such a notice, or any document produced in pursuance of such a notice or made available to an authorized officer for inspection, is not admissible in evidence against the person—

- (a) in the case of a person not being a body corporate—in any criminal proceedings other than proceedings under this section; or
- (b) in the case of a body corporate—in any criminal proceedings other than proceedings under this Act.

156. (1) A member of the Commission, or a person authorized by a member of the Commission, may inspect a document produced in pursuance of a notice under section 155 and may make copies of, or take extracts from, the document. Inspection of documents by Commission.

(2) The Commission may, for the purposes of this Act, take, and retain for as long as is necessary for those purposes, possession of a document produced in pursuance of a notice under section 155 but the person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by a member of the Commission under his hand to be a true copy and the certified copy shall be received in all courts as evidence as if it were the original.

(3) Until such a certified copy is supplied, the Commission shall, at such times and places as it thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorized by that person, to inspect and make copies of or take extracts from the document.

157. (1) Where a corporation makes an application to the Commission for an authorization, the Commission gives a notice under section 91 (4) to a corporation to which an authorization has been given or proceedings have been instituted against a corporation under section 77, the Commission shall, at the request of the corporation, furnish to the corporation— Disclosure of documents by Commission.

- (a) a copy of every document that has been furnished to, or obtained by, the Commission in connexion with the matter to which the application, notice or proceedings relates and tends to establish the case of the corporation; and
- (b) a copy of any other document in the possession of the Commission that comes to the attention of the Commission in connexion with the matter to which the application, notice or proceedings relates and tends to establish the case of the corporation,

not being a document obtained from the corporation or prepared by an officer or professional adviser of the Commission.

(2) If the Commission does not comply with a request under sub-section (1), the Court shall, subject to sub-section (3), upon application by the corporation which made the request, make an order directing the Commission to comply with the request.

(3) The Court may refuse to make an order under sub-section (2) in respect of a document or part of a document if the Court considers it inappropriate to make the order by reason that the disclosure of the contents of the document or part of the document would prejudice any person, or for any other reason.

(4) Before the Court gives a decision on an application under sub-section (2), the Court may require any documents to be produced to it for inspection.

(5) An order under this section may be expressed to be subject to conditions specified in the order.

Protection of
members of
Tribunal or
Commission,
barristers
and
witnesses.

158. (1) A member of the Tribunal or a member of the Commission has, in the performance of his duty as a member, the same protection and immunity as a Justice of the High Court.

(2) A barrister, solicitor or other person appearing before the Tribunal or the Commission on behalf of a person has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

(3) Subject to this Act, a person summoned to attend or appearing before the Tribunal or the Commission as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, in any civil or criminal proceedings as a witness in proceedings in the High Court.

Incriminating
answers.

159. (1) A person appearing before the Tribunal or the Commission to give evidence or produce documents (including a person appearing before the Commission under section 155) is not excused from answering a question, or producing a document, on the ground that the answer to the question, or the document, may tend to incriminate him.

(2) Evidence given by a person before the Tribunal or the Commission is not admissible against him in any criminal proceedings other than proceedings for offences against this Part.

Failure of
witness to
attend.

160. A person served, as prescribed, with a summons to appear as a witness before the Tribunal or the Commission shall not, without reasonable excuse—

(a) fail to attend as required by the summons; or

- (b) fail to appear and report himself from day to day unless excused, or released from further attendance, by a member of the Tribunal or a member of the Commission, as the case may be.

Penalty: \$1,000 or imprisonment for 3 months.

161. A person appearing as a witness before the Tribunal or the Commission shall not, without reasonable excuse—

Refusal to be sworn or to answer questions.

- (a) refuse or fail to be sworn or to make an affirmation;
 (b) refuse or fail to answer a question that he is required to answer by the member presiding at the proceedings; or
 (c) refuse or fail to produce a document that he was required to produce by a summons under this Act served on him as prescribed.

Penalty: \$1,000 or imprisonment for 3 months.

162. A person shall not—

Contempt of Tribunal or Commission.

- (a) insult or disturb a member of the Tribunal or a member of the Commission in the exercise of his powers or functions as a member;
 (b) interrupt the proceedings of the Tribunal or of the Commission;
 (c) use insulting language towards a member of the Tribunal or a member of the Commission;
 (d) create a disturbance or take part in creating or continuing a disturbance in or near a place where the Tribunal is sitting or the Commission is holding a public hearing; or
 (e) do any other act or thing that would, if the Tribunal or Commission were a court of record, constitute a contempt of that court.

Penalty: \$1,000 or imprisonment for 3 months.

163. (1) Prosecutions for offences against this Act shall be brought only in the Court. Prosecutions.

(2) Jurisdiction is conferred on the Court to hear and determine prosecutions under this Act.

(3) The jurisdiction of the Court in respect of an offence against a provision of Division 3 or 4 of Part X shall be exercised by not less than 3 Judges.

(4) Proceedings before the Court in accordance with this section—

- (a) may be instituted by summons upon information; and
 (b) shall not be instituted except with the consent in writing of the Attorney-General or of a person authorized by the Attorney-General, by writing under his hand, to give such consents.

(5) A prosecution for an offence against section 118 may be commenced at any time after the commission of the offence.

Proceedings
by
Commission
to be in its
official
name.

164. Where this Act provides that the Commission may make an application to, or institute any other proceeding in, a court, the Commission may make that application or institute that proceeding in the official name of the Commission.

Inspection
of,
furnishing of
copies of,
and evidence
of,
documents.

165. (1) A person may, on application in accordance with the regulations and on payment of the prescribed fee (if any)—

- (a) inspect any document contained in the register kept under sub-section 89 (3) or 95 (1); and
- (b) obtain a copy of such a document (including, where the person so requests, a copy certified to be a true copy under the hand of a person authorized by the Commission to certify such copies).

(2) Subject to sub-section (3) and to any direction under sub-section 106 (2), a person may, on application in accordance with the regulations and on payment of the prescribed fee (if any)—

- (a) inspect the document recording a determination of the Tribunal or any document furnished to, or recorded in the records of, the Tribunal in pursuance of this Act or the regulations; and
- (b) obtain a copy of such a document (including, where the person so requests, a copy certified to be a true copy under the hand of the Registrar or of a Deputy Registrar).

(3) Unless the Tribunal in a particular case otherwise directs, sub-section (2) does not apply in relation to a document furnished to the Tribunal if the person by whom the document was furnished claims, as prescribed, that the document contains matter of a confidential nature.

(4) A copy of a determination of the Commission, certified to be a true copy by a person authorized by the Commission to certify copies of determinations of the Commission, shall be received in all courts as evidence of the determination.

(5) A document purporting to be a copy of a determination of the Commission and to be certified to be a true copy in accordance with sub-section (4) shall, unless the contrary is established, be deemed to be such a copy and to be so certified.

(6) A copy of a determination of, or undertaking given to, the Tribunal, certified to be a true copy under the hand of the Registrar or of a Deputy Registrar, shall be received in all courts as evidence of the determination or undertaking.

Certificates
as to
furnishing of
particulars of
agreements.

166. (1) Where particulars of an agreement have been furnished to the Commission for the purposes of paragraph 51 (2) (g), the Commission shall, on application by a party to the agreement, cause to be furnished to the party a certificate signed by a member of the Commission specifying the particulars so furnished and the date on which the particulars were furnished.

(2) A certificate referred to in sub-section (1) shall be received in all courts as evidence that the particulars specified in the certificate were furnished to the Commission on the date so specified.

(3) A person is not entitled to inspect any particulars of an agreement that have been furnished to the Commission for the purposes of paragraph 51 (2) (g), but the Commission may make those particulars available to the Attorney-General or to an officer acting on behalf of, and with the authority of, the Attorney-General or to a court.

167. (1) All courts shall take judicial notice of—

Judicial
notice.

(a) the official signature of any person who holds or has held the office of President, Deputy President, member of the Tribunal, Chairman, Deputy Chairman, member of the Commission, Registrar or Deputy Registrar and of the fact that that person holds or has held that office; and

(b) the official seal of the Tribunal or of the Commission,

if the signature or seal purports to be attached or appended to an official document.

(2) In this section, “court” includes a Federal Court or a court of a State or Territory and all persons authorized by law or by consent of parties to receive evidence.

168. In proceedings under this Act, whether in a court or before the Tribunal or the Commission, it shall be presumed, unless the contrary is established, that bodies corporate are not, or were not at a particular time, related to each other.

Presumption
that bodies
corporate
not related.

169. (1) Jurisdiction expressed to be conferred on the Superior Court of Australia by this Act shall not be deemed to be so conferred before a court of that name is authorized under another Act to exercise jurisdiction.

Temporary
exercise of
jurisdiction
by
Australian
Industrial
Court.

(2) If, at the commencing date, jurisdiction under this Act cannot be exercised by the Superior Court of Australia, then—

(a) until jurisdiction can be so exercised, any action, prosecution or other proceeding under this Act may be instituted in the Australian Industrial Court as if references in this Act to the Superior Court of Australia were references to the Australian Industrial Court;

(b) jurisdiction is conferred on the Australian Industrial Court to hear and determine a proceeding so instituted in that Court and, except in the case of a proceeding referred to in sub-section 137 (4), section 143 or sub-section 163 (3), that jurisdiction may be exercised by a single Judge; and

(c) this Act has effect in relation to a proceeding instituted in the Australian Industrial Court in accordance with this section, or in relation to a finding or order made in such a proceeding, as if

references in this Act to the Court were, except where the context otherwise requires, references to the Australian Industrial Court.

(3) The jurisdiction of the Australian Industrial Court by virtue of this section is exclusive of the jurisdiction of other courts to the extent to which the jurisdiction of the Superior Court of Australia under this Act is expressed to be so exclusive.

Legal and
financial
assistance.

170. (1) A person—

- (a) who has instituted, or proposes to institute, a proceeding before the Commission or the Tribunal, or a proceeding before the Court under Part VI;
- (b) who is entitled to participate, or has been permitted to intervene, in a proceeding before the Commission or the Tribunal; or
- (c) against whom a proceeding before the Court has been instituted under Part VI,

may apply to the Attorney-General for a grant of assistance under this section in respect of the proceeding.

(2) Where an application is made by a person under sub-section (1), the Attorney-General, or an officer of the Australian Public Service authorized in writing by the Attorney-General, may, if he is satisfied that it would involve hardship to that person to refuse the application and that, in all the circumstances, it is reasonable that the application should be granted, authorize the grant by Australia to the person, either unconditionally or subject to such conditions as the Attorney-General or officer determines, such legal or financial assistance in relation to the proceeding as the Attorney-General or officer determines.

(3) In this section—

- (a) a reference to a proceeding before the Commission is a reference to a proceeding in relation to an application for, or in relation to the revocation of, an authorization; and
- (b) a reference to a proceeding before the Tribunal is a reference to an application to the Tribunal for a review of a determination by the Commission.

Annual
report by
Commission.

171. The Commission shall, within 60 days after each year ending on 30 June, furnish to the Attorney-General, for presentation to the Parliament, a report with respect to its operations in that year.

Regulations.

172. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, prescribing—

- (a) matters in connexion with the procedure of the Tribunal and the Commission;

- (b) the fees and expenses of witnesses in proceedings before the Tribunal and the Commission; and
- (c) matters for and in relation to the costs, if any, that may be awarded by the Court in proceedings before the Court under this Act.

(2) The regulations may provide that all or any of the provisions of this Act shall not apply to or in relation to conduct engaged in by a specified organization or body that performs functions in relation to the marketing of primary products.

(3) The regulations may provide that all or any of the provisions of this Act are not to apply in respect of a prescribed contract or proposed contract, contracts included in a prescribed class of contracts, or prescribed conduct, being a contract, proposed contract or class of contracts made, or conduct engaged in, in pursuance of or for the purposes of a specified agreement, arrangement or understanding between the Government of Australia and the Government of a country outside Australia.

NOTE

1. Act No. 51, 1974; assented to 24 August 1974.