



A New Tax System (Trade Practices Amendment) Act 1999

No. 61, 1999



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An Act to amend the *Trade Practices Act 1974* in connection with the implementation of A New Tax System

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A New Tax System (Trade Practices Amendment) Act 1999

No. 61, 1999

An Act to amend the *Trade Practices Act 1974* in connection with the implementation of A New Tax System

[Assented to 8 July 1999]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *A New Tax System (Trade Practices Amendment) Act 1999*.

2 Commencement

(1) This Act commences, or is taken to have commenced:

-
- (a) after all the Acts listed in subsection (2) have received the Royal Assent; and
 - (b) on the day after the last day on which any of those Acts received the Royal Assent.
- (2) These are the Acts:
- (a) the *A New Tax System (Goods and Services Tax) Act 1999*;
 - (b) the *A New Tax System (Goods and Services Tax Imposition—Excise) Act 1999*;
 - (c) the *A New Tax System (Goods and Services Tax Imposition—Customs) Act 1999*;
 - (d) the *A New Tax System (Goods and Services Tax Imposition—General) Act 1999*;
 - (e) the *A New Tax System (Goods and Services Tax Administration) Act 1999*.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Trade Practices Act 1974

1 After paragraph 2B(1)(a)

Insert:

(aa) Part VB;

2 Subsection 5(1)

Omit “and Part V (other than Division 1AA)”, substitute “, Part V (other than Division 1AA) and Part VB”.

Note: The heading to section 5 is altered by omitting “**and V**” and substituting “, **V and VB**”.

3 Paragraph 6(2)(b)

Omit “section 75A”, substitute “sections 75A, 75AU, 75AV, 75AW, 75AX and 75AY”.

Note: The heading to section 6 is altered by omitting “**and V**” and substituting “, **V and VB**”.

4 After subsection 6(2A)

Insert:

(2B) So far as subsection (2) relates to Part VB, that subsection has effect in relation to a Part XI~~AA~~ scheme Territory as if the words “within a Territory,” were omitted from subparagraph (2)(b)(iii). For this purpose, a *Part XI~~AA~~ scheme Territory* is a Territory that has a law applying the New Tax System Price Exploitation Code (see Part XI~~AA~~), either with or without modifications, as a law of the Territory.

5 After Part VA

Insert:

Part VB—Price exploitation in relation to A New Tax System

75AT Definitions

In this Part, unless the contrary intention appears:

GST has the same meaning as in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999*.

Note: The operation of the GST Act is affected by the GST Transition Act.

GST implementation date means the day on which the GST Act commences.

GST Transition Act means the *A New Tax System (Goods and Services Tax Transition) Act 1999*.

New Tax System changes means the following:

- (a) the amendment of the *Sales Tax (Exemptions and Classifications) Act 1992* made by the GST Transition Act;
- (b) the ending of sales tax, as provided for in the *A New Tax System (End of Sales Tax) Act 1999*;
- (c) the imposition of GST;
- (d) any other changes (including changes to Commonwealth, State or Territory laws) prescribed by the regulations for the purposes of this definition.

New Tax System transition period means the period:

- (a) starting on the later of 1 July 1999 and the commencement of the *A New Tax System (Trade Practices Amendment) Act 1999*; and
- (b) ending on the day that is 2 years after the GST implementation date.

price, in relation to a supply, includes:

- (a) a charge of any description for the supply; and

- (b) any pecuniary or other benefit, whether direct or indirect, received or to be received by a person for or in connection with the supply.

regulated supply means:

- (a) a supply that:
 - (i) occurs during the New Tax System transition period and before the GST implementation date; and
 - (ii) is of goods of a kind that, immediately before the commencement of the GST Transition Act, were specified in any of items 4 to 14 of Schedule 5 to the *Sales Tax (Exemptions and Classifications) Act 1992*; or
- (b) a supply that:
 - (i) occurs during the New Tax System transition period and on or after the GST implementation date; and
 - (ii) is by a person who is registered or required to be registered under the GST Act; and
 - (iii) is a taxable supply for the purposes of the GST Act, or would have been a taxable supply for the purposes of the GST Act had it not been GST-free or input taxed for the purposes of that Act.

supply means:

- (a) a supply of goods, including by way of sale, exchange, lease, hire or hire-purchase; or
- (b) any other transaction or dealing that is a supply for the purposes of the GST Act.

75AU Price exploitation in relation to New Tax System changes

- (1) A corporation contravenes this section if it engages in price exploitation in relation to the New Tax System changes.
- (2) For the purposes of this section, a corporation engages in price exploitation in relation to the New Tax System changes if:
 - (a) it makes a regulated supply; and
 - (b) the price for the supply is unreasonably high, having regard alone to the New Tax System changes (so far as they have taken effect); and

- (c) the price for the supply is unreasonably high even if the following other matters are also taken into account:
 - (i) the supplier's costs;
 - (ii) supply and demand conditions;
 - (iii) any other relevant matter.

75AV Price exploitation—guidelines about when prices contravene section 75AU

- (1) The Commission must, by written instrument, formulate guidelines about when prices for regulated supplies may be regarded as being in contravention of section 75AU.
- (2) The Commission may, by written instrument, vary the guidelines.
- (3) The Commission must have regard to the guidelines in making decisions under section 75AW or 75AX in relation to the issue, variation and revocation of notices under that section.
- (4) The Court may have regard to the guidelines in any proceedings:
 - (a) under section 76 relating to section 75AU; or
 - (b) under section 80 for an injunction relating to section 75AU.
- (5) As soon as practicable after making or varying the guidelines, the Commission must cause a copy of the guidelines, or of the variation, to be published in the *Gazette*. However, failure to do so does not affect the validity of the guidelines or of the variation.

75AW Commission may issue notice to corporation it considers has contravened section 75AU

- (1) If the Commission considers that a corporation has made a supply in contravention of section 75AU, the Commission may give the corporation a notice in writing under this section.
- (2) The notice must:
 - (a) be expressed to be given under this section; and
 - (b) identify:
 - (i) the corporation that made the supply; and
 - (ii) the kind of supply made; and

- (iii) the circumstances in which the supply was made; and
- (c) state that, in the Commission's opinion:
 - (i) the price for the supply was unreasonably high as mentioned in paragraph 75AU(2)(b); and
 - (ii) that unreasonably high price was not attributable to matters referred to in paragraph 75AU(2)(c).
- (3) In any proceedings:
 - (a) under section 76 relating to section 75AU; or
 - (b) under section 80 for an injunction relating to section 75AU;the notice is taken to be prima facie evidence that:
 - (c) the price for the supply was unreasonably high as mentioned in paragraph 75AU(2)(b); and
 - (d) that unreasonably high price was not attributable to matters referred to in paragraph 75AU(2)(c).
- (4) The Commission may vary or revoke the notice on its own initiative or on application made by the corporation. The Commission must give the corporation notice in writing of the variation or revocation.

75AX Commission may issue notice to aid prevention of price exploitation

- (1) The Commission may give a corporation a notice in writing under this section if the Commission considers that doing so will aid the prevention of price exploitation (within the meaning of section 75AU).
- (2) The notice must:
 - (a) be expressed to be given under this section; and
 - (b) be expressed to relate to any supply that the corporation makes that is:
 - (i) of a kind specified in the notice; and
 - (ii) made in circumstances specified in the notice; and
 - (iii) made during the period specified in the notice (which must not be a period ending after the end of the New Tax System Transition period); and

- (c) specify the maximum price that, in the Commission's opinion, may be charged for a supply to which the notice is expressed to relate.
- (3) The Commission may, on its own initiative or on application made by the corporation:
 - (a) vary the notice to:
 - (i) change the period specified as required by subparagraph (2)(b)(iii); or
 - (ii) change the price specified in the notice as required by paragraph (2)(c); or
 - (b) revoke the notice.The Commission must give the corporation notice in writing of the variation or revocation.
- (4) The Commission may publish the notice, or particulars of any variation or revocation of the notice, in such manner as the Commission considers appropriate, including, for example, in a national newspaper.

75AY Commission may monitor prices

- (1) The Commission may monitor prices for either or both of the following purposes:
 - (a) to assess the general effect of the New Tax System changes on prices charged by corporations for supplies during the New Tax System transition period;
 - (b) to assist its consideration of whether section 75AU has been, is being, or may in the future be, contravened.
- (2) A member of the Commission may, by notice in writing served on a person, require the person:
 - (a) to give the Commission specified information in writing signed by:
 - (i) the person; or
 - (ii) if the person is a body corporate—a competent officer of the body corporate; or
 - (b) to produce to the Commission specified documents;

being information, or documents containing information, relating to prices or the setting of prices that the member considers will or may be useful to the Commission in monitoring prices as mentioned in subsection (1).

Note: The powers under this section are in addition to the powers under section 155. Under section 155, the Commission may obtain information about particular matters that constitute or may constitute a contravention of section 75AU.

- (3) Without limiting subsection (2), information or documents that may be required under that subsection may relate to prices, or the setting of prices:
- (a) before or after all or any of the New Tax System changes have taken effect; and
 - (b) before or after the start of the New Tax System transition period; and
 - (c) in a situation, or during a period, specified in the notice.
- (4) A person must not:
- (a) refuse or fail to comply with a notice under subsection (2) to the extent that the person is capable of complying with it; or
 - (b) in purported compliance with such a notice, intentionally or recklessly provide information or a document that is false or misleading.

Penalty: 20 penalty units.

75AZ Reporting

- (1) The Commission must, within 28 days after the end of each quarter, give the Minister a written report about the operations of the Commission under this Part during the quarter.
- (2) Without otherwise limiting subsection (1), a report under that subsection must include particulars of:
- (a) all notices given under section 75AX during the quarter; and
 - (b) all variations or revocations during the quarter of notices given under section 75AX.
- (3) For this purpose, a *quarter* is a period of 3 months:

- (a) that occurs wholly or partly during the New Tax System transition period; and
 - (b) that starts on any of the following days in a year:
 - (i) 1 January;
 - (ii) 1 April;
 - (iii) 1 July;
 - (iv) 1 October.
- (4) As soon as practicable after the Minister receives a report under subsection (1), the Minister must make the report public by such means as the Minister considers appropriate.
- (5) If this section commences during a quarter (but not on the first day of a quarter):
- (a) no report is to be made at the end of the quarter; but
 - (b) the report made at the end of the next quarter is also to include the information required by subsection (1) in relation to the previous quarter.

6 Subsection 75B(1)

After “or V”, insert “, or of section 75AU,”.

7 Paragraph 76(1)(a)

Repeal the paragraph, substitute:

- (a) has contravened any of the following provisions:
 - (i) a provision of Part IV;
 - (ii) section 75AU;

8 Paragraph 78(a)

Repeal the paragraph, substitute:

- (a) has contravened any of the following provisions:
 - (i) a provision of Part IV;
 - (ii) section 75AU;

Note: The heading to section 78 is altered by omitting “**Part IV**” and substituting “**Part IV or section 75AU**”.

9 Paragraph 80(1)(a)

Repeal the paragraph, substitute:

- (a) a contravention of any of the following provisions:
 - (i) a provision of Part IV, IVA, IVB or V;
 - (ii) section 75AU;

10 At the end of subsection 80(1A)

Add “or section 75AU”.

11 After section 80A

Insert:

80B Section 75AU contraventions—orders limiting prices or requiring refunds of money

Without limiting the generality of section 80, where, on the application of the Commission, the Court is satisfied that a person has engaged in conduct constituting a contravention of section 75AU, the Court may make either or both of the following orders:

- (a) an order requiring that person, or a person involved in the contravention, not to make a regulated supply of a kind specified in the order for a price in excess of the price specified in the order while the order remains in force;
- (b) an order requiring that person, or a person involved in the contravention, to refund money to a person specified in the order.

12 Subsections 84(1) and (3)

Omit “or V”, substitute “, V or VB”.

13 Section 150A (definition of *Schedule version of Part IV*)

Before “the Schedule”, insert “Part 1 of”.

14 After Part XIA

Insert:

Part XI^{AA}—The New Tax System Price Exploitation Code

150L Definitions

In this Part, unless the contrary intention appears:

application law means:

- (a) a law of a State or Territory that applies the New Tax System Price Exploitation Code, either with or without modifications, as a law of the State or Territory; or
- (b) any regulations or other legislative instrument made under a law described in paragraph (a); or
- (c) the New Tax System Price Exploitation Code, applying as a law of a State or Territory, either with or without modifications.

apply, in relation to the New Tax System Price Exploitation Code, means apply the New Tax System Price Exploitation Code by reference:

- (a) as in force from time to time; or
- (b) as in force at a particular time.

modifications includes additions, omissions and substitutions.

New Tax System Price Exploitation Code means (according to the context):

- (a) the text described in section 150N; or
- (b) that text, applying as a law of a State or Territory, either with or without modifications.

officer, in relation to the Commonwealth, includes the following:

- (a) a Minister;
- (b) a person who holds:
 - (i) an office established by or under an Act; or
 - (ii) an appointment made under an Act; or
 - (iii) an appointment made by the Governor-General or a Minister but not under an Act;

- (c) a person who is a member or officer of an authority of the Commonwealth;
- (d) a person who is in the service or employment of the Commonwealth, or of an authority of the Commonwealth, or is employed or engaged under an Act.

Schedule version of Part VB means the text that is set out in Part 2 of the Schedule to this Act.

Territory means the Australian Capital Territory or the Northern Territory.

150M Object of this Part

The object of this Part is to facilitate the application of the New Tax System Price Exploitation Code by the States and Territories.

150N The New Tax System Price Exploitation Code

- (1) The New Tax System Price Exploitation Code consists of:
 - (a) the Schedule version of Part VB; and
 - (b) the remaining provisions of this Act (except sections 2A, 5, 6 and 172), so far as they would relate to the Schedule version if the Schedule version were substituted for Part VB; and
 - (c) the regulations under this Act, so far as they relate to any provision covered by paragraph (a) or (b); and
 - (d) the guidelines under section 75AV.
- (2) For the purpose of forming part of the New Tax System Price Exploitation Code, the provisions referred to in paragraphs (1)(b), (c) and (d) are to be modified as necessary to fit in with the Schedule version of Part VB. In particular, references to corporations are to include references to persons who are not corporations.

150O Federal Court may exercise jurisdiction under application laws

The Federal Court may exercise jurisdiction (whether original or appellate) conferred on that Court by an application law with

respect to matters arising under the New Tax System Price Exploitation Code.

150P Exercise of jurisdiction under cross-vesting provisions

This Part does not affect the operation of any other law of the Commonwealth, or any law of a State or Territory, relating to cross-vesting of jurisdiction.

150Q Application laws may confer functions on Commonwealth authorities and officers

An application law may confer functions and powers on authorities and officers of the Commonwealth for the purposes of the New Tax System Price Exploitation Code.

150R Application laws may operate concurrently with this Act

This Act is not intended to exclude the operation of any application law, to the extent that the application law is capable of operating concurrently with this Act.

150S No doubling-up of liabilities

- (1) If:
 - (a) an act or omission is an offence against this Act and is also an offence against an application law; and
 - (b) the offender has been punished for the offence under the application law;the offender is not liable to be punished for the offence against this Act.
- (2) If a person has been ordered to pay a pecuniary penalty under an application law, the person is not liable to a pecuniary penalty under this Act in respect of the same conduct.

150T References in instruments to the New Tax System Price Exploitation Code

- (1) A reference in any instrument to the New Tax System Price Exploitation Code is a reference to the New Tax System Price Exploitation Codes of any or all of the States and Territories.
- (2) Subsection (1) has effect except so far as the contrary intention appears in the instrument or the context of the reference otherwise requires.

15 Subsections 155AA(1) and (2)

After “Part IV information”, insert “or protected Part VB information”.

Note: The heading to section 155AA is altered by inserting “**or VB**” after “**Part IV**”.

16 Subsection 155AA(3)

Insert:

protected Part VB information means:

- (a) information that:
 - (i) was obtained by the Commission under section 155; and
 - (ii) relates to a matter arising under Part VB; or
- (b) information that was obtained by the Commission under section 75AY.

17 After subparagraph 163A(1)(a)(i)

Insert:

- (ia) Part VB;

18 Schedule (heading)

Repeal the heading, substitute:

Schedule—The Schedule versions of Parts IV and VB

Part 1—Schedule version of Part IV

Note: See section 150A.

19 At the end of the Schedule

Add:

Part 2—Schedule version of Part VB

Note: See section 150L.

75AT Definitions

In this section and sections 75AU to 75AZ, unless the contrary intention appears:

GST has the same meaning as in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

Note: The operation of the GST Act is affected by the GST Transition Act.

GST implementation date means the day on which the GST Act commences.

GST Transition Act means the *A New Tax System (Goods and Services Tax Transition) Act 1999* of the Commonwealth.

New Tax System changes means the following:

- (a) the amendment of the *Sales Tax (Exemptions and Classifications) Act 1992* of the Commonwealth made by the GST Transition Act;
- (b) the ending of sales tax, as provided for in the *A New Tax System (End of Sales Tax) Act 1999* of the Commonwealth;
- (c) the imposition of GST;
- (d) any other changes (including changes to Commonwealth, State or Territory laws) prescribed by the regulations for the purposes of this definition.

New Tax System transition period means the period:

- (a) starting on the later of 1 July 1999 and the commencement of the *A New Tax System (Trade Practices Amendment) Act 1999* of the Commonwealth; and

- (b) ending on the day that is 2 years after the GST implementation date.

price, in relation to a supply, includes:

- (a) a charge of any description for the supply; and
- (b) any pecuniary or other benefit, whether direct or indirect, received or to be received by a person for or in connection with the supply.

regulated supply means:

- (a) a supply that:
 - (i) occurs during the New Tax System transition period and before the GST implementation date; and
 - (ii) is of goods of a kind that, immediately before the commencement of the GST Transition Act, were specified in any of items 4 to 14 of Schedule 5 to the *Sales Tax (Exemptions and Classifications) Act 1992* of the Commonwealth; or
- (b) a supply that:
 - (i) occurs during the New Tax System transition period and on or after the GST implementation date; and
 - (ii) is by a person who is registered or required to be registered under the GST Act; and
 - (iii) is a taxable supply for the purposes of the GST Act, or would have been a taxable supply for the purposes of the GST Act had it not been GST-free or input taxed for the purposes of that Act.

supply means:

- (a) a supply of goods, including by way of sale, exchange, lease, hire or hire-purchase; or
- (b) any other transaction or dealing that is a supply for the purposes of the GST Act.

75AU Price exploitation in relation to New Tax System changes

- (1) A person contravenes this section if the person engages in price exploitation in relation to the New Tax System changes.

- (2) For the purposes of this section, a person engages in price exploitation in relation to the New Tax System changes if:
- (a) the person makes a regulated supply; and
 - (b) the price for the supply is unreasonably high, having regard alone to the New Tax System changes (so far as they have taken effect); and
 - (c) the price for the supply is unreasonably high even if the following other matters are also taken into account:
 - (i) the supplier's costs;
 - (ii) supply and demand conditions;
 - (iii) any other relevant matter.

75AV Price exploitation—guidelines about when prices contravene section 75AU

- (1) In this section:

guidelines means the guidelines in force under section 75AV of the *Trade Practices Act 1974* of the Commonwealth.

- (2) The Commission must have regard to the guidelines in making decisions under section 75AW or 75AX in relation to the issue, variation and revocation of notices under that section.
- (3) The Court may have regard to the guidelines in any proceedings:
- (a) under section 76 relating to section 75AU; or
 - (b) under section 80 for an injunction relating to section 75AU.

75AW Commission may issue notice to person it considers has contravened section 75AU

- (1) If the Commission considers that a person has made a supply in contravention of section 75AU, the Commission may give the person a notice in writing under this section.
- (2) The notice must:
- (a) be expressed to be given under this section; and
 - (b) identify:
 - (i) the person that made the supply; and

- (ii) the kind of supply made; and
 - (iii) the circumstances in which the supply was made; and
- (c) state that, in the Commission's opinion:
 - (i) the price for the supply was unreasonably high as mentioned in paragraph 75AU(2)(b); and
 - (ii) that unreasonably high price was not attributable to matters referred to in paragraph 75AU(2)(c).
- (3) In any proceedings:
 - (a) under section 76 relating to section 75AU; or
 - (b) under section 80 for an injunction relating to section 75AU;the notice is taken to be prima facie evidence that:
 - (c) the price for the supply was unreasonably high as mentioned in paragraph 75AU(2)(b); and
 - (d) that unreasonably high price was not attributable to matters referred to in paragraph 75AU(2)(c).
- (4) The Commission may vary or revoke the notice on its own initiative or on application made by the person. The Commission must give the person notice in writing of the variation or revocation.

75AX Commission may issue notice to aid prevention of price exploitation

- (1) The Commission may give a person a notice in writing under this section if the Commission considers that doing so will aid the prevention of price exploitation (within the meaning of section 75AU).
- (2) The notice must:
 - (a) be expressed to be given under this section; and
 - (b) be expressed to relate to any supply that the person makes that is:
 - (i) of a kind specified in the notice; and
 - (ii) made in circumstances specified in the notice; and
 - (iii) made during the period specified in the notice (which must not be a period ending after the end of the New Tax System Transition period); and

- (c) specify the maximum price that, in the Commission's opinion, may be charged for a supply to which the notice is expressed to relate.
- (3) The Commission may, on its own initiative or on application made by the person:
 - (a) vary the notice to:
 - (i) change the period specified as required by subparagraph (2)(b)(iii); or
 - (ii) change the price specified in the notice as required by paragraph (2)(c); or
 - (b) revoke the notice.The Commission must give the corporation notice in writing of the variation or revocation.
- (4) The Commission may publish the notice, or particulars of any variation or revocation of the notice, in such manner as the Commission considers appropriate, including, for example, in a national newspaper.

75AY Commission may monitor prices

- (1) The Commission may monitor prices for either or both of the following purposes:
 - (a) to assess the general effect of the New Tax System changes on prices charged by persons for supplies during the New Tax System transition period;
 - (b) to assist its consideration of whether section 75AU has been, is being, or may in the future be, contravened.
- (2) A member of the Commission may, by notice in writing served on a person, require the person:
 - (a) to give the Commission specified information in writing signed by:
 - (i) the person; or
 - (ii) if the person is a body corporate—a competent officer of the body corporate; or
 - (b) to produce to the Commission specified documents;

being information, or documents containing information, relating to prices or the setting of prices that the member considers will or may be useful to the Commission in monitoring prices as mentioned in subsection (1).

Note: The powers under this section are in addition to the powers under section 155. Under section 155, the Commission may obtain information about particular matters that constitute or may constitute a contravention of section 75AU.

- (3) Without limiting subsection (2), information or documents that may be required under that subsection may relate to prices, or the setting of prices:
- (a) before or after all or any of the New Tax System changes have taken effect; and
 - (b) before or after the start of the New Tax System transition period; and
 - (c) in a situation, or during a period, specified in the notice.
- (4) A person must not:
- (a) refuse or fail to comply with a notice under subsection (2) to the extent that the person is capable of complying with it; or
 - (b) in purported compliance with such a notice, intentionally or recklessly provide information or a document that is false or misleading.

Penalty: 20 penalty units.

75AZ Reporting

- (1) The Commission must, within 28 days after the end of each quarter, give the Minister administering Part VB of the *Trade Practices Act 1974* of the Commonwealth a written report about the operations of the Commission under sections 75AU to 75AX during the quarter.
- (2) Without otherwise limiting subsection (1), a report under that subsection must include particulars of:
- (a) all notices given under section 75AX during the quarter; and
 - (b) all variations or revocations during the quarter of notices given under section 75AX.

- (3) For this purpose, a *quarter* is a period of 3 months:
- (a) that occurs wholly or partly during the New Tax System transition period; and
 - (b) that starts on any of the following days in a year:
 - (i) 1 January;
 - (ii) 1 April;
 - (iii) 1 July;
 - (iv) 1 October.
- (4) As soon as practicable after the Minister receives a report under subsection (1), the Minister must make the report public by such means as the Minister considers appropriate.
- (5) If this section commences during a quarter (but not on the first day of a quarter):
- (a) no report is to be made at the end of the quarter; but
 - (b) the report made at the end of the next quarter is also to include the information required by subsection (1) in relation to the previous quarter.

*[Minister's second reading speech made in—
House of Representatives on 10 December 1998
Senate on 8 March 1999]*

(243/98)
