

TRADE PRACTICES AMENDMENT ACT 1977

No. 81 of 1977

An Act relating to Trade Practices.

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

Short title,
&c.

1. (1) This Act may be cited as the *Trade Practices Amendment Act 1977*.¹

(2) The *Trade Practices Act 1974*² is in this Act referred to as the Principal Act.

Commence-
ment.

2. This Act shall come into operation on 1 July 1977.

Repeal of
expired
commence-
ment
provisions.

3. Section 2 of the Principal Act is repealed.

4. Before section 3 of the Principal Act the following section is inserted:—

Application
of Act to
Common-
wealth and
Common-
wealth
authorities.

“2A. (1) Subject to this section, this Act (other than Part X) binds the Crown in right of the Commonwealth in so far as the Crown in right of the Commonwealth carries on a business, either directly or by an authority of the Commonwealth.

“(2) Subject to the succeeding provisions of this section, this Act applies as if—

- (a) the Commonwealth, in so far as it carries on a business otherwise than by an authority of the Commonwealth; and
- (b) each authority of the Commonwealth (whether or not acting as an agent of the Crown in right of the Commonwealth) in so far as it carries on a business,

were a corporation.

“(3) Nothing in this Act renders the Crown in right of the Commonwealth liable to be prosecuted for an offence.

“(4) Part IV does not apply in relation to the business carried on by the Commonwealth in developing, and disposing of interests in, land in the Australian Capital Territory.”.

5. Section 4 of the Principal Act is amended—

Interpretation.

- (a) by inserting in sub-section (1), before the definition of “authorization”, the following definitions:—

“ ‘acquire’ includes—

- (a) in relation to goods—acquire by way of purchase, exchange or taking on lease, on hire or on hire-purchase; and

- (b) in relation to services—accept;

‘arrive at’, in relation to an understanding, includes reach or enter into;

‘authority of the Commonwealth’ means—

- (a) a body corporate established for a purpose of the Commonwealth by or under a law of the Commonwealth or a law of a Territory; or

- (b) an incorporated company in which the Commonwealth, or a body corporate referred to in paragraph (a), has a controlling interest;”;

- (b) by inserting in sub-section (1), after the definition of “authorization”, the following definition:—

“ ‘business’ includes a business not carried on for profit;”;

- (c) by omitting from sub-section (1) the definitions of “commencing date”, “Commission” and “Companies Ordinance” and substituting the following definitions:—

“ ‘commencing date’ means 1 October 1974;

‘Commission’ means the Trade Practices Commission established by section 6A, and includes a member of the Commission or a Division of the Commission performing functions of the Commission;”;

- (d) by omitting from sub-section (1) the definition of “conduct”;

- (e) by inserting in sub-section (1), after the definition of “Court”, the following definitions:—

“ ‘covenant’ means a covenant (including a promise not under seal) annexed to or running with an estate or interest in land (whether at law or in equity and whether or not for the benefit of other land), and ‘proposed covenant’ has a corresponding meaning;

‘debenture’ includes debenture stock, bonds, notes and any other document evidencing or acknowledging indebtedness of a body corporate, whether constituting a charge on property of the body corporate or not;”;

- (f) by omitting from sub-section (1) the definitions of “engage in conduct” and “financial corporation” and substituting the following definition:—

- “‘financial corporation’ means a financial corporation within the meaning of paragraph 51 (xx) of the Constitution and includes a body corporate that carries on as its sole or principal business the business of banking (other than State banking not extending beyond the limits of the State concerned) or insurance (other than State insurance not extending beyond the limits of the State concerned);”;
- (g) by omitting from sub-section (1) the definitions of “full-time member of the Commission” and “give effect to” and substituting the following definition:—
- “‘give effect to’, in relation to a provision of a contract, arrangement or understanding, includes do an act or thing in pursuance of or in accordance with or enforce or purport to enforce;”;
- (h) by omitting from sub-section (1) the definitions of “market”, “meeting” and “member of the Commission” and substituting the following definition:—
- “‘member of the Commission’ includes the Chairman and a person appointed to act as a member of the Commission but does not include an associate member of the Commission;”;
- (j) by omitting from sub-section (1) the definition of “practice of exclusive dealing” and substituting the following definition:—
- “‘practice of exclusive dealing’ means the practice of exclusive dealing referred to in sub-section 47 (2), (3), (4), (5), (6), (7), (8) or (9);”;
- (k) by inserting in sub-section (1), after the definition of “price”, the following definition:—
- “‘provision’, in relation to an understanding, means any matter forming part of the understanding;”;
- (l) by inserting in sub-section (1), after the definition of “Registrar”, the following definition:—
- “‘require’, in relation to the giving of a covenant, means require or demand the giving of a covenant, whether by way of making a contract containing the covenant or otherwise, and whether or not a covenant is given in pursuance of the requirement or demand;”;
- (m) by omitting from sub-section (1) the definitions of “services” and “share” and substituting the following definitions:—
- “‘services’ includes any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges or facilities that are, or are to be, provided, granted or conferred in trade or commerce, and without limiting the generality of the foregoing, includes the

rights, benefits, privileges or facilities that are, or are to be, provided, granted or conferred under—

- (a) a contract for or in relation to—
 - (i) the performance of work (including work of a professional nature), 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, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction;
- (b) a contract of insurance;
- (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
- (d) any contract for or in relation to the lending of moneys,

but does not include rights or benefits being the supply of goods or the performance of work under a contract of service;

‘share’ includes stock;’;

- (n) by adding at the end of sub-section (1) the following definition:—

“ ‘unsolicited services’ means services supplied to a person without any request made by him or on his behalf.”; and

- (o) by omitting sub-sections (2), (3) and (4) and substituting the following sub-sections:—

“(2) In this Act—

- (a) a reference to engaging in conduct shall be read as a reference to doing or refusing to do any act, including the making of, or the giving effect to a provision of, a contract or arrangement, the arriving at, or the giving effect to a provision of, an understanding or the requiring of the giving of, or the giving of, a covenant;
- (b) a reference to conduct, when that expression is used as a noun otherwise than as mentioned in paragraph (a), shall be read as a reference to the doing of or the refusing to do any act, including the making of, or the giving effect to a provision of, a contract or arrangement, the arriving at, or the giving effect to a provision of, an understanding or the requiring of the giving of, or the giving of, a covenant;

- (c) a reference to refusing to do an act includes a reference to—
 - (i) refraining (otherwise than inadvertently) from doing that act; or
 - (ii) making it known that that act will not be done; and
- (d) a reference to a person offering to do an act, or to do an act on a particular condition, includes a reference to the person making it known that the person will accept applications, offers or proposals for the person to do that act or to do that act on that condition, as the case may be.

“(3) Where a provision of this Act is expressed to render a provision of a contract, or to render a covenant, unenforceable if the provision of the contract or the covenant has or is likely to have a particular effect, that provision of this Act applies in relation to the provision of the contract or the covenant at any time when the provision of the contract or the covenant has or is likely to have that effect notwithstanding that—

- (a) at an earlier time the provision of the contract or the covenant did not have that effect or was not regarded as likely to have that effect; or
- (b) the provision of the contract or the covenant will not or may not have that effect at a later time.

“(4) In this Act—

- (a) a reference to the acquisition of shares in the capital of a body corporate shall be construed as a reference to an acquisition, whether alone or jointly with another person, of any legal or equitable interest in such shares; and
- (b) a reference to the acquisition of assets of a body corporate shall be construed as a reference to an acquisition, whether alone or jointly with another person, of any legal or equitable interest in such assets but does not include a reference to an acquisition by way of charge only or an acquisition in the ordinary course of business.”.

6. After section 4 of the Principal Act the following sections are inserted:—

Subsidiary,
holding and
related
bodies
corporate.

“4A. (1) For the purposes of this Act, a body corporate shall, subject to sub-section (3), be deemed to be a subsidiary of another body corporate if—

- (a) that other body corporate—
 - (i) controls the composition of the board of directors of the first-mentioned body corporate;
 - (ii) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the first-mentioned body corporate; or

(iii) holds more than one-half of the allotted share capital of the first-mentioned body corporate (excluding any part of that allotted share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or

(b) the first-mentioned body corporate is a subsidiary of any body corporate that is that other body corporate's subsidiary (including any body corporate that is that other body corporate's subsidiary by another application or other applications of this paragraph).

“(2) For the purposes of sub-section (1), the composition of a body corporate's board of directors shall be deemed to be controlled by another body corporate if that other body corporate, by the exercise of some power exercisable by it without the consent or concurrence of any other person, can appoint or remove all or a majority of the directors, and for the purposes of this provision that other body corporate shall be deemed to have power to make such an appointment if—

- (a) a person cannot be appointed as a director without the exercise in his favour by that other body corporate of such a power; or
- (b) a person's appointment as a director follows necessarily from his being a director or other officer of that other body corporate.

“(3) In determining whether a body corporate is a subsidiary of another body corporate—

- (a) any shares held or power exercisable by that other body corporate in a fiduciary capacity shall be treated as not held or exercisable by it;
- (b) subject to paragraphs (c) and (d), any shares held or power exercisable—
 - (i) by any person as a nominee for that other body corporate (except where that other body corporate is concerned only in a fiduciary capacity); or
 - (ii) by, or by a nominee for, a subsidiary of that other body corporate, not being a subsidiary that is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other body corporate;

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned body corporate, or of a trust deed for securing any allotment of such debentures, shall be disregarded; and
- (d) any shares held or power exercisable by, or by a nominee for, that other body corporate or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other body corporate if the ordinary business of that other body corporate or its subsidiary, as the

case may be, includes the lending of money and the shares are held or the power is exercisable by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

“(4) A reference in this Act to the holding company of a body corporate shall be read as a reference to a body corporate of which that other body corporate is a subsidiary.

“(5) Where a body corporate—

- (a) is the holding company of another body corporate;
- (b) is a subsidiary of another body corporate; or
- (c) is a subsidiary of the holding company of another body corporate,

that first-mentioned body corporate and that other body corporate shall, for the purposes of this Act, be deemed to be related to each other.

“(6) In proceedings under this Act, whether in the 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.

Consumers. “4B. (1) For the purposes of this Act, unless the contrary intention appears—

- (a) a person shall be taken to have acquired particular goods as a consumer if, and only if—
 - (i) the price paid or payable by the person for the goods did not exceed the prescribed amount; or
 - (ii) where that price exceeded the prescribed amount—the goods were of a kind ordinarily acquired for personal, domestic or household use or consumption,
 and the person did not acquire the goods, or hold himself out as acquiring the goods, for the purpose of re-supply or for the purpose of using them up or transforming them, in trade or commerce, in the course of a process of production or manufacture or of repairing or treating other goods or fixtures on land; and
- (b) a person shall be taken to have acquired particular services as a consumer if, and only if—
 - (i) the price paid or payable by the person for the services did not exceed the prescribed amount; or
 - (ii) where that price exceeded the prescribed amount—the services were of a kind ordinarily acquired for personal, domestic or household use or consumption.

“(2) For the purposes of sub-section (1)—

- (a) the prescribed amount is \$15,000 or, if a greater amount is prescribed for the purposes of this paragraph, that greater amount;

- (b) if a person acquired goods together with other property or with services, or with both other property and services, and a specified price was not allocated to the goods in the contract under which they were acquired, the price paid or payable by the person for the goods shall be taken to have been the amount that was the market value of the goods at the time when that contract was entered into; and
- (c) if a person acquired services together with property or with other services, or with both property and other services, and a specified price was not allocated to the first-mentioned services in the contract under which they were acquired, the price paid or payable by the person for the first-mentioned services shall be taken to have been the amount that was the market value of those services at the time when that contract was entered into.

“(3) Where it is alleged in any proceeding under this Act or in any other proceeding in respect of a matter arising 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.

“4C. In this Act, unless the contrary intention appears—

- (a) a reference to the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to, goods in pursuance of a supply of the goods;
- (b) a reference to the supply or acquisition of goods or services includes a reference to agreeing to supply or acquire goods or services;
- (c) a reference to the supply or acquisition of goods includes a reference to the supply or acquisition of goods together with other property or services, or both;
- (d) a reference to the supply or acquisition of services includes a reference to the supply or acquisition of services together with property or other services, or both; and
- (e) a reference to the re-supply of goods acquired from a person includes a reference to—
 - (i) a supply of the goods to another person in an altered form or condition; and
 - (ii) a supply to another person of goods in which the first-mentioned goods have been incorporated.

Acquisition,
supply and
re-supply.

“4D. (1) A provision of a contract, arrangement or understanding, or of a proposed contract, arrangement or understanding, shall be taken to be an exclusionary provision for the purposes of this Act if—

Exclusionary
provisions.

- (a) the contract or arrangement was made, or the understanding was arrived at, or the proposed contract or arrangement is to be

made, or the proposed understanding is to be arrived at, between persons any 2 or more of whom are competitive with each other; and

- (b) the provision has the purpose of preventing, restricting or limiting—
- (i) the supply of goods or services to, or the acquisition of goods or services from, particular persons; or
 - (ii) the supply of goods or services to, or the acquisition of goods or services from, particular persons in particular circumstances or on particular conditions,

by all or any of the parties to the contract, arrangement or understanding or of the proposed parties to the proposed contract, arrangement or understanding or, if a party or proposed party is a body corporate, by a body corporate that is related to the body corporate.

“(2) A person shall be deemed to be competitive with another person for the purposes of this section if the first-mentioned person or a body corporate that is related to that person is, or is likely to be, in competition, in relation to the supply or acquisition of goods or services, with the other person or with a body corporate that is related to the other person.

Market.

“4E. For the purposes of this Act, ‘market’ means a market in Australia and, when used in relation to any goods or services, includes a market for those goods or services and other goods or services that are substitutable for, or otherwise competitive with, the first-mentioned goods or services.

References to purpose or reason.

“4F. For the purposes of this Act—

- (a) a provision of a contract, arrangement or understanding or of a proposed contract, arrangement or understanding, or a covenant or a proposed covenant, shall be deemed to have had, or to have, a particular purpose if—
 - (i) the provision was included in the contract, arrangement or understanding or is to be included in the proposed contract, arrangement or understanding, or the covenant was required to be given or the proposed covenant is to be required to be given, as the case may be, for that purpose or for purposes that included or include that purpose; and
 - (ii) that purpose was or is a substantial purpose; and
- (b) a person shall be deemed to have engaged or to engage in conduct for a particular purpose or a particular reason if—
 - (i) the person engaged or engages in the conduct for purposes that included or include that purpose or for reasons that included or include that reason, as the case may be; and

- (ii) that purpose or reason was or is a substantial purpose or reason.

“4G. For the purposes of this Act, references to the lessening of competition shall be read as including references to preventing or hindering competition.

Lessening of competition to include preventing or hindering competition.

“4H. In this Act—

- (a) a reference to a contract shall be construed as including a reference to a lease of, or a licence in respect of, land or a building or part of a building and shall be so construed notwithstanding the express references in this Act to such leases or licences;
- (b) a reference to making or entering into a contract, in relation to such a lease or licence, shall be read as a reference to granting or taking the lease or licence; and
- (c) a reference to a party to a contract, in relation to such a lease or licence, shall be read as including a reference to any person bound by, or entitled to the benefit of, any provision contained in the lease or licence.

Application of Act in relation to leases and licences of land and buildings.

“4J. In this Act—

- (a) a reference to a joint venture is a reference to an activity in trade or commerce—
- (i) carried on jointly by two or more persons, whether or not in partnership; or
- (ii) carried on by a body corporate formed by two or more persons for the purpose of enabling those persons to carry on that activity jointly by means of their joint control, or by means of their ownership of shares in the capital, of that body corporate; and
- (b) a reference to a contract or arrangement made or understanding arrived at, or to a proposed contract or arrangement to be made or proposed understanding to be arrived at, for the purposes of a joint venture shall, in relation to a joint venture by way of an activity carried on by a body corporate as mentioned in subparagraph (a) (ii), be read as including a reference to the memorandum and articles of association, rules or other document that constitute or constitutes, or are or is to constitute, that body corporate.

Joint ventures.

“4K. In this Act—

- (a) a reference to loss or damage, other than a reference to the amount of any loss or damage, includes a reference to injury; and
- (b) a reference to the amount of any loss or damage includes a reference to damages in respect of an injury.

Loss or damage to include injury.

Severability. “4L. If the making of a contract after the commencement of this section contravenes this Act by reason of the inclusion of a particular provision in the contract, then, subject to any order made under section 87, nothing in this Act affects the validity or enforceability of the contract otherwise than in relation to that provision in so far as that provision is severable.

Saving of law relating to restraint of trade and breaches of confidence.

“4M. This Act does not affect the operation of—

- (a) the law relating to restraint of trade in so far as that law is capable of operating concurrently with this Act; or
- (b) the law relating to breaches of confidence,

but nothing in the law referred to in paragraph (a) or (b) affects the interpretation of this Act.”

Additional operation of Act.

7. Section 6 of the Principal Act is amended—

- (a) by omitting from paragraph (b) of sub-section (2) the words and figures “sections 46, 60 and 61, sub-sections 64 (3) and (4)” and substituting the words, figures and letters “sections 45, 45B, 45D, 46, 60 and 61, sub-sections 64 (3) and (4), section 75A”;
- (b) by omitting paragraphs (d) and (e) of sub-section (2) and substituting the following paragraphs:—
 - “(d) in sub-section 45 (1) and sub-paragraph 87 (3) (a) (i) the words ‘in so far as it confers rights or benefits or imposes duties or obligations on a corporation’ were omitted;
 - “(e) in sub-section 45B (1) and sub-paragraph 87 (3) (a) (ii) the words ‘in so far as it confers rights or benefits or imposes duties or obligations on a corporation or on a person associated with a corporation’ were omitted;”;
- (c) by inserting in paragraph (f) of sub-section (2), before the word and figures “section 60”, the words, figures and letter “sub-section 53A (2) and”; and
- (d) by omitting paragraph (h) of sub-section (2) and substituting the following paragraph:—
 - “(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 or sub-section 88 (9), included a reference to a person not being a corporation.”

8. (1) Section 7 of the Principal Act is repealed and the following sections are substituted:—

“6A. (1) Upon the commencement of this section the Commission established by the *Trade Practices Act* 1974 as in force immediately before the commencement of this section ceases to exist and there is established by this section a Commission by the name of the Trade Practices Commission.

Establishment of Commission.

“(2) The Commission—

- (a) is a body corporate, with perpetual succession;
- (b) shall have an official seal;
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue or be sued in its corporate name.

“7. (1) The Commission shall consist of a Chairman and such number of other members as are from time to time appointed in accordance with this Act.

Constitution of Commission.

“(2) The members of the Commission shall be appointed by the Governor-General and shall be so appointed as full-time members.

“(3) 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, economics, law or public administration.”

(2) Any documents that were furnished under the Principal Act to the Commission established by that Act shall be deemed for the purposes of that Act as amended by this Act to have been furnished to the Trade Practices Commission established by that Act as so amended and, subject to that Act as so amended, that last-mentioned Commission is entitled to obtain and retain custody of those documents.

(3) Where, immediately before the commencement of this section, the Commission established by the Principal Act was a party to or intervenor in a proceeding in a court, the Trade Practices Commission established by the Principal Act as amended by this Act shall be deemed to be substituted for the first-mentioned Commission as a party to or intervenor in that proceeding.

(4) The power of the Trade Practices Commission established by the Principal Act as amended by this Act to institute any proceeding in the Court extends to the institution of a proceeding in respect of conduct engaged in before the commencement of this Act.

(5) Section 167 of the Principal Act as amended by this Act applies in relation to the official signature of a person who has held the office of Chairman, Deputy Chairman or member of the Commission that was established by the Principal Act and in relation to the official seal of that Commission in like manner as it applies in relation to the official signature of a person who holds the office of Chairman, Deputy Chairman or member of the Trade Practices Commission established by the Principal

Act as amended by this Act and in relation to the official seal of that last-mentioned Commission, respectively.

(6) The Trade Practices Commission established by the Principal Act as amended by this Act shall, not later than 31 August 1977, furnish to the Minister, for presentation to the Parliament, a report with respect to the operations in the year ending on 30 June 1977 of the Trade Practices Commission established by the Principal Act.

Terms and conditions of appointment.

9. Section 8 of the Principal Act is amended by omitting from sub-section (2) the words "the Chairman or as a full-time member" (wherever occurring) and substituting the words "a member".

10. After section 8 of the Principal Act the following section is inserted:—

Associate members.

"8A. (1) The Minister may appoint persons to be associate members of the Commission.

"(2) An associate member of the Commission shall be appointed for such period not exceeding 5 years as is specified in the instrument of his appointment, but is eligible for re-appointment.

"(3) Subject to this Part, an associate member of the Commission holds office on such terms and conditions as the Minister determines.

"(4) The Chairman may, by writing signed by him, direct that, for the purposes of the exercise of the powers of the Commission under this Act in relation to a specified matter, not being an exercise of those powers by a Division of the Commission, a specified associate member of the Commission or specified associate members of the Commission shall be deemed to be a member or members of the Commission and, in that case, unless the contrary intention appears, a reference in this Act to a member of the Commission shall, for the purposes only of the exercise of the powers of the Commission in relation to that matter, be construed as including a reference to that associate member of the Commission or each of those associate members of the Commission, as the case may be.

"(5) Associate members of the Commission shall be deemed to be members of the Commission for the purposes of section 19.

"(6) For the purpose of the determination by the Commission of an application for an authorization or the making by the Commission of any decision for the purposes of sub-section 93 (3), the Chairman shall consider—

- (a) whether he should give a direction under sub-section (4) of this section; or
- (b) in the case of a matter in relation to which the Chairman proposes to give a direction under sub-section 19 (1), whether he

should direct that the Division concerned is to include an associate member of the Commission or associate members of the Commission.

“(7) Nothing in sub-section (4) or (5) deems an associate member of the Commission to be a member of the Commission for any purpose related to the preparation of a report by the Commission under section 171.”.

11. Section 9 of the Principal Act is amended by adding at the end thereof the following sub-section:— Remuneration.

“(3) In this section, ‘member of the Commission’ includes an associate member of the Commission.”.

12. Section 10 of the Principal Act is amended by omitting from sub-section (1) the word “full-time”. Deputy Chairman.

13. Section 12 of the Principal Act is amended by omitting the words “the Chairman or a full-time member” and substituting the words “a member”. Leave of absence.

14. Sections 13 and 14 of the Principal Act are repealed and the following sections substituted:—

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

“(2) If a member of the Commission—

- (a) 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;
- (b) fails to comply with his obligations under section 17;
- (c) engages in any paid employment outside the duties of his office;
or
- (d) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any 12 months,

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

Termination of appointment of associate members of the Commission.

“14. (1) The Minister may terminate the appointment of an associate member of the Commission for misbehaviour or physical or mental incapacity.

“(2) If an associate member of the Commission—

(a) 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

(b) fails to comply with his obligations under section 17,

the Minister shall terminate the appointment of that associate member of the Commission.”.

Resignation.

15. Section 15 of the Principal Act is amended by adding at the end thereof the following sub-section:—

“(2) An associate member of the Commission may resign his office by writing signed by him and delivered to the Minister.”.

Disclosure of financial interests.

16. Section 17 of the Principal Act is amended—

(a) by omitting sub-section (2) and substituting the following sub-section:—

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

(a) in 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 a matter before the Commission, being a matter in the 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.”; and

(b) by adding at the end thereof the following sub-section:—

“(4) In this section, ‘member of the Commission’ includes an associate member of the Commission.”.

Repeal of sections 20 to 24.

17. Sections 20 to 24, inclusive, of the Principal Act are repealed.

Rights of public servants appointed as members of Commission.

18. Section 26 of the Principal Act is amended by omitting the words “Chairman or as a full-time member” (wherever occurring) and substituting the words “a member”.

- 19.** Section 28 of the Principal Act is amended by omitting from paragraph (e) of sub-section (1) the words “of the Commonwealth or of the Territories” and substituting the words “in force in Australia”.
- Functions of Commission in relation to dissemination of information, law reform and research.
- 20.** Section 29 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:—
- “(1) The Minister may—
- (a) give directions as to matters to be given special consideration by the Commission in determining applications for authorizations or in making decisions for the purposes of paragraph 93 (3) (a) or (b); and
- (b) give directions to the Commission in connexion with the performance of its functions or the exercise of its powers under this Act, not including, except as mentioned in paragraph (a), functions or powers related directly or indirectly to Part VII,
- and the Commission shall comply with any directions so given.”.
- Commission to comply with directions of Minister and requirements of the Parliament.
- 21.** Section 31 of the Principal Act is amended—
- (a) by omitting sub-section (1) and substituting the following sub-section:—
- “(1) A person shall not be appointed as a presidential member of the Tribunal unless he is a Judge of a Federal Court, not being the High Court or a court of an external Territory.”; and
- (b) by inserting in sub-section (2), after the word “commerce”, the words “, economics, law”.
- Qualifications of members of Tribunal.
- 22.** (1) Section 33 of the Principal Act is amended by omitting sub-sections (1) and (4).
- (2) For the avoidance of doubt, it is hereby declared that the *Judges’ Pensions Act* 1968 applies, and shall be deemed always to have applied, to and in relation to a President of the Trade Practices Tribunal who retired as a Judge of the Australian Industrial Court as if he had been Chief Judge of that Court immediately before his retirement.
- Remuneration of members of Tribunal.
- 23.** Section 35 of the Principal Act is amended by omitting from sub-section (2) the word “Attorney-General” and substituting the word “Minister”.
- Suspension and removal of members of Tribunal.
- 24.** Section 44 of the Principal Act is amended by omitting from sub-section (2) the word “Attorney-General” and substituting the word “Minister”.
- Staff of Tribunal.
- 25.** Sections 45, 46 and 47 of the Principal Act are repealed and the following sections substituted:—

Contracts,
arrangements
or
understandings
restricting
dealings or
affecting
competition.

“45. (1) If a provision of a contract made before the commencement of the *Trade Practices Amendment Act 1977*—

- (a) is an exclusionary provision; or
- (b) has the purpose, or has or is likely to have the effect, of substantially lessening competition,

that provision is unenforceable in so far as it confers rights or benefits or imposes duties or obligations on a corporation.

“(2) A corporation shall not—

- (a) make a contract or arrangement, or arrive at an understanding, if—
 - (i) the proposed contract, arrangement or understanding contains an exclusionary provision; or
 - (ii) a provision of the proposed contract, arrangement or understanding has the purpose, or would have or be likely to have the effect, of substantially lessening competition; or
- (b) give effect to a provision of a contract, arrangement or understanding, whether the contract or arrangement was made, or the understanding was arrived at, before or after the commencement of this section, if that provision—
 - (i) is an exclusionary provision; or
 - (ii) has the purpose, or has or is likely to have the effect, of substantially lessening competition.

“(3) For the purposes of this section and section 45A, ‘competition’, in relation to a provision of a contract, arrangement or understanding or of a proposed contract, arrangement or understanding, means competition in any market in which a corporation that is a party to the contract, arrangement or understanding or would be a party to the proposed contract, arrangement or understanding, or any body corporate related to such a corporation, supplies or acquires, or is likely to supply or acquire, goods or services or would, but for the provision, supply or acquire, or be likely to supply or acquire, goods or services.

“(4) For the purposes of the application of this section in relation to a particular corporation, a provision of a contract, arrangement or understanding or of a proposed contract, arrangement or understanding shall be deemed to have or to be likely to have the effect of substantially lessening competition if that provision and any one or more of the following provisions, namely—

- (a) the other provisions of that contract, arrangement or understanding or proposed contract, arrangement or understanding; and
- (b) the provisions of any other contract, arrangement or understanding or proposed contract, arrangement or understanding to

which the corporation or a body corporate related to the corporation is or would be a party, together have or are likely to have that effect.

“(5) This section does not apply to or in relation to—

- (a) a provision of a contract where the provision constitutes a covenant to which section 45B applies or, but for sub-section 45B (9), would apply;
- (b) a provision of a proposed contract where the provision would constitute a covenant to which section 45B would apply or, but for sub-section 45B (9), would apply; or
- (c) a provision of a contract, arrangement or understanding or of a proposed contract, arrangement or understanding in so far as the provision relates to conduct that contravenes section 48 or would contravene 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 or are to be advertised, displayed or offered for sale.

“(6) The making of a contract, arrangement or understanding does not constitute a contravention of this section by reason that the contract, arrangement or understanding contains a provision the giving effect to which would, or would but for the operation of sub-section 88 (8) or section 93, constitute a contravention of section 47 and this section does not apply to or in relation to the giving effect to a provision of a contract, arrangement or understanding by way of—

- (a) engaging in conduct that contravenes, or would but for the operation of sub-section 88 (8) or section 93 contravene, section 47; or
- (b) doing an act by reason of a breach or threatened breach of a condition referred to in sub-section 47 (2), (4), (6) or (8), being an act done by a person at a time when—
 - (i) an authorization under sub-section 88 (8) is in force in relation to conduct engaged in by that person on that condition; or
 - (ii) by reason of sub-section 93 (7) conduct engaged in by that person on that condition is not to be taken to have the effect of substantially lessening competition within the meaning of section 47.

“(7) This section does not apply to or in relation to a contract, arrangement or understanding in so far as the contract, arrangement or understanding provides, or to or in relation to a proposed contract, arrangement or understanding in so far as the proposed contract, arrangement or understanding would provide, directly or indirectly for the acquisition of any shares in the capital, or any assets, of a body corporate.

“(8) This section does not apply to or in relation to a contract, arrangement or understanding, or a proposed contract, arrangement or

understanding, the only parties to which are or would be bodies corporate that are related to each other.

“(9) The making by a corporation of a contract that contains a provision in relation to which sub-section 88 (1) applies is not a contravention of sub-section (2) of this section if—

- (a) the contract is subject to a condition that the provision will not come into force unless and until the corporation is granted an authorization to give effect to the provision; and
- (b) the corporation applies for the grant of such an authorization within 14 days after the contract is made,

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

Contracts,
arrangements
or under-
standing in
relation to
prices.

“45A. (1) Without limiting the generality of section 45, a provision of a contract, arrangement or understanding, or of a proposed contract, arrangement or understanding, shall be deemed for the purposes of that section to have the purpose, or to have or to be likely to have the effect, of substantially lessening competition if the provision has the purpose, or has or is likely to have the effect, as the case may be, of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods or services supplied or acquired or to be supplied or acquired by the parties to the contract, arrangement or understanding or the proposed parties to the proposed contract, arrangement or understanding, or by any of them, or by any bodies corporate that are related to any of them, in competition with each other.

“(2) Sub-section (1) does not apply to a provision of a contract or arrangement made or of an understanding arrived at, or of a proposed contract or arrangement to be made or of a proposed understanding to be arrived at, for the purposes of a joint venture to the extent that the provision relates or would relate to—

- (a) the joint supply by the parties to the joint venture, or the supply by the parties to the joint venture in proportion to their respective interests in the joint venture, of goods jointly produced by those parties in pursuance of the joint venture;
- (b) the joint supply by the parties to the joint venture of services in pursuance of the joint venture; or
- (c) in the case of a joint venture carried on by a body corporate as mentioned in sub-paragraph 4J (a) (ii)—
 - (i) the supply by that body corporate of goods produced by it in pursuance of the joint venture; or
 - (ii) the supply by that body corporate of services in pursuance of the joint venture, not being services supplied on behalf of the body corporate by—
 - (A) a person who is the owner of shares in the capital of the body corporate; or

(B) a body corporate that is related to such a person.

“(3) Sub-section (1) does not apply in relation to a provision of a contract, arrangement or understanding, or of a proposed contract, arrangement or understanding, to the extent that the provision recommends or provides for recommending, or would recommend or provide for recommending, the price for, or a discount, allowance, rebate or credit in relation to, goods or services, where the parties to the contract, arrangement or understanding, or the proposed parties to the proposed contract, arrangement or understanding, include—

- (a) not less than 50 persons (bodies corporate that are related to one another being counted as a single person) who supply, in trade or commerce, goods or services to which the provision applies; or
- (b) not less than 50 persons (bodies corporate that are related to one another being counted as a single person) who acquire, in trade or commerce, goods or services to which the provision applies.

“(4) Sub-section (1) does not apply to a provision of a contract, arrangement or understanding, or of a proposed contract, arrangement or understanding, being a provision—

- (a) in relation to the price for goods or services to be collectively acquired, whether directly or indirectly, by parties to the contract, arrangement or understanding or by proposed parties to the proposed contract, arrangement or understanding; or
- (b) for the joint advertising of the price for the re-supply of goods so acquired.

“(5) For the purposes of this Act, a provision of a contract, arrangement or understanding, or of a proposed contract, arrangement or understanding, shall not be taken not to have the purpose, or not to have or to be likely to have the effect, of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods or services by reason only of—

- (a) the form of, or of that provision of, the contract, arrangement or understanding or the proposed contract, arrangement or understanding; or
- (b) any description given to, or to that provision of, the contract, arrangement or understanding or the proposed contract, arrangement or understanding by the parties or proposed parties.

“(6) For the purposes of this Act but without limiting the generality of sub-section (5), a provision of a contract, arrangement or understanding, or of a proposed contract, arrangement or understanding, shall not be taken not to have the purpose, or not to have or to be likely to have the effect, of fixing, controlling or maintaining, or providing for the

fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods or services by reason only that the provision recommends, or provides for the recommending of, such a price, discount, allowance, rebate or credit if in fact the provision has that purpose or has or is likely to have that effect.

“(7) For the purposes of the preceding provisions of this section but without limiting the generality of those provisions, a provision of a contract, arrangement or understanding, or of a proposed contract, arrangement or understanding, shall be deemed to have the purpose, or to have or to be likely to have the effect, of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods supplied as mentioned in sub-section (1) if the provision has the purpose, or has or is likely to have the effect, of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, such a price, discount, allowance, rebate or credit in relation to a re-supply of the goods by persons to whom the goods are or would be supplied by the parties to the contract, arrangement or understanding or the proposed parties to the proposed contract, arrangement or understanding, or by any of them, or by any bodies corporate that are related to any of them.

“(8) The reference in sub-section (1) to the supply or acquisition of goods or services by persons in competition with each other includes a reference to the supply or acquisition of goods or services by persons who, but for a provision of any contract, arrangement or understanding or of any proposed contract, arrangement or understanding, would be, or would be likely to be, in competition with each other in relation to the supply or acquisition of the goods or services.

Covenants
affecting
competition.

“45B. (1) A covenant, whether the covenant was given before or after the commencement of this section, is unenforceable in so far as it confers rights or benefits or imposes duties or obligations on a corporation or on a person associated with a corporation if the covenant has, or is likely to have, the effect of substantially lessening competition in any market in which the corporation or any person associated with the corporation supplies or acquires, or is likely to supply or acquire, goods or services or would, but for the covenant, supply or acquire, or be likely to supply or acquire, goods or services.

“(2) A corporation or a person associated with a corporation shall not—

- (a) require the giving of a covenant, or give a covenant, if the proposed covenant has the purpose, or would have or be likely to have the effect, of substantially lessening competition in any market in which—
 - (i) the corporation, or any person associated with the corporation by virtue of paragraph (7) (b), supplies or acquires, is likely to supply or acquire, or would, but for the

covenant, supply or acquire, or be likely to supply or acquire, goods or services; or

(ii) any person associated with the corporation by virtue of the operation of paragraph (7) (a) supplies or acquires, is likely to supply or acquire, or would, but for the covenant, supply or acquire, or be likely to supply or acquire, goods or services, being a supply or acquisition in relation to which that person is, or would be, under an obligation to act in accordance with directions, instructions or wishes of the corporation;

(b) threaten to engage in particular conduct if a person who, but for sub-section (1), would be bound by a covenant does not comply with the terms of the covenant; or

(c) engage in particular conduct by reason that a person who, but for sub-section (1), would be bound by a covenant has failed to comply, or proposes or threatens to fail to comply, with the terms of the covenant.

“(3) Where a person—

(a) issues an invitation to another person to enter into a contract containing a covenant;

(b) makes an offer to another person to enter into a contract containing a covenant; or

(c) makes it known that the person will not enter into a contract of a particular kind unless the contract contains a covenant of a particular kind or in particular terms,

the first-mentioned person shall, by issuing that invitation, making that offer or making that fact known, be deemed to require the giving of the covenant.

“(4) For the purposes of this section, a covenant or proposed covenant shall be deemed to have, or to be likely to have, the effect of substantially lessening competition in a market if the covenant or proposed covenant, as the case may be, would have, or be likely to have, that effect when taken together with the effect or likely effect on competition in that market of any other covenant or proposed covenant to the benefit of which—

(a) a corporation that, or person who, is or would be, or but for sub-section (1) would be, entitled to the benefit of the first-mentioned covenant or proposed covenant; or

(b) a person associated with the corporation referred to in paragraph (a) or a corporation associated with the person referred to in that paragraph,

is or would be, or but for sub-section (1) would be, entitled.

“(5) The requiring of the giving of, or the giving of, a covenant does not constitute a contravention of this section by reason that giving effect

to the covenant would, or would but for the operation of sub-section 88 (8) or section 93, constitute a contravention of section 47 and this section does not apply to or in relation to engaging in conduct in relation to a covenant by way of—

- (a) conduct that contravenes, or would but for the operation of sub-section 88 (8) or section 93 contravene, section 47; or
- (b) doing an act by reason of a breach or threatened breach of a condition referred to in sub-section 47 (2), (4), (6) or (8), being an act done by a person at a time when—
 - (i) an authorization under sub-section 88 (8) is in force in relation to conduct engaged in by that person on that condition; or
 - (ii) by reason of sub-section 93 (7) conduct engaged in by that person on that condition is not to be taken to have the effect of substantially lessening competition within the meaning of section 47.

“(6) This section does not apply to or in relation to a covenant or proposed covenant where the only persons who are or would be respectively bound by, or entitled to the benefit of, the covenant or proposed covenant are persons who are associated with each other or are bodies corporate that are related to each other.

“(7) For the purposes of this section, section 45C and sub-paragraph 87 (3) (a) (ii), a person and a corporation shall be taken to be associated with each other in relation to a covenant or proposed covenant if, and only if—

- (a) the person is under an obligation (otherwise than in pursuance of the covenant or proposed covenant), whether formal or informal, to act in accordance with directions, instructions or wishes of the corporation in relation to the covenant or proposed covenant; or
- (b) the person is a body corporate in relation to which the corporation is in the position mentioned in sub-paragraph 4A (1) (a) (ii).

“(8) The requiring by a person of the giving of, or the giving by a person of, a covenant in relation to which sub-section 88 (5) applies is not a contravention of sub-section (2) of this section if—

- (a) the covenant is subject to a condition that the covenant will not come into force unless and until the person is granted an authorization to require the giving of, or to give, the covenant; and
- (b) the person applies for the grant of such an authorization within 14 days after the covenant is given,

but nothing in this sub-section affects the application of paragraph (2) (b) or (c) in relation to the covenant.

“(9) This section does not apply to or in relation to a covenant or proposed covenant if—

- (a) the sole or principal purpose for which the covenant was or is required to be given was or is to prevent the relevant land from being used otherwise than for residential purposes;
- (b) the person who required or requires the covenant to be given was or is a religious, charitable or public benevolent institution or a trustee for such an institution and the covenant was or is required to be given for or in accordance with the purposes or objects of that institution; or
- (c) the covenant was or is required to be given in pursuance of a legally enforceable requirement made by, or by a trustee for, a religious, charitable or public benevolent institution, being a requirement made for or in accordance with the purposes or objects of that institution.

“45C. (1) In the application of sub-section 45B (1) in relation to a covenant that has, or is likely to have, the effect of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods or services supplied or acquired by the persons who are, or but for that sub-section would be, bound by or entitled to the benefit of the covenant, or by any of them, or by any persons associated with any of them, in competition with each other, that sub-section has effect as if the words ‘if the covenant has, or is likely to have, the effect of substantially lessening competition in a market in which the corporation or any person associated with the corporation supplies or acquires, or is likely to supply or acquire, goods or services or would, but for the covenant, supply or acquire, or be likely to supply or acquire, goods or services’ were omitted. Covenants in relation to prices.

“(2) In the application of sub-section 45B (2) in relation to a proposed covenant that has the purpose, or would have or be likely to have the effect, of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods or services supplied or acquired by the persons who would, or would but for sub-section 45B (1), be bound by or entitled to the benefit of the proposed covenant, or by any of them, or by any persons associated with any of them, in competition with each other, paragraph 45B (2) (a) has effect as if all the words after the words ‘require the giving of a covenant, or give a covenant’ were omitted.

“(3) For the purposes of this Act, a covenant shall not be taken not to have, or not to be likely to have, the effect, or a proposed covenant shall not be taken not to have the purpose, or not to have, or not to be

likely to have, the effect, of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods or services by reason only of—

- (a) the form of the covenant or proposed covenant; or
- (b) any description given to the covenant by any of the persons who are, or but for sub-section 45B (1) would be, bound by or entitled to the benefit of the covenant or any description given to the proposed covenant by any of the persons who would, or would but for sub-section 45B (1), be bound by or entitled to the benefit of the proposed covenant.

“(4) For the purposes of the preceding provisions of this section, but without limiting the generality of those provisions—

- (a) a covenant shall be deemed to have, or to be likely to have, the effect of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods supplied as mentioned in sub-section (1) if the covenant has, or is likely to have, the effect of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, such a price, discount, allowance, rebate or credit in relation to a re-supply of the goods by persons to whom the goods are supplied by the persons who are, or but for sub-section 45B (1) would be, bound by or entitled to the benefit of the covenant, or by any of them, or by any persons associated with any of them; and
- (b) a proposed covenant shall be deemed to have the purpose, or to have, or to be likely to have, the effect, of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods supplied as mentioned in sub-section (2) if the proposed covenant has the purpose, or would have or be likely to have the effect, as the case may be, of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, such a price, discount, allowance, rebate or credit in relation to a re-supply of the goods by persons to whom the goods are supplied by the persons who would, or would but for sub-section 45B (1), be bound by or entitled to the benefit of the proposed covenant, or by any of them, or by any persons associated with any of them.

“(5) The reference in sub-section (1) to the supply or acquisition of goods or services by persons in competition with each other includes a reference to the supply or acquisition of goods or services by persons who, but for a provision of any contract, arrangement or understanding or of any proposed contract, arrangement or understanding, would be, or would be likely to be, in competition with each other in relation to the supply or acquisition of the goods or services.

“45D. (1) Subject to this section, a person shall not, in concert with another person, engage in conduct that hinders or prevents the supply of goods or services by a third person to a corporation (not being an employer of the first-mentioned person), or the acquisition of goods or services by a third person from a corporation (not being an employer of the first-mentioned person), where the conduct is engaged in for the purpose, and would have or be likely to have the effect, of causing—

Secondary
boycotts.

- (a) substantial loss or damage to the business of the corporation or of a body corporate that is related to the corporation; or
- (b) a substantial lessening of competition in any market in which the corporation or a body corporate that is related to the corporation supplies or acquires goods or services.

“(2) Paragraph 4F (b) does not apply in relation to sub-section (1) of this section but a person shall be deemed to engage in conduct for a purpose mentioned in that sub-section if he engages in that conduct for purposes that include that purpose.

“(3) A person shall not be taken to contravene, or to be involved in a contravention of, sub-section (1) by engaging in conduct where—

- (a) the dominant purpose for which the conduct is engaged in is substantially related to—
 - (i) the remuneration, conditions of employment, hours of work or working conditions of that person or of another person employed by an employer of that person; or
 - (ii) an employer of that person having terminated, or taken action to terminate, the employment of that person or of another person employed by that employer; or
- (b) in the case of conduct engaged in by the following persons in concert with each other (and not in concert with any other person), that is to say—
 - (i) an organization or organizations of employees, or an officer or officers of such an organization, or both such an organization or organizations and such an officer or officers; and
 - (ii) an employee, or 2 or more employees who are employed by the one employer,

the dominant purpose for which the conduct is engaged in is substantially related to—

- (iii) the remuneration, conditions of employment, hours of work or working conditions of the employee, or of any of the employees, referred to in sub-paragraph (ii); or
- (iv) the employer of the employee, or of the employees, referred to in sub-paragraph (ii) having terminated, or taken action to terminate, the employment of any of his employees.

“(4) The application of sub-section (1) in relation to a person in respect of his engaging in conduct in concert with another person is not affected by reason that sub-section (3) operates to preclude the other person from being taken to contravene, or to be involved in a contravention of, sub-section (1) in respect of that conduct.

“(5) If two or more persons (in this sub-section referred to as the ‘participants’) each of whom is a member or officer of the same organization of employees (being an organization that exists or is carried on for the purpose, or for purposes that include the purpose, of furthering the interests of its members in relation to their employment) engage in conduct in concert with one another, whether or not the conduct is also engaged in in concert with other persons, the organization shall be deemed for the purposes of this Act to engage in that conduct in concert with the participants, and so to engage in that conduct for the purpose or purposes for which that conduct is engaged in by the participants, unless the organization establishes that it took all reasonable steps to prevent the participants from engaging in that conduct.

“(6) Where an organization of employees engages, or is deemed by sub-section (5) to engage, in conduct in concert with members or officers of the organization in contravention of sub-section (1)—

- (a) any loss or damage suffered by a person as a result of the conduct shall be deemed to have been caused by the conduct of the organization;
- (b) if the organization is a body corporate, no action under section 82 to recover the amount of the loss or damage may be brought against any of the members or officers of the organization; and
- (c) if the organization is not a body corporate—
 - (i) a proceeding in respect of the conduct may be instituted under section 77, 80 or 82 against an officer or officers of the organization as a representative or representatives of the members of the organization and a proceeding so instituted shall be deemed to be a proceeding against all the persons who were members of the organization at the time when the conduct was engaged in;
 - (ii) sub-section 76 (2) does not prevent an order being made in a proceeding mentioned in sub-paragraph (i) that was instituted under section 77;
 - (iii) the maximum pecuniary penalty that may be imposed in a proceeding mentioned in sub-paragraph (ii) is the penalty applicable under section 76 in relation to a body corporate;
 - (iv) except as provided by sub-paragraph (i), a proceeding in respect of the conduct shall not be instituted under section 77 or 82 against any of the members or officers of the organization; and

- (v) for the purpose of enforcing any judgment or order given or made in a proceeding mentioned in sub-paragraph (i) that is instituted under section 77 or 82, process may be issued and executed against any property of the organization or of any branch or part of the organization, or any property in which the organization or any branch or part of the organization has, or any members of the organization or of a branch or part of the organization have in their capacity as such members, a beneficial interest, whether vested in trustees or however otherwise held, as if the organization were a body corporate and the absolute owner of the property or interest but no process shall be issued or executed against any other property of members, or against any property of officers, of the organization or of a branch or part of the organization.

“(7) Nothing in this section affects the operation of any other provision of this Part.

“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 for the purpose of—

Monopolization.

- (a) eliminating or substantially damaging a person, being a competitor in that market or in any other market of the corporation or of a body corporate related to the corporation;
- (b) preventing the entry of a person into that market or into any other market; or
- (c) deterring or preventing a person from engaging in competitive conduct in that market or in any other market.

“(2) If—

- (a) a body corporate that is related to a corporation is, or two or more bodies corporate each of which is related to the one corporation together are, in a position substantially to control a market for goods or services; or
- (b) a corporation, and a body corporate that is, or two or more bodies corporate each of which is, related to that corporation, together are in a position substantially to control a market for goods or services,

the corporation shall be deemed for the purposes of this section to be in a position substantially to control that market.

“(3) A reference in this section to a corporation or other body corporate being in a position substantially to control a market for goods or services includes a reference to a corporation or other body corporate, as the case may be, having, by reason of its share of the market, or its share

of the market combined with the availability to it of technical knowledge, raw materials or capital, 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) A reference in this section to substantially controlling a market for goods or services shall be construed as a reference to substantially controlling such a market either as a supplier or as an acquirer of goods or services in that market.

“(5) Without extending by implication the meaning of sub-section (1), a corporation shall not be taken to contravene that sub-section by reason only that it acquires plant or equipment.

“(6) This section does not prevent a corporation from engaging in conduct that does not constitute a contravention of any of the following sections, namely, sections 45, 45B, 47 and 50, by reason that an authorization is in force or by reason of the operation of section 93.

Exclusive
dealing.

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

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

- (a) supplies, or offers to supply, goods or services;
- (b) supplies, or offers to supply, goods or services at a particular price; or
- (c) gives or allows, or offers to give or allow, a discount, allowance, rebate or credit in relation to the supply or proposed supply of goods or services by the corporation,

on the condition that the person to whom the corporation supplies, or offers or proposes to supply, the goods or services or, if that person is a body corporate, a body corporate related to that body corporate—

- (d) will not, or will not except to a limited extent, acquire goods or services, or goods or services of a particular kind or description, directly or indirectly from a competitor of the corporation or from a competitor of a body corporate related to the corporation;
- (e) will not, or will not except to a limited extent, re-supply goods, or goods of a particular kind or description, acquired directly or indirectly from a competitor of the corporation or from a competitor of a body corporate related to the corporation; or
- (f) in the case where the corporation supplies or would supply goods, will not re-supply the goods to any person, or will not, or will not except to a limited extent, re-supply the goods—
 - (i) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or
 - (ii) in particular places or classes of places or in places other than particular places or classes of places.

“(3) A corporation also engages in the practice of exclusive dealing if the corporation refuses—

- (a) to supply goods or services to a person;
- (b) to supply goods or services to a person at a particular price; or
- (c) to give or allow a discount, allowance, rebate or credit in relation to the supply or proposed supply of goods or services to a person,

for the reason that the person or, if the person is a body corporate, a body corporate related to that body corporate—

- (d) has acquired, or has not agreed not to acquire, goods or services, or goods or services of a particular kind or description, directly or indirectly from a competitor of the corporation or from a competitor of a body corporate related to the corporation;
- (e) has re-supplied, or has not agreed not to re-supply, goods, or goods of a particular kind or description, acquired directly or indirectly from a competitor of the corporation or from a competitor of a body corporate related to the corporation; or
- (f) in the case of a refusal in relation to the supply or proposed supply of goods, has re-supplied, or has not agreed not to re-supply, goods, or goods of a particular kind or description, acquired from the corporation to any person, or has re-supplied, or has not agreed not to re-supply, goods, or goods of a particular kind or description, acquired from the corporation—
 - (i) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or
 - (ii) in particular places or classes of places or in places other than particular places or classes of places.

“(4) A corporation also engages in the practice of exclusive dealing if the corporation—

- (a) acquires, or offers to acquire, goods or services; or
- (b) acquires, or offers to acquire, goods or services at a particular price,

on the condition that the person from whom the corporation acquires or offers to acquire the goods or services or, if that person is a body corporate, a body corporate related to that body corporate will not supply goods or services, or goods or services of a particular kind or description, to any person, or will not, or will not except to a limited extent, supply goods or services, or goods or services of a particular kind or description—

- (c) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or
- (d) in particular places or classes of places or in places other than particular places or classes of places.

“(5) A corporation also engages in the practice of exclusive dealing if the corporation refuses—

- (a) to acquire goods or services from a person; or
- (b) to acquire goods or services at a particular price from a person, for the reason that the person or, if the person is a body corporate, a body corporate related to that body corporate has supplied, or has not agreed not to supply, goods or services, or goods or services of a particular kind or description—
- (c) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or
- (d) in particular places or classes of places or in places other than particular places or classes of places.

“(6) A corporation also engages in the practice of exclusive dealing if the corporation—

- (a) supplies, or offers to supply, goods or services;
- (b) supplies, or offers to supply, goods or services at a particular price; or
- (c) gives or allows, or offers to give or allow, a discount, allowance, rebate or credit in relation to the supply or proposed supply of goods or services by the corporation,

on the condition that the person to whom the corporation supplies or offers or proposes to supply the goods or services or, if that person is a body corporate, a body corporate related to that body corporate will acquire goods or services of a particular kind or description directly or indirectly from another person not being a body corporate related to the corporation.

“(7) A corporation also engages in the practice of exclusive dealing if the corporation refuses—

- (a) to supply goods or services to a person;
- (b) to supply goods or services at a particular price to a person; or
- (c) to give or allow a discount, allowance, rebate or credit in relation to the supply of goods or services to a person,

for the reason that the person or, if the person is a body corporate, a body corporate related to that body corporate has not acquired, or has not agreed to acquire, goods or services of a particular kind or description directly or indirectly from another person not being a body corporate related to the corporation.

“(8) A corporation also engages in the practice of exclusive dealing if the corporation grants or renews, or makes it known that it will not exercise a power or right to terminate, a lease of, or a licence in respect of, land or a building or part of a building on the condition that another party to the lease or licence or, if that other party is a body corporate, a body corporate related to that body corporate—

- (a) will not, or will not except to a limited extent—
 - (i) acquire goods or services, or goods or services of a particular kind or description, directly or indirectly from a competitor of the corporation or from a competitor of a body corporate related to the corporation; or
 - (ii) re-supply goods, or goods of a particular kind or description, acquired directly or indirectly from a competitor of the corporation or from a competitor of a body corporate related to the corporation;
- (b) will not supply goods or services, or goods or services of a particular kind or description, to any person, or will not, or will not except to a limited extent, supply goods or services, or goods or services of a particular kind or description—
 - (i) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or
 - (ii) in particular places or classes of places or in places other than particular places or classes of places; or
- (c) will acquire goods or services of a particular kind or description directly or indirectly from another person not being a body corporate related to the corporation.

“(9) A corporation also engages in the practice of exclusive dealing if the corporation refuses to grant or renew, or exercises a power or right to terminate, a lease of, or a licence in respect of, land or a building or part of a building for the reason that another party to the lease or licence or, if that other party is a body corporate, a body corporate related to that body corporate—

- (a) has acquired, or has not agreed not to acquire, goods or services, or goods or services of a particular kind or description, directly or indirectly from a competitor of the corporation or from a competitor of a body corporate related to the corporation;
- (b) has re-supplied, or has not agreed not to re-supply, goods, or goods of a particular kind or description, acquired directly or indirectly from a competitor of the corporation or from a competitor of a body corporate related to the corporation;
- (c) has supplied goods or services, or goods or services of a particular kind or description—
 - (i) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or
 - (ii) in particular places or classes of places or in places other than particular places or classes of places; or
- (d) has not acquired, or has not agreed to acquire, goods or services of a particular kind or description directly or indirectly from another person not being a body corporate related to the corporation.

“(10) 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), (3), (4) or (5) or paragraph (8) (a) or (b) or (9) (a), (b) or (c) unless—

- (a) the engaging by the corporation in that conduct has the purpose, or has or is likely to have the effect, of substantially lessening competition; or
- (b) the engaging by the corporation in that conduct, and the engaging by the corporation, or by a body corporate related to the corporation, in other conduct of the same or a similar kind, together have or are likely to have the effect of substantially lessening competition.

“(11) Sub-sections (8) and (9) do not apply with respect to—

- (a) conduct engaged in by, or by a trustee for, a religious, charitable or public benevolent institution, being conduct engaged in for or in accordance with the purposes or objects of that institution; or
- (b) conduct engaged in in pursuance of a legally enforceable requirement made by, or by a trustee for, a religious, charitable or public benevolent institution, being a requirement made for or in accordance with the purposes or objects of that institution.

“(12) Sub-section (1) 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.

“(13) In this section—

- (a) a reference to a condition shall be read as a reference to any condition, whether direct or indirect and whether having legal or equitable force or not, and includes a reference to a condition the existence or nature of which is ascertainable only by inference from the conduct of persons or from other relevant circumstances;
- (b) a reference to competition, in relation to conduct to which a provision of this section other than sub-section (8) or (9) applies, shall be read as a reference to competition in any market in which—
 - (i) the corporation engaging in the conduct or any body corporate related to that corporation; or
 - (ii) any person whose business dealings are restricted, limited or otherwise circumscribed by the conduct or, if that person is a body corporate, any body corporate related to that body corporate,

supplies or acquires, or is likely to supply or acquire, goods or services or would, but for the conduct, supply or acquire, or be likely to supply or acquire, goods or services; and

- (c) a reference to competition, in relation to conduct to which sub-section (8) or (9) applies, shall be read as a reference to competition in any market in which the corporation engaging in the conduct or any other corporation the business dealings of which are restricted, limited or otherwise circumscribed by the conduct, or any body corporate related to either of those corporations, supplies or acquires, or is likely to supply or acquire, goods or services or would, but for the conduct, supply or acquire, or be likely to supply or acquire, goods or services.”

26. Section 49 of the Principal Act is amended—

- (a) by inserting in paragraph (b) of sub-section (1), after the word “given”, the words “or allowed”;
- (b) by omitting from paragraphs (c) and (d) of sub-section (1) the words “or facilities”;
- (c) by inserting before the words “is likely to have” the words “has or”.

Price
discrimi-
nation.

27. Section 50 of the Principal Act is repealed and the following section substituted:—

“50. (1) A corporation shall not acquire, directly or indirectly, any shares in the capital, or any assets, of a body corporate if—

- (a) as a result of the acquisition, the corporation would be, or be likely to be, in a position to control or dominate a market for goods or services; or
- (b) in a case where the corporation is in a position to control or dominate a market for goods or services—
- (i) the body corporate or another body corporate that is related to that body corporate is, or is likely to be, a competitor of the corporation or of a body corporate that is related to the corporation; and
- (ii) the acquisition would, or would be likely to, substantially strengthen the power of the corporation to control or dominate that market.

“(2) If—

- (a) a body corporate that is related to a corporation is, or two or more bodies corporate each of which is related to the one corporation together are, in a position to control or dominate a market for goods or services; or
- (b) a corporation, and a body corporate that is, or two or more bodies corporate each of which is, related to that corporation, together are in a position to control or dominate a market for goods or services,

the corporation shall be deemed for the purposes of this section to be in a position to control or dominate that market.

“(3) In this section—

- (a) a reference to a market for goods or services shall be construed as a reference to a substantial market for goods or services in Australia or in a State; and
- (b) a reference to controlling or dominating a market for goods or services shall be construed as a reference to controlling or dominating such a market either as a supplier or as an acquirer of goods or services in that market.

“(4) 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 provisions of the contract relating to the acquisition will not come into force unless and until the corporation has been granted an authorization to acquire the shares or assets; and
- (c) the corporation applied for the grant of such an authorization before the expiration of 14 days after the contract was entered into,

the 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) the application for the authorization is disposed of; or
- (e) the contract ceases to be subject to the condition,

whichever first happens.

“(5) For the purposes of sub-section (4), 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.

28. Section 51 of the Principal Act is amended—

- (a) by inserting in sub-section (2), before the figures “48”, the figures and word “45D or”;
- (b) by omitting paragraphs (a) to (d), inclusive, of sub-section (2) and substituting the following paragraphs:—

“(a) to any act done in relation to, or to any provision of a contract, arrangement or understanding to the extent

that the provision relates to, the remuneration, conditions of employment, hours of work or working conditions of employees;

- “(b) to any provision of a contract of service or of a contract for the provision of services, being a provision 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, arrangement or understanding, being a provision 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, arrangement or understanding between partners none of whom is a body corporate, being a provision 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;”;
- (c) by omitting paragraphs (f) and (g) of sub-section (2) and substituting the following word and paragraph:—
- “; or (g) to any provision of a contract, arrangement or understanding, being a provision that relates exclusively to the export of goods from Australia or to the supply of services outside Australia, if full and accurate particulars of the provision (not including particulars of prices for goods or services but including particulars of any method of fixing, controlling or maintaining such prices) were furnished to the Commission before the expiration of 14 days after the date on which the contract or arrangement was made or the understanding was arrived at, or before 8 September 1976, whichever was the later.”; and
- (d) by omitting sub-sections (3) and (4) and substituting the following sub-sections:—
- “(2A) In determining whether a contravention of a provision of this Part other than section 48 has been committed, regard shall not be had 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.

“(3) A contravention of a provision of this Part other than section 46 or 48 shall not be taken to have been committed by reason of—

- (a) the imposing of, or giving effect to, a condition of—
 - (i) a licence granted by the proprietor, licensee or owner of a patent, of a registered design or of 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, of a registered design or of a copyright or of the right to apply for a patent or for the registration of a design,
to the extent that the condition relates to—
 - (iii) the invention to which the patent or application for a patent relates to 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) the inclusion in a contract, arrangement or understanding authorizing the use of a certification trade mark of a provision in accordance with rules applicable under Part XI of the *Trade Marks Act* 1955, or the giving effect to such a provision; or
- (c) the inclusion in a contract, arrangement or understanding between—
 - (i) the registered proprietor of a trade mark other than a certification trade mark; and
 - (ii) a person registered as a registered user of that trade mark under Part IX of the *Trade Marks Act* 1955 or a person authorized by the contract to use the trade mark subject to his becoming registered as such a registered user,

of a provision to the extent that it relates to the kinds, qualities or standards of goods bearing the mark that may be produced or supplied, or the giving effect to the provision to that extent.

“(4) This section applies in determining whether a provision of a contract is unenforceable by reason of sub-section 45 (1), or whether a covenant is unenforceable by reason of sub-section 45B (1), in like manner as it applies in determining whether a contravention of a provision of this Part has been committed.”.

29. Section 52 of the Principal Act is amended by adding at the end of sub-section (1) the words “or is likely to mislead or deceive”.

Misleading or deceptive conduct.

30. Section 53 of the Principal Act is amended—

(a) by omitting paragraph (a) and substituting the following paragraphs:—

False representations.

“(a) falsely represent that goods are of a particular standard, quality, grade, composition, style or model or have had a particular history or particular previous use;

(aa) falsely represent that services are of a particular standard, quality or grade;” and

(b) by omitting paragraphs (e) to (g), inclusive, and substituting the following paragraphs:—

“(e) make a false or misleading statement with respect to the price of goods or services;

(f) make a false or misleading statement concerning the need for any goods or services; or

(g) make a false or misleading statement concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.”.

31. After section 53 of the Principal Act the following section is inserted:—

“53A. (1) A corporation shall not, in trade or commerce, in connexion with the sale or grant, or the possible sale or grant, of an interest in land or in connexion with the promotion by any means of the sale or grant of an interest in land—

False representations and other misleading or offensive conduct in relation to land.

(a) represent that the corporation has a sponsorship, approval or affiliation it does not have;

(b) make a false or misleading statement concerning the nature of the interest in the land, the price payable for the land, the location of the land, the characteristics of the land, the use to which the land is capable of being put or may lawfully be put or the existence or availability of facilities associated with the land; or

(c) offer gifts, prizes or other free items with the intention of not providing them or of not providing them as offered.

“(2) 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 sale or grant, or the possible sale or grant, of an interest in land or the payment for an interest in land.

“(3) In this section, ‘interest’, in relation to land, means—

(a) a legal or equitable estate or interest in the land;

(b) a right of occupancy of the land, or of a building or part of a building erected on the land, arising by virtue of the holding of

shares, or by virtue of a contract to purchase shares, in an incorporated company that owns the land or building; or

- (c) a right, power or privilege over, or in connexion with, the land.”.

Offering gifts and prizes.

32. Section 54 of the Principal Act is amended by inserting after the word “them” the words “, or of not providing them”.

33. After section 55 of the Principal Act the following section is inserted:—

Certain misleading conduct in relation to services.

“55A. A corporation shall not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose or the quantity of any services.”.

Bait advertising.

34. Section 56 of the Principal Act is amended by adding at the end thereof the following sub-sections:—

“(2) A corporation that has, in trade or commerce, advertised goods or services for supply at a special price shall offer such goods or services 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.

“(3) In a prosecution of a corporation under Part VI in relation to a failure to offer goods or services to a person (in this sub-section referred to as the ‘customer’) in accordance with sub-section (2), it is a defence if the corporation establishes that—

- (a) it offered to supply, or to procure another person to supply, goods or services of the kind advertised to the customer within a reasonable time, in a reasonable quantity and at the advertised price; or
- (b) it offered to supply immediately, or to procure another person to supply within a reasonable time, equivalent goods or services to the customer in a reasonable quantity and at the price at which the first-mentioned goods or services were advertised,

and, in either case, where the offer was accepted by the customer, the corporation has so supplied, or procured another person to supply, goods or services.”.

Misleading statements about certain business activities.

35. Section 59 of the Principal Act is amended—

- (a) by omitting the words “false or misleading statement” and substituting the words “statement that is false or misleading in a material particular”; and
- (b) by adding at the end thereof the following sub-section:—

“(2) Where a corporation, in trade or commerce, invites, whether by advertisement or otherwise, persons to engage or participate, or to offer or apply to engage or participate, in a

business activity requiring the investment of moneys by the persons concerned and the performance by them of work associated with the investment, the corporation shall not make, with respect to the profitability or risk or any other material aspect of the business activity, a statement that is false or misleading in a material particular.”.

36. Section 62 of the Principal Act is amended—

Product
safety
standards.

- (a) by omitting sub-section (1) and substituting the following sub-section:—

“(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 if the goods are of a kind—

- (a) in respect of which there is a prescribed consumer product safety standard and which do not comply with that standard; or
- (b) in respect of which there is in force a notice under this section declaring the goods to be unsafe goods.”;

- (b) by omitting sub-section (2A) and substituting the following sub-sections:—

“(2AA) Sub-section (1) does not apply to goods that are intended to be used outside Australia.

“(2A) If there is applied to goods—

- (a) a statement that the goods are for export only; or
- (b) a statement indicating by the use of words authorized by the regulations to be used for the purposes of this sub-section that the goods are intended to be used outside Australia,

it shall be presumed for the purposes of this section, unless the contrary is established, that the goods are intended to be so used.”;

- (c) by inserting after sub-section (2C) the following sub-sections:—

“(2D) Where it appears to the Minister that goods of a particular kind will or may cause injury to persons using the goods, he may, by notice under his hand published in the *Gazette*, declare the goods to be unsafe goods.

“(2E) A notice under sub-section (2D) has effect until the expiration of 18 months after the date of publication of the notice in the *Gazette* unless it is revoked before the expiration of that period.”; and

- (d) by adding at the end thereof the following sub-section:—

“(4) Where—

- (a) the supplying of goods by a corporation constitutes a contravention of this section by reason that there is in force a notice under this section declaring the goods to be unsafe goods; and
- (b) a person suffers loss or damage by reason of a defect in the goods or by reason of his not having particular information as to a characteristic of 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.”

Product information standards.

37. Section 63 of the Principal Act is amended by omitting sub-section (2A) and substituting the following sub-sections:—

“(2AA) Sub-section (1) does not apply to goods that are intended to be used outside Australia.

“(2A) If there is applied to goods—

- (a) a statement that the goods are for export only; or
- (b) a statement indicating by the use of words authorized by the regulations to be used for the purposes of this sub-section that the goods are intended to be used outside Australia,

it shall be presumed for the purposes of this section, unless the contrary is established, that the goods are intended to be so used.”

Unsolicited credit cards.

38. Section 63A of the Principal Act is amended by omitting from the definition of “credit card” in sub-section (3) the words “services or goods or other property” (wherever occurring) and substituting the words “goods or services”.

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

39. Section 64 of the Principal Act is amended—

- (a) by inserting after sub-section (2) the following sub-sections:—

“(2A) A corporation shall not, in trade or commerce, assert a right to payment from a person for unsolicited services unless the corporation has reasonable cause to believe that there is a right to payment.

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

- (b) by omitting from sub-section (5) the words “or of a charge for the making of an entry in a directory” and substituting the words “or services, or of a charge for the making of an entry in a directory,”;
- (c) by inserting in paragraph (e) of sub-section (5), after the word “goods”, the words “or services”;
- (d) by omitting sub-section (8); and

- (e) by inserting in paragraph (a) of sub-section (9), after the word “goods”, the words “or unsolicited services”.

40. (1) Section 70 of the Principal Act is amended by omitting from sub-section (1) the words “or sale by competitive tender”. Supply by description.

(2) The amendment made by sub-section (1) applies only in relation to contracts made after the commencement of this section.

41. (1) Section 71 of the Principal Act is amended by omitting from sub-sections (1) and (2) the words “or sale by competitive tender”. Implied undertakings as to quality or fitness.

(2) The amendments made by sub-section (1) apply only in relation to contracts made after the commencement of this section.

42. (1) Section 72 of the Principal Act is amended by omitting the words “or sale by competitive tender”. Supply by sample.

(2) The amendment made by sub-section (1) applies only in relation to contracts made after the commencement of this section.

43. (1) Section 74 of the Principal Act is amended—

(a) by omitting from sub-sections (1) and (2) the words “(otherwise than by way of competitive tender)”;

(b) by adding at the end of paragraph (b) of sub-section (3) the word “or”; and

(c) by omitting paragraphs (c) and (d) of sub-section (3) and substituting the following paragraph:—

“(c) the transportation of goods otherwise than for the purposes of a business, trade, profession or occupation carried on or engaged in by the person for whom the goods are transported.”

Warranties in relation to the supply of services.

(2) The amendment made by paragraph (1) (a) applies only in relation to contracts made after the commencement of this section.

44. After section 75 of the Principal Act the following section is inserted in Part V:—

“75A. (1) Where—

(a) a corporation supplies goods to a consumer in the course of a business; and

(b) there is a breach of a condition that is, by virtue of a provision of Division 2, implied in the contract for the supply of the goods,

the consumer is, subject to this section, entitled to rescind the contract by—

(c) causing to be served on the corporation a notice in writing signed by him giving particulars of the breach; or

Rescission of contracts.

- (d) causing the goods to be returned to the corporation and giving to the corporation, either orally or in writing, particulars of the breach.

“(2) Where a consumer purports to rescind under this section a contract for the supply of goods by a corporation, the purported rescission does not have any effect if—

- (a) the notice is not served or the goods are not returned within a reasonable time after the consumer has had a reasonable opportunity of inspecting the goods;
- (b) in the case of a rescission effected by service of a notice, after the delivery of the goods to the consumer but before the notice is served—
 - (i) the goods were disposed of by the consumer, were lost, or were destroyed otherwise than by reason of a defect in the goods;
 - (ii) the consumer caused the goods to become unmerchantable or failed to take reasonable steps to prevent the goods from becoming unmerchantable; or
 - (iii) the goods were damaged by abnormal use; or
- (c) in the case of a rescission effected by return of the goods, while the goods were in the possession of the consumer—
 - (i) the consumer caused the goods to become unmerchantable or failed to take reasonable steps to prevent the goods from becoming unmerchantable; or
 - (ii) the goods were damaged by abnormal use.

“(3) Where a contract for the supply of goods by a corporation to a consumer has been rescinded in accordance with this section—

- (a) if the property in the goods had passed to the consumer before the notice of rescission was served on, or the goods were returned to, the corporation—the property in the goods re-vests in the corporation upon the service of the notice or the return of the goods; and
- (b) the consumer may recover from the corporation, as a debt, the amount or value of any consideration paid or provided by him for the goods.

“(4) The right of rescission conferred by this section is in addition to, and not in derogation of, any other right or remedy under this Act or any other Act, any State Act, any law of a Territory or any rule of law.”

45. Before section 76 of the Principal Act the following section is inserted in Part VI:—

“75B. A reference in this Part to a person involved in a contravention of a provision of Part IV or V shall be read as a reference to a person who—

Interpretation.

- (a) has aided, abetted, counselled or procured the contravention;
- (b) has induced, whether by threats or promises or otherwise, the contravention;
- (c) has been in anyway, directly or indirectly, knowingly concerned in, or party to, the contravention; or
- (d) has conspired with others to effect the contravention.”

46. Section 76 of the Principal Act is amended by adding at the end thereof the following sub-section:—

Pecuniary penalties.

“(2) Nothing in sub-section (1) authorizes the making of an order against a person not being a body corporate by reason that the person has contravened or attempted to contravene, or been involved in a contravention of, section 45D.”

47. (1) Section 79 of the Principal Act is amended—

Offences against Part V.

- (a) by omitting from paragraph (a) the words “or by imprisonment for a period not exceeding 6 months”; and
- (b) by adding at the end thereof the following sub-sections:—

“(2) Where a person is convicted of two or more offences constituted by, or relating to, contraventions of the same provision of Part V, being contraventions that appear to the Court to have been of the same nature or a substantially similar nature and to have occurred at or about the same time (whether or not the person is also convicted of an offence or offences constituted by, or relating to, another contravention or other contraventions of that provision that were of a different nature or occurred at a different time), the Court shall not, in respect of the first-mentioned offences, impose on the person fines that, in the aggregate, exceed the maximum fine that would be applicable in respect of one offence by that person against that provision.

“(3) Where—

- (a) a person is convicted of an offence constituted by, or relating to, a contravention of a provision of Part V; and
- (b) a fine has, or fines have, previously been imposed on the person by the Court for an offence or offences constituted by, or relating to, another contravention or other contraventions of the same provision, being a contravention that, or contraventions each of which, appears to the Court to have been of the same nature as, or of a substantially similar nature to, and to have occurred at or about the same time as, the first-mentioned contravention (whether or not a fine has, or fines have, also previously

been imposed on the person for an offence or offences constituted by, or relating to, a contravention or contraventions of that provision that were of a different nature or occurred at a different time),

the Court shall not, in respect of the offence mentioned in paragraph (a), impose on the person a fine that exceeds the amount (if any) by which the maximum fine applicable in respect of that offence under sub-section (1) is greater than the amount of the fine, or the sum of the amounts of the fines, first referred to in paragraph (b).”.

(2) The amendments made by sub-section (1) apply in relation to any imposition of penalties after the commencement of this section.

Injunctions.

48. Section 80 of the Principal Act is amended—

(a) by omitting paragraph (c) of sub-section (1) and substituting the following paragraph:—

“(c) subject to sub-section (1A)—any other person,”;

(b) by inserting after sub-section (1) the following sub-section:—

“(1A) A person other than the Minister or the Commission is not entitled to make an application under sub-section (1) for an injunction by reason that a person has contravened or attempted to contravene or is proposing to contravene, or has been or is proposing to be involved in a contravention of, section 50.”; and

(c) by adding at the end thereof the following sub-sections:—

“(4) Where an application is made to the Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, being conduct referred to in sub-section (1), the Court may—

(a) if it is satisfied that the person has engaged in conduct of that kind—grant an injunction under sub-section (1) restraining the person from engaging in conduct of that kind; or

(b) if in the opinion of the Court it is desirable to do so—grant an interim injunction under sub-section (2) restraining the person from engaging in conduct of that kind,

whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind.

“(5) Where an application is made to the Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, being conduct referred to in sub-section (1), the Court may—

(a) if it appears to the Court that, in the event that an injunction is not granted, it is likely that the person will engage

in conduct of that kind—grant an injunction under sub-section (1) restraining the person from engaging in conduct of that kind; or

- (b) if in the opinion of the Court it is desirable to do so—grant an interim injunction under sub-section (2) restraining the person from engaging in conduct of that kind,

whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

“(6) Where the Minister or the Commission makes an application to the Court for the grant of an injunction under this section, the Court shall not require the applicant or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

“(7) Where—

- (a) in a case to which sub-section (6) does not apply the Court would, but for this sub-section, require a person to give an undertaking as to damages or costs; and
- (b) the Minister gives the undertaking,

the Court shall accept the undertaking by the Minister and shall not require a further undertaking from any other person.”

49. After section 80 of the Principal Act the following section is inserted:—

“80A. (1) Where on the application of the Minister or the Commission, the Court is satisfied that a person has engaged in conduct constituting a contravention of a provision of Part V, the Court may make either or both of the following orders:—

- (a) an order requiring that person or a person involved in the contravention to disclose to the public, to a particular person or to persons included in a particular class of persons, in such manner as is specified in the order, such information, or information of such a kind, as is so specified, being information that is in the possession of the person to whom the order is directed or to which that last-mentioned person has access;
- (b) an order requiring that person or a person involved in the contravention to publish, at his own expense, in a manner and at times specified in the order, advertisements the terms of which are specified in, or are to be determined in accordance with, the order.

Order to disclose information or publish advertisement.

“(2) Where, on an application made under sub-section (1), the Court is satisfied that a contravention of a provision of Part V has been committed, the Court shall not, in respect of that contravention, make an

order or orders under sub-section (1) that the Court considers would, or would be likely to, require the expenditure by the person or persons to whom the order or orders is or are directed of an amount that exceeds, or of amounts that, in the aggregate, exceed, \$50,000.

“(3) Where, on an application made under sub-section (1), the Court is satisfied that a person has committed, or been involved in, two or more contraventions of the same provision of Part V, being contraventions that appear to the Court to have been of the same nature or a substantially similar nature and to have occurred at or about the same time (whether or not the person has also committed, or been involved in, another contravention or other contraventions of that provision that was or were of a different nature or occurred at a different time), the Court shall not, in respect of the first-mentioned contraventions, make an order or orders under sub-section (1) that the Court considers would, or would be likely to, require the expenditure by the person or persons to whom the order or orders is or are directed of an amount that exceeds, or of amounts that, in the aggregate, exceed, \$50,000.

“(4) Where—

- (a) on an application made under sub-section (1), the Court is satisfied that a person has committed, or been involved in, a contravention or contraventions of a provision of Part V; and
- (b) an order has, or orders have, previously been made under sub-section (1) against the person who committed, or against a person who was involved in, that contravention or those contraventions in respect of another contravention or other contraventions of the same provision, being a contravention which, or contraventions each of which, appears to the Court to have been of the same nature as, or of a substantially similar nature to, and to have occurred at or about the same time as, the first-mentioned contravention or contraventions (whether or not an order has, or orders have, also previously been made under sub-section (1) against any of those persons in respect of another contravention or other contraventions of that provision that was or were of a different nature or occurred at a different time),

the Court shall not, in respect of the contravention or contraventions mentioned in paragraph (a), make an order or orders under sub-section (1) that the Court considers would be likely to require the expenditure by the person or persons to whom the order or orders is or are directed of an amount that exceeds, or of amounts that, in the aggregate, exceed, the amount (if any) by which \$50,000 is greater than the amount, or the sum of the amounts, that has or have been, or that the Court considers would be or be likely to be, expended in accordance with the previous order or previous orders first mentioned in paragraph (b).”.

50. Sections 81, 82 and 83 of the Principal Act are repealed and the following sections substituted:—

“81. (1) The Court may, on the application of the Minister, the Commission or any other person, if it finds, or has in another proceeding instituted under this Part found, that a corporation has contravened section 50, 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. Divestiture.

“(2) An application under sub-section (1) may be made at any time within 3 years after the date on which the contravention occurred.

“82. (1) A person who suffers loss or damage by conduct 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 or against any person involved in the contravention. Actions for damages.

“(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.

“83. In a proceeding against a person under section 82 or in an application under sub-section 87 (1A) for an order against a person, a finding of any fact by a court made in proceedings under section 77, 80, 80A or 81, or for an offence against section 79, in which that person has been found to have contravened, or to have been involved in a contravention of, 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.” Finding in proceedings to be evidence.

51. Section 85 of the Principal Act is amended—

Defences.

(a) by omitting paragraphs (a) and (b) of sub-section (1) and substituting the following paragraphs:—

“(a) that the contravention in respect of which the proceeding was instituted was due to reasonable mistake;

(b) that the contravention in respect of which the proceeding was instituted was due to reasonable reliance on information supplied by another person; or

(c) that—

(i) the contravention in respect of which the proceeding was instituted was due to the act or default of another person, to an accident or to some other cause beyond the defendant’s control; and

(ii) the defendant took reasonable precautions and exercised due diligence to avoid the contravention.”; and

(b) by omitting sub-section (6) and substituting the following sub-section:—

“(6) Where, in any proceedings under this Part against a person other than a body corporate, it appears to the Court that the person has or may have engaged in conduct in contravention of

a provision of Part IV or in conduct referred to in paragraph 76 (1) (b), (c), (d), (e) or (f) 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.”.

Other orders.

52. (1) Section 87 of the Principal Act is amended—

(a) by omitting sub-sections (1), (2) and (3) and substituting the following sub-sections:—

“(1) Where, in a proceeding instituted under, or for an offence against, this Part, the Court finds that a person who is a party to the proceeding has suffered, or is likely to suffer, loss or damage by conduct of another person that was engaged in (whether before or after the commencement of this sub-section) in contravention of a provision of Part IV or V, the Court may, whether or not it grants an injunction under section 80 or makes an order under section 80A or 82, make such order or orders as it thinks appropriate against the person who engaged in the conduct or a person who was involved in the contravention (including all or any of the orders mentioned in sub-section (2) of this section) if the Court considers that the order or orders concerned will compensate the first-mentioned person in whole or in part for the loss or damage or will prevent or reduce the loss or damage.

“(1A) The Court may, on the application of a person who has suffered, or is likely to suffer, loss or damage by conduct of another person that was engaged in (whether before or after the commencement of this sub-section) in contravention of a provision of Part V, make such order or orders as it thinks appropriate against the person who engaged in the conduct or a person who was involved in the contravention (including all or any of the orders mentioned in sub-section (2)) if the Court considers that the order or orders concerned will compensate the first-mentioned person in whole or in part for the loss or damage or will prevent or reduce the loss or damage.

“(2) The orders referred to in sub-sections (1) and (1A) are—

(a) an order declaring the whole or any part of a contract made between the person who suffered, or is likely to suffer, the loss or damage and the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, or of a collateral arrangement relating to such 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 such a contract or 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 person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to refund money or return property to the person who suffered the loss or damage;
- (d) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to pay to the person who suffered the loss or damage the amount of the loss or damage;
- (e) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, at his own expense, to repair, or provide parts for, goods that had been supplied by the person who engaged in the conduct to the person who suffered, or is likely to suffer, the loss or damage; and
- (f) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, at his own expense, to supply specified services to the person who suffered, or is likely to suffer, the loss or damage.

“(3) Where—

- (a) a provision of a contract made, or a covenant given, whether before or after the commencement of the *Trade Practices Amendment Act 1977*—
 - (i) in the case of a provision of a contract, 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
 - (ii) in the case of a covenant, is unenforceable by reason of section 45B in so far as it confers rights or benefits or imposes duties or obligations on a corporation or on a person associated with a corporation; or
- (b) the engaging in conduct by a corporation in pursuance of or in accordance with a contract made before the commencement of the *Trade Practices Amendment Act 1977* would constitute a contravention of section 47,

the Court may, on the application of a party to the contract or of a person who would, but for sub-section 45B (1), be bound by, or entitled to the benefit of, the covenant, as the case may be, make an order—

- (c) varying the contract or covenant, or a collateral arrangement relating to the contract or covenant, in such manner as the Court considers just and equitable; or
 - (d) directing another party to the contract, or another person who would, but for sub-section 45B (1), be bound by, or entitled to the benefit of, the covenant, to do any act in relation to the first-mentioned party or person that the Court considers just and equitable.”; and
- (b) by inserting in sub-section (5), after the word “contract” (wherever occurring), the words “or covenant”.

(2) Where—

- (a) a contract made before 1 February 1975 was at any time during the period that commenced on that date and ended immediately before the commencement of this Act, unenforceable in whole or in part by reason of section 45 of the Principal Act; or
- (b) the engaging in conduct at any time during the period referred to in paragraph (a) by a person in pursuance of or in accordance with a contract made before 1 February 1975 would have constituted a contravention of section 47 of the Principal Act,

the Federal Court of Australia 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 that 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 that Court considers just and equitable.

Heading. 53. The heading to Part VII of the Principal Act is amended by inserting after the word “AUTHORIZATIONS” the word “, NOTIFICATIONS”.

54. (1) Section 88 of the Principal Act is repealed and the following section substituted:—

Power of
Commission
to grant
author-
izations.

“88. (1) Subject to this Part, the Commission may, upon application by or on behalf of a corporation, grant an authorization to the corporation—

- (a) to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision or would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45; or

- (b) to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision or has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45,

and, while such an authorization remains in force—

- (c) in the case of an authorization to make a contract or arrangement or to arrive at an understanding—sub-section 45 (2) does not prevent the corporation from making the contract or arrangement or arriving at the understanding in accordance with the authorization and giving effect in accordance with the authorization to any provision of the contract or arrangement so made or of the understanding so arrived at;
- (d) in the case of an authorization to give effect to a provision of a contract—
 - (i) the provision 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 provision in accordance with the authorization; or
- (e) in the case of an authorization to give effect to a provision of an arrangement or understanding—sub-section 45 (2) does not prevent the corporation from giving effect to the provision in accordance with the authorization.

“(2) Subject to sub-sections (3) and (4), sub-section (1) does not permit the granting of an authorization in relation to—

- (a) the making of a contract or arrangement, or the arriving at an understanding, that would contain a provision having the purpose, or having or being likely to have the effect, of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods supplied or acquired or to be supplied or acquired by the proposed parties to the proposed contract, arrangement or understanding, or by any of them, or by any bodies corporate that are related to any of them, in competition with each other, to or from other persons who are neither proposed parties to the proposed contract, arrangement or understanding nor bodies corporate related to such proposed parties; or
- (b) the giving effect to such a provision of a contract, arrangement or understanding.

“(3) Sub-section (2) does not prevent the granting of an authorization under sub-section (1) in relation to—

- (a) a provision of a contract or arrangement made, or of an understanding arrived at, or of a proposed contract or arrangement to

be made, or of a proposed understanding to be arrived at, for the purposes of a joint venture to the extent that the provision relates or would relate to the supply of goods in pursuance of the joint venture; or

- (b) a provision of a contract, arrangement or understanding, or of a proposed contract, arrangement or understanding, to the extent that the provision recommends or provides for recommending, or would recommend or provide for recommending, the price for, or a discount, allowance, rebate or credit in relation to, goods, where the parties to the contract, arrangement or understanding, or the proposed parties to the proposed contract, arrangement or understanding, include—
 - (i) not less than 50 persons (bodies corporate that are related to one another being counted as a single person) who supply, in trade or commerce, goods to which the provision applies; or
 - (ii) not less than 50 persons (bodies corporate that are related to one another being counted as a single person) who acquire, in trade or commerce, goods to which the provision applies.

“(4) Sub-section (2) does not prevent the granting of an authorization under sub-section (1) in relation to a provision of a contract, arrangement or understanding, or of a proposed contract, arrangement or understanding, being a provision—

- (a) in relation to the price for goods to be collectively acquired, whether directly or indirectly, by the parties to the contract, arrangement or understanding, or by the proposed parties to the proposed contract, arrangement or understanding, from—
 - (i) a person who is not, or persons none of whom is, such a party or a body corporate related to such a party; or
 - (ii) a person who would not be, or persons none of whom would be, such a proposed party or a body corporate related to such a proposed party; or
- (b) for the joint advertising of the price for the re-supply of goods so acquired.

“(5) Subject to this Part, the Commission may, upon application by or on behalf of a person, grant an authorization to the person—

- (a) to require the giving of, or to give, a covenant (other than a proposed covenant of a kind mentioned in sub-section 45C (2) that relates to the supply or acquisition of goods) where the proposed covenant would have the purpose, or would have or might have the effect, of substantially lessening competition in a market referred to in paragraph 45B (2) (a); or

- (b) to enforce the terms of a covenant (other than a covenant of a kind mentioned in sub-section 45C (1) that relates to the supply or acquisition of goods),

and, while such an authorization remains in force—

- (c) in the case of an authorization to require the giving of, or to give, a covenant—
 - (i) the covenant is not unenforceable by reason of sub-section 45B (1); and
 - (ii) sub-section 45B (2) does not apply in relation to the covenant; or
- (d) in the case of an authorization to enforce the terms of a covenant—
 - (i) the covenant is not unenforceable by reason of sub-section 45B (1); and
 - (ii) paragraphs 45B (2) (b) and (c) do not apply in relation to the covenant.

“(6) An authorization granted by the Commission to a person under any of the preceding provisions of this section to—

- (a) make a contract or arrangement or arrive at an understanding;
- (b) give effect to a provision of a contract, arrangement or understanding;
- (c) require the giving of, or give, a covenant; or
- (d) enforce the terms of a covenant,

has effect as if it were also an authorization in the same terms to every other person named or referred to in the application for the authorization as a party to the contract, arrangement or understanding or as a proposed party to the proposed contract, arrangement or understanding, or as a person who is or would be bound by, or entitled to the benefit of, the covenant or the proposed covenant, as the case may be.

“(7) Subject to this Part, the Commission may, upon application by a person, grant an authorization to the person, and to any other person acting in concert with the first-mentioned person, to engage in conduct that hinders or prevents, or may hinder or prevent, the supply of goods or services by a third person to a corporation or the acquisition of goods or services by a third person from a corporation and, while such an authorization remains in force, section 45D does not apply in relation to the engaging in that conduct by the applicant and by any person acting in concert with the applicant.

“(8) Subject to this Part, the Commission may, upon application by a corporation, grant an authorization to the corporation to engage in conduct that constitutes or may constitute 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.

“(9) 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.

“(10) An authorization to a corporation under sub-section (1) may be expressed so as to apply to or in relation to another person who—

- (a) in the case of an authorization to make a contract or arrangement or arrive at an understanding—becomes a party to the proposed contract or arrangement at a time after it is made or becomes a party to the proposed understanding at a time after it is arrived at; or
- (b) in the case of an authorization to give effect to a provision of a contract, arrangement or understanding—becomes a party to the contract, arrangement or understanding at a time after the authorization is granted.

“(11) An authorization under sub-section (5) may be expressed so as to apply to or in relation to another person who—

- (a) in the case of an authorization to require the giving of, or to give, a covenant—becomes bound by, or entitled to the benefit of, the proposed covenant at a time after the covenant is given; or
- (b) in the case of an authorization to enforce the terms of a covenant—becomes bound by, or entitled to the benefit of, the covenant at a time after the authorization is granted.

“(12) The Commission does not have power to grant an authorization to a corporation to make a contract or arrangement, to arrive at an understanding or to require the giving of, or to give, a covenant if the contract or arrangement has been made, the understanding has been arrived at or the covenant has been given before the Commission makes a determination in respect of the application.

“(13) An application made to the Commission under this section for an authorization in relation to a particular contract or proposed contract may be expressed to be made also in relation to another contract or proposed contract that is or will be, or in relation to two or more other contracts or proposed contracts that are or will be, in similar terms to the first-mentioned contract or proposed contract and, where an application is so expressed, the Commission may grant a single authorization in respect of all the contracts or proposed contracts or may grant separate authorizations in respect of any one or more of the contracts or proposed contracts.

“(14) Where an application made to the Commission under this section for an authorization in relation to a particular contract or proposed contract is expressed in accordance with sub-section (13) to be made

also in relation to another contract or contracts or proposed contract or proposed contracts—

- (a) the application shall set out—
 - (i) the names of the parties to each other contract; and
 - (ii) the names of the parties to each other proposed contract where those names are known to the applicant at the time when the application is made; and
- (b) if an authorization is granted in respect of a proposed contract the names of the parties to which were not so known to the applicant, the authorization shall, by force of this sub-section, be deemed to be expressed to be subject to a condition that any party to the contract will, when so required by the Commission, furnish to the Commission the names of all the parties to the contract.

“(15) In sub-sections (13) and (14)—

- (a) ‘contract’ includes an arrangement, understanding or covenant and ‘proposed contract’ has a corresponding meaning; and
- (b) the reference to the parties to a contract or proposed contract shall, for the purposes of the application of those sub-sections in relation to a covenant or proposed covenant by reason of paragraph (a) of this sub-section, be read as a reference to the persons who are or will be, or but for sub-section 45B (1) would be, respectively bound by, or entitled to the benefit of, the covenant or proposed covenant.

“(16) A corporation that has made an application to the Commission for an authorization may at any time, by notice in writing to the Commission, withdraw the application.”

(2) Where, before the date of commencement of this section, a person made an application to the Trade Practices Commission (in the succeeding provisions of this section referred to as the “previous Commission”) established under the Principal Act for an authorization to engage in conduct, being conduct of a kind referred to in sub-section 88 (1), (5), (8) or (9) of the Principal Act as amended by this Act, then—

- (a) if the previous Commission had not before that date made a determination in respect of the application—the application shall be treated as if it were an application for an authorization in respect of that conduct made by the person on that date to the Trade Practices Commission (in the succeeding provisions of this section referred to as the “new Commission”) established by the Principal Act as amended by this Act; or
- (b) if the previous Commission had before that date made a determination (in this paragraph referred to as the “relevant determination”) in respect of the application—

- (i) where no application had been made before that date to the Tribunal for a review of the relevant determination but the time for making such an application had not expired—the relevant determination shall be deemed to have been a determination by the new Commission made on that date; or
 - (ii) where an application had been made to the Tribunal before that date for a review of the relevant determination but the application for review had not been determined before that date—the Tribunal shall hear and determine the application for review as if the relevant determination had been made by the new Commission on that date.
- (3) Any authorization to engage in conduct that was granted under the Principal Act before the date of commencement of this section and was in force immediately before that date shall, to the extent (if any) that the new Commission has power to grant an authorization in respect of that conduct under the Principal Act as amended by this Act, have effect as if—
- (a) it had been granted by the new Commission on that date;
 - (b) in the case of an authorization for a limited period only—it had been so granted for the unexpired portion of that period; and
 - (c) in the case of an authorization to continue to be a party to a contract, arrangement or understanding—it were an authorization to give effect to the provisions of that contract, arrangement or understanding.
- (4) Where—
- (a) before the date of commencement of this section a person gave a notice to the previous Commission under sub-section 92 (1) of the Principal Act in relation to a contract, arrangement or understanding or a proposed contract, arrangement or understanding, not being a contract, arrangement or understanding or a proposed contract, arrangement or understanding that contains a provision of a kind to which sub-section 88 (2) of the Principal Act as amended by this Act applies;
 - (b) the previous Commission gave a notice to the person before that date under sub-section 92 (2) of the Principal Act in relation to the contract, arrangement or understanding or the proposed contract, arrangement or understanding, being a notice that had not been revoked; and
 - (c) section 45 or 45B of the Principal Act as amended by this Act applies to or in relation to a provision of the contract, arrangement or understanding,
- the notice by the previous Commission has effect as if it were an authorization to give effect to the provision referred to in paragraph (c)

granted to the person by the new Commission on that date under sub-section 88 (1) or (5), as the case may be, of the Principal Act as amended by this Act.

(5) Where, before the date of commencement of this section, a corporation made a contract to which sub-section 88 (1) of the Principal Act applied (not being a contract to which that sub-section applied by reason only that the contract contained a covenant) and the contract was subject to a condition that the contract would not come into force unless and until a notice was given to the corporation under sub-section 92 (2) of the Principal Act in relation to the contract—

- (a) the contract shall be deemed to be subject to the condition referred to in paragraph 45 (9) (a) of the Principal Act as amended by this Act; and
- (b) if, before the date of commencement of this section, the corporation gave, as mentioned in paragraph 45 (8) (b) of the Principal Act, a notice, in relation to the contract, to the Trade Practices Commission established under the Principal Act and that Commission did not, before that date, give notice in writing to the corporation stating whether or not that Commission considered that any restraint of trade or commerce resulting from the contract had, or was likely to have, a significant effect upon competition, the giving of the notice by the corporation shall be deemed to have been an application by the corporation for the grant of an authorization to give effect to any provisions of the contract to or in relation to which sub-section 88 (1) of the Principal Act as amended by this Act applies.

(6) Where, before the date of commencement of this section, a corporation made a contract that contained a covenant and the contract was subject to a condition that the contract would not come into force unless and until a notice was given to the corporation under sub-section 92 (2) of the Principal Act in relation to the contract—

- (a) the covenant shall be deemed to be subject to the condition referred to in paragraph 45B (8) (a) of the Principal Act as amended by this Act; and
- (b) if, before the date of commencement of this section, the corporation gave, as mentioned in paragraph 45 (8) (b) of the Principal Act, a notice, in relation to the contract, to the Trade Practices Commission established under the Principal Act and that Commission did not, before that date, give notice in writing to the corporation stating whether or not that Commission considered that any restraint of trade or commerce resulting from the contract had, or was likely to have, a significant effect upon competition, the giving of the notice by the corporation shall be deemed to have been an application by the corporation for a grant of an authorization to enforce the terms of the covenant.

(7) Where, before the date of commencement of this section, a corporation entered into a contract to acquire shares in the capital, or assets, of a body corporate and the contract was subject to a condition that the contract would not come into force unless and until sub-section 94 (3) of the Principal Act applied in relation to the acquisition—

- (a) the contract shall be deemed to be subject to the condition referred to in paragraph 50 (4) (b) of the Principal Act as amended by this Act; and
- (b) if, before the date of commencement of this section, the corporation gave, as mentioned in paragraph 50 (3) (c) of the Principal Act, a notice of the proposed acquisition to the Trade Practices Commission established under the Principal Act and that Commission did not, before that date, give notice in writing to the corporation stating whether or not that Commission considered that the proposed acquisition would be likely to have the effect of substantially lessening competition in a market for goods or services, the giving of the notice by the corporation shall be deemed to have been an application by the corporation for the grant of an authorization to acquire the shares or assets.

Procedure
for
applications.

55. Section 89 of the Principal Act is amended—

- (a) by adding at the end of the sub-section (3) the words “(including applications that have been withdrawn)”;
- (b) by omitting from sub-section (4) the words “sub-sections (5) and (6)” and substituting the words “this section”;
- (c) by omitting paragraph (a) of sub-section (4) and substituting the following paragraphs:—
 - “(a) any document furnished to the Commission in relation to an application for an authorization;
 - “(aa) any draft determination, and any summary of reasons, by the Commission furnished to any person under section 90A;
 - “(ab) any record of a conference made in accordance with sub-section 90A (8) and any certificate in relation to a conference given under sub-section 90A (9);”;
- (d) by omitting sub-section (5) and substituting the following sub-sections:—
 - “(5) Where a person furnishes a document to the Commission in relation to an application for an authorization or makes an oral submission to the Commission in relation to such an application, he may, at the time when the document is furnished or the submission is made, request that the document or a part of the document, or that particulars of the submission or of part of the submission, be excluded from the register kept under sub-section (3) by reason of the confidential nature of any of the matters contained in the document or submission.

“(5A) Where such a request is made—

(a) if the document or the part of the document, or the submission or the part of the submission, to which the request relates contains particulars of—

(i) a secret formula or process;

(ii) the cash consideration offered for the acquisition of shares in the capital, or assets, of a body corporate; or

(iii) the current costs of manufacturing, producing or marketing goods or services,

the Commission shall exclude the document or the part of the document, or particulars of the submission or of the part of the submission, as the case may be, from the register kept under sub-section (3); and

(b) in any other case—the Commission may, if it is satisfied that it is desirable to do so by reason of the confidential nature of the matters contained in the document or the part of the document, or in the submission or the part of the submission, exclude the document or the part of the document, or particulars of the submission or of the part of the submission, as the case may be, from that register.

“(5B) If the Commission refuses a request to exclude a document or a part of a document from the register kept under sub-section (3), the Commission shall, if the person who furnished the document to the Commission so requires, return the document or part of the document to him and, in that case, paragraph (4) (a) does not apply in relation to the document or part of the document.

“(5C) If the Commission refuses a request to exclude particulars of an oral submission or of part of an oral submission from the register kept under sub-section (3), the person who made the submission may inform the Commission that he withdraws the submission or that part of the submission and, in that case, paragraph (4) (b) does not apply in relation to the submission or that part of the submission, as the case may be.

“(5D) Where the Commission is satisfied that it is desirable to do so for any reason other than the confidential nature of matters contained in a document or submission, the Commission may exclude a document or part of a document referred to in paragraph (4) (a) or particulars referred to in paragraph (4) (b) from the register kept under sub-section (3).

“(5E) If a person requests, in accordance with sub-section (5) that a document or a part of a document, or that particulars of a submission or of part of a submission, be excluded from the register kept under sub-section (3), the document or part of the

document, or particulars of the submission or of the part of the submission, shall not be included in that register until the Commission has made a determination in relation to the request.”; and

- (e) by omitting from sub-section (6) the words “is in force under paragraph 22 (1) (b)” and substituting the words “was in force under paragraph 22 (1) (b) of the *Trade Practices Act 1974* immediately before the commencement of the *Trade Practices Amendment Act 1977*”.

Deter-
mination of
applications
for author-
izations.

56. Section 90 of the Principal Act is amended—

- (a) by omitting from sub-section (2) the words “and may, where it considers it appropriate to do so, hold a public hearing in relation to the application”;
- (b) by omitting sub-section (3); and
- (c) by omitting sub-sections (5) to (9), inclusive, and substituting the following sub-sections:—

“(5) Before making a determination in respect of an application for an authorization the Commission shall comply with the requirements of section 90A.

“(6) The Commission shall not make a determination granting an authorization under sub-section 88 (1), (5) or (8) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a proposed contract, arrangement or understanding, in respect of a proposed covenant, or in respect of proposed conduct, unless it is satisfied in all the circumstances that the provision of the proposed contract, arrangement or understanding, the proposed covenant, or the proposed conduct, as the case may be, would result, or be likely to result, in a benefit to the public and that that benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if—

- (a) the proposed contract or arrangement were made, or the proposed understanding were arrived at, and the provision concerned were given effect to;
- (b) the proposed covenant were given, and were complied with; or
- (c) the proposed conduct were engaged in,
- as the case may be.

“(7) The Commission shall not make a determination granting an authorization under sub-section 88 (1) or (5) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a contract, arrangement or understanding or, in respect of a covenant, unless it is satisfied in all

the circumstances that the provision of the contract, arrangement or understanding, or the covenant, as the case may be, has resulted, or is likely to result, in a benefit to the public and that that benefit outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted, or is likely to result, from giving effect to the provision or complying with the covenant.

“(8) The Commission shall not—

(a) make a determination granting—

- (i) an authorization under sub-section 88 (1) in respect of a provision of a proposed contract, arrangement or understanding that is or may be an exclusionary provision; or
- (ii) an authorization under sub-section 88 (7) in respect of proposed conduct,

unless it is satisfied in all the circumstances that the proposed provision or the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed contract or arrangement should be allowed to be made, the proposed understanding should be allowed to be arrived at, or the proposed conduct should be allowed to take place, as the case may be; or

(b) make a determination granting an authorization under sub-section 88 (1) in respect of a provision of a contract, arrangement or understanding that is or may be an exclusionary provision unless it is satisfied in all the circumstances that the provision has resulted, or is likely to result, in such a benefit to the public that the contract, arrangement or understanding should be allowed to be given effect to.

“(9) The Commission shall not make a determination granting an authorization under sub-section 88 (9) in respect of a proposed acquisition of shares in the capital, or of assets, of a body corporate unless it is satisfied in all the circumstances that the proposed acquisition would result, or be likely to result, in such a benefit to the public that the acquisition should be allowed to take place.

“(10) Subject to sub-sections (12), (13) and (15), if—

- (a) the Minister, by notice published in the *Gazette*, fixes a date for the purposes of the application of this sub-section in relation to applications for authorizations under sub-section 88 (1), (5), (7) or (8); and
- (b) the Commission does not determine an application for an authorization under a sub-section in relation to which a date is so fixed within 4 months from that date or the

date on which the application was or is received by the Commission, whichever is the later, the Commission shall be deemed to have granted, at the expiration of that period, the authorization applied for.

“(11) Subject to sub-sections (12), (13) and (15), if the Commission does not determine an application for an authorization under sub-section 88 (9) within 4 months from the date on which the application was or is received by the Commission, the Commission shall be deemed to have granted, at the expiration of that period, the authorization applied for.

“(12) If the applicant for an authorization informs the Commission in writing before the expiration of the period referred to in sub-section (10) or (11) (in this sub-section and in sub-section (13) referred to as the ‘base period’) that the applicant agrees to the Commission taking a specified longer period for the determination of the application, a reference to that longer period shall be deemed for the purposes of that application to be substituted in sub-section (10) or (11), as the case may be, for the reference in that sub-section to the base period.

“(13) For the purposes of any application of sub-section (12), a reference in that sub-section to the base period shall, if a reference to another period is deemed by any other application or applications of that sub-section to have been substituted in sub-section (10) or (11) for the reference in sub-section (10) or (11) to the base period, be construed as a reference to that other period.

“(14) If a person to whom a notice has been sent under sub-section 90A (2) in relation to a draft determination in respect of an application for an authorization notifies the Commission in accordance with sub-section 90A (6) that he wishes the Commission to hold a conference in relation to the draft determination, the period referred to in sub-section (10) or (11), as the case may be, of this section shall be deemed to be increased by a period equal to the period commencing on the day on which the first notification in relation to the draft determination was received by the Commission and ending on the seventh day after the day specified in the certificate given by a member of the Commission in pursuance of sub-section 90A (9) as the day on which the conference terminated.

“(15) Where a party to a joint venture makes at the one time two or more applications for authorizations, being applications each of which deals with a matter relating to the joint venture—

- (a) the Commission shall not make a determination in respect of any one of those applications unless it also makes

a determination or determinations at the same time in respect of the other application or other applications; and

- (b) if the Commission does not make a determination in respect of any one of the applications within the period referred to in whichever of sub-sections (10) and (11) is applicable in relation to that application, the Commission shall be deemed to have granted, at the expiration of that period, all the authorizations applied for.”.

57. After section 90 of the Principal Act the following section is inserted:—

“90A. (1) Before determining an application for an authorization, the Commission shall prepare a draft determination in relation to the application.

Commission to afford opportunity for conference before determining application for authorization.

“(2) The Commission shall, by notice in writing sent to the applicant and to each other interested person, invite the applicant or other person to notify the Commission, within 14 days after a date fixed by the Commission being not earlier than the day on which the notice is sent, whether the applicant or other person wishes the Commission to hold a conference in relation to the draft determination.

“(3) If—

- (a) the draft determination provides for the granting of the application unconditionally; and
- (b) no person has made a written submission to the Commission opposing the application,

each notice by the Commission under sub-section (2) shall inform the person to whom the notice is sent that the draft determination so provides.

“(4) If—

- (a) the draft determination does not provide for the granting of the application or provides for the granting of the application subject to conditions; or
- (b) the draft determination provides for the granting of the application unconditionally but a written submission has, or written submissions have, been made to the Commission opposing the application,

the Commission shall send with each notice under sub-section (2) a copy of the draft determination and—

- (c) in a case to which paragraph (a) applies—a summary of the reasons why the Commission is not satisfied that the application should be granted or why it is not satisfied that the application should be granted unconditionally; or

- (d) in a case to which paragraph (b) applies—a summary of the reasons why it is satisfied that the application should be granted unconditionally.

“(5) If each of the persons to whom a notice was sent under sub-section (2)—

- (a) notifies the Commission within the period of 14 days mentioned in that sub-section that he does not wish the Commission to hold a conference in relation to the draft determination; or
- (b) does not notify the Commission within that period that he wishes the Commission to hold such a conference,

the Commission may make the determination at any time after the expiration of that period.

“(6) If any of the persons to whom a notice was sent under sub-section (2) notifies the Commission in writing within the period of 14 days mentioned in that sub-section that he wishes the Commission to hold a conference in relation to the draft determination, the Commission shall appoint a date (being not later than 30 days after the expiration of that period), time and place for the holding of the conference and give notice of the date, time and place so appointed to each of the persons to whom a notice was sent under sub-section (2).

“(7) At the conference—

- (a) the Commission shall be represented by a member or members of the Commission (being a member or members who participated in the preparation of the draft determination) nominated by the Chairman;
- (b) each person to whom a notice was sent under sub-section (2) and any other interested person whose presence at the conference is considered by the Commission to be appropriate is entitled to attend and participate personally or, in the case of a body corporate, may be represented by a person who, or by persons each of whom, is a director, officer or employee of the body corporate;
- (c) a person participating in the conference in accordance with paragraph (a) or (b) is entitled to have another person or other persons present to assist him but a person who so assists another person at the conference is not entitled to participate in the discussion;
- (d) the Minister or a person or persons appointed in writing by the Minister is or are entitled to attend and participate personally; and
- (e) no other person is entitled to be present.

“(8) A member of the Commission participating in the conference shall make such record of the discussions as is sufficient to set out the matters raised by the persons participating in the conference.

“(9) The member of the Commission who represents the Commission at the conference, or, if the Commission is represented by more than one member of the Commission, one of those members appointed by the Chairman—

- (a) may exclude from the conference any person who uses insulting language at the conference, creates, or takes part in creating or continuing, a disturbance at the conference or repeatedly interrupts the conference;
- (b) may terminate the conference when he is of the opinion that a reasonable opportunity has been given for the expression of the views of persons participating in the conference (other than persons excluded from the conference under paragraph (a)); and
- (c) shall give a certificate certifying the day on which the first notification under sub-section (6) in relation to the draft determination was received by the Commission and the day on which the conference terminated,

and any such certificate shall be received in all courts as evidence of the matters certified.

“(10) A document purporting to be a certificate referred to in sub-section (9) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

“(11) The Commission shall take account of all matters raised at the conference and may at any time after the termination of the conference make a determination in respect of the application.

“(12) For the purposes of this section, ‘interested person’ means a person who has notified the Commission in writing that he, or a specified unincorporated association of which he is a member, claims to have an interest in the application, being an interest that, in the opinion of the Commission, is real and substantial.

“(13) Where the Commission is of the opinion that two or more applications for authorizations that are made by the same person, or by persons being bodies corporate that are related to each other, involve the same or substantially similar issues, the Commission may treat the applications as if they constitute a single application and may prepare one draft determination in relation to the applications and hold one conference in relation to that draft determination.”

Grant,
revocation
and
variation of
authorizations.

58. (1) Section 91 of the Principal Act is amended—

(a) by omitting from sub-section (2) the words “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” and substituting the words “an authorization granted in respect of the application may be expressed to be an interim authorization and the Commission may at any time revoke an authorization so expressed”; and

(b) by inserting after that sub-section the following sub-section:—

“(2A) Sub-sections 90 (4) to (9), inclusive, do not apply in relation to an authorization that is expressed to be an interim authorization.”.

(2) The amendments made by sub-section (1) shall be deemed to have taken effect on 1 October 1974.

Heading.

59. The heading to Division 2 of Part VII of the Principal Act is repealed and the following heading substituted:—

“*Division 2—Notifications and Clearances*”.

60. Sections 92 and 93 of the Principal Act are repealed and the following section is substituted:—

Notification
of exclusive
dealing.

“93. (1) Subject to sub-section (2), a corporation that engages, or proposes to engage, in conduct of a kind referred to in sub-section 47 (2), (3), (4) or (5) or paragraph 47 (8) (a) or (b) or (9) (a), (b) or (c) may give to the Commission notice, as prescribed, setting out particulars of the conduct or proposed conduct.

“(2) A corporation is not entitled to give a notice under sub-section (1) in relation to conduct or proposed conduct if—

(a) the corporation has made an application for an authorization to engage in that conduct, being an application in respect of which the Commission, or the Trade Practices Commission established under the *Trade Practices Act 1974* as in force immediately before the commencement of the *Trade Practices Amendment Act 1977*, has—

(i) made a determination dismissing the application, not being a determination made in circumstances where the corporation gave a notice in relation to that conduct under sub-section 92 (1) or 93 (1) of the *Trade Practices Act 1974* as in force immediately before the commencement of the *Trade Practices Amendment Act 1977* and—

(A) in the case of a notice given under sub-section 92 (1) of the *Trade Practices Act 1974* as so in force—a notice was given to the corporation under sub-section 92 (2) of that Act; or

- (B) in the case of a notice given under sub-section 93 (1) of the *Trade Practices Act 1974* as so in force—no notice was given to the Corporation under sub-section 93 (2) of that Act; or
 - (ii) made a determination granting an authorization (whether or not the authorization is still in force); and
- (b) the Tribunal has made a determination on an application for a review of the determination of the Commission, or for a review of the determination of the Trade Practices Commission established under the *Trade Practices Act 1974* as in force immediately before the commencement of the *Trade Practices Amendment Act 1977*, or the time for making such an application for review has expired without an application for review having been made.

“(3) If the Commission is satisfied that the engaging by a corporation in conduct or proposed conduct of a kind referred to in a notice given by the corporation to the Commission under sub-section (1) has or is likely to have, or would have or be likely to have, the effect of substantially lessening competition within the meaning of section 47 and that in all the circumstances—

- (a) the conduct has not resulted or is not likely to result, or the proposed conduct would not result or be likely to result, in a benefit to the public; or
- (b) any benefit to the public that has resulted or is likely to result from the conduct, or would result or be likely to result from the proposed conduct, would not outweigh the detriment to the public constituted by any lessening of competition that has resulted or is likely to result from the conduct or would result or be likely to result from the proposed conduct,

the Commission may at any time give notice in writing to the corporation stating that the Commission is so satisfied and accompanied by a statement setting out its reasons for being so satisfied.

“(4) Before giving a notice under sub-section (3) the Commission shall comply with the requirements of section 93A.

“(5) In satisfying itself for the purposes of sub-section (3) in relation to any conduct or proposed conduct referred to in a notice given to the Commission by a corporation under sub-section (1), the Commission shall seek such relevant information as it considers reasonable and appropriate and may make a decision on the basis of any information so obtained and any other information furnished to it by the corporation or any other person or otherwise in its possession.

“(6) A corporation that has given a notice to the Commission under this section in relation to any conduct or proposed conduct may, at any time before the Commission has given to the corporation a notice under

sub-section (3) in relation to the conduct or proposed conduct, by notice in writing to the Commission, withdraw the first-mentioned notice.

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

- (a) in the case of a notice given before the expiration of the period of 3 months commencing on the date of commencement of the *Trade Practices Amendment Act 1977*, the engaging by the corporation in the conduct referred to in the notice on or after that date and before the giving of the notice shall not be taken, for the purposes of section 47, to have had the effect of substantially lessening competition within the meaning of that section; and
- (b) in any case, the engaging by the corporation in the conduct referred to in the notice after the giving of the notice shall not be taken, for the purposes of section 47, to have the effect of substantially lessening competition within the meaning of that section unless—
 - (i) the Commission has given notice to the corporation under sub-section (3) of this section 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; or
 - (ii) the notice has been, or is deemed to have been, withdrawn and the conduct takes place after the day on which the notice was, or is deemed to have been, withdrawn.

“(8) Where—

- (a) a corporation gives a notice to the Commission under sub-section (1) in relation to any conduct or proposed conduct;
- (b) before or after the notice is given the corporation makes an application to the Commission for an authorization to engage in that conduct;
- (c) the Commission—
 - (i) makes a determination dismissing the application; or
 - (ii) makes a determination granting an authorization in respect of the application; and
- (d) the Tribunal makes a determination on an application for a review of the determination of the Commission or the time for making such an application for review expires without an application for review having been made,

the notice shall thereupon be deemed to be withdrawn.

“(9) If an application is made to the Tribunal for a review of the giving of a notice by the Commission under sub-section (3), the reference in

sub-section (7) to the day on which the Commission gave the notice shall be read as a reference to—

- (a) if the application is withdrawn—the day on which the application is withdrawn;
- (b) if the Tribunal, on the application of the Commission or of any other person who the Tribunal is satisfied has an interest in the subject matter of the review, declares that the application for the review is not being proceeded with by the applicant with due diligence—the day on which the Tribunal makes the declaration; or
- (c) in any other case—the day on which the Tribunal makes a determination on the review.

“(10) Where—

- (a) a corporation has given a notice to the Commission under sub-section (1) in relation to conduct or proposed conduct and the Commission has given notice to the corporation in writing under sub-section (3) in relation to the conduct or the proposed conduct; or
- (b) a notice given by a corporation to the Commission under sub-section (1) in relation to conduct or proposed conduct is withdrawn or deemed to be withdrawn,

the corporation is not entitled to give a further notice under sub-section (1) to the Commission in relation to the same conduct or proposed conduct or in relation to conduct or proposed conduct to the like effect.”

61. Before section 94 of the Principal Act the following section is inserted:—

“93A. (1) Before giving a notice under sub-section 93 (3) in relation to any conduct or proposed conduct, the Commission shall prepare a draft notice in relation to that conduct or proposed conduct.

Commission to afford opportunity for conference before giving notice in relation to exclusive dealings.

“(2) The Commission shall, by notice in writing sent to the corporation to the conduct or proposed conduct of which the draft notice relates and to each other interested person, invite the corporation or other person to notify the Commission, within 14 days after a date fixed by the Commission being not earlier than the day on which the notice is sent, whether the corporation or other person wishes the Commission to hold a conference in relation to the draft notice.

“(3) The Commission shall send with each notice under sub-section (2) a copy of the draft notice and a summary of the reasons why it proposes to give the notice under sub-section 93 (3).

“(4) If each of the persons to whom a notice was sent under sub-section (2)—

- (a) notifies the Commission in writing within the period of 14 days mentioned in that sub-section that the person does not wish the

Commission to hold a conference in relation to the draft notice;
or

- (b) does not notify the Commission within that period that he wishes the Commission to hold such a conference,

the Commission may give the notice under sub-section 93 (3) at any time after the expiration of that period.

“(5) If any of the persons to whom a notice was sent under sub-section (2) notifies the Commission in writing within the period of 14 days mentioned in that sub-section that he wishes the Commission to hold a conference in relation to the draft notice, the Commission shall appoint a date (being not later than 30 days after the expiration of that period), time and place for the holding of the conference and give notice of the date, time and place so appointed to each of the persons to whom a notice was sent under sub-section (2).

“(6) At the conference—

- (a) the Commission shall be represented by a member or members of the Commission (being a member or members who participated in the preparation of the draft notice) nominated by the Chairman;
- (b) each person to whom a notice was sent under sub-section (2) and any other interested person whose presence at the conference is considered by the Commission to be appropriate is entitled to attend and participate personally or, in the case of a body corporate, may be represented by a person who, or by persons each of whom, is a director, officer or employee of the body corporate;
- (c) a person participating in the conference in accordance with paragraph (a) or (b) is entitled to have another person or other persons present to assist him but a person who so assists another person at the conference is not entitled to participate in the discussion;
- (d) the Minister or a person or persons appointed in writing by the Minister is or are entitled to attend and participate personally; and
- (e) no other person is entitled to be present.

“(7) A member of the Commission participating in the conference shall make such record of the discussions as is sufficient to set out the matters raised by the persons participating in the conference.

“(8) The member of the Commission who represents the Commission at the conference, or, if the Commission is represented by more than one member of the Commission, one of those members appointed by the Chairman—

- (a) may exclude from the conference any person who uses insulting language at the conference, creates, or takes part in creating or

continuing, a disturbance at the conference or repeatedly interrupts the conference;

- (b) may terminate the conference when he is of the opinion that a reasonable opportunity has been given for the expression of the views of persons participating in the conference (other than persons excluded from the conference under paragraph (a)); and
- (c) shall give a certificate certifying the day on which the first notification under sub-section (5) in relation to the draft notice was received by the Commission and the day on which the conference terminated,

and any such certificate shall be received in all courts as evidence of the matters certified.

“(9) A document purporting to be a certificate referred to in sub-section (8) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

“(10) The Commission shall take account of all matters raised at the conference and may at any time after the termination of the conference, if it is satisfied as to the matters referred to in sub-section 93 (3), give a notice under that sub-section in relation to the conduct or proposed conduct.

“(11) For the purposes of this section, ‘interested person’ means a person who has notified the Commission in writing that he, or a specified unincorporated association of which he is a member, claims to have an interest in the matter, being an interest that, in the opinion of the Commission, is real and substantial.

“(12) Where the Commission is of the opinion that two or more notices given to the Commission under sub-section 93 (1) by the same person, or by persons being bodies corporate that are related to each other, deal with substantially similar conduct or proposed conduct, the Commission may treat the notices as if they constituted a single notice and may prepare one draft notice in relation to the notices so given to the Commission and hold one conference in relation to that draft notice.”.

62. (1) Section 94 of the Principal Act is repealed.

Clearance of
mergers.

(2) Where before the commencement of this section a notice was given to a corporation under section 94 of the Principal Act by the Trade Practices Commission established under that Act stating that the Commission considered that a proposed acquisition of shares in the capital, or of assets, of a body corporate would not be likely to have the effect of substantially lessening competition in a market for goods or services, sections 46 and 50 of the Principal Act as amended by this Act do not apply to or in relation to that acquisition.

63. (1) Section 95 of the Principal Act is repealed and the following section substituted:—

Register of
notifications.

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

- (a) draft notices, and summaries of reasons, by the Commission furnished to any person under section 93A;
- (b) records of conferences made in accordance with sub-section 93A (7) and certificates in relation to conferences given under sub-section 93A (8);
- (c) notices (including notices that have been withdrawn) given to the Commission under section 93;
- (d) documents furnished to the Commission in relation to such notices;
- (e) particulars of any oral submissions made to the Commission in relation to such notices;
- (f) particulars of notices given by the Commission to corporations by which notices under section 93 were given; and
- (g) particulars of any permits given by the Commission under subparagraph 93 (7) (b) (i).

“(2) Where a person furnishes a document to the Commission in relation to a notice given to the Commission under section 93 or makes an oral submission to the Commission in relation to such a notice, he may, at the time when the document is furnished or the submission is made, request that the document or a part of the document, or that particulars of the submission or of part of the submission, be excluded from the register kept under sub-section (1) by reason of the confidential nature of any of the matters contained in the document or submission.

“(3) Where such a request is made—

- (a) if the document or part of the document, or the submission or part of the submission, to which the request relates contains particulars of—
 - (i) a secret formula or process;
 - (ii) the cash consideration offered for the acquisition of shares in the capital, or assets, of a body corporate; or
 - (iii) the current costs of manufacturing, producing or marketing goods or services,

the Commission shall exclude the document or the part of the document, or particulars of the submission or of the part of the submission, as the case may be, from the register kept under sub-section (1); and

- (b) in any other case—the Commission may, if it is satisfied that it is desirable to do so by reason of the confidential nature of matters contained in the document or the part of the document, or in the submission or the part of the submission, exclude the document or the part of the document, or particulars of the submission or of the part of the submission, as the case may be, from that register.

“(4) If the Commission refuses a request to exclude a document or a part of a document from the register kept under sub-section (1), the Commission shall, if the person who furnished the document to the Commission so requires, return the document or part of the document to him and, in that case, paragraph (1) (d) does not apply in relation to the document or part of the document.

“(5) Sub-section (4) does not apply in relation to a document that was produced to the Commission in pursuance of a notice under section 155.

“(6) If the Commission refuses a request to exclude particulars of an oral submission or of part of an oral submission from the register kept under sub-section (1), the person who made the submission may inform the Commission that he withdraws the submission or that part of the submission and, in that case, paragraph (1) (e) does not apply in relation to the submission or that part of the submission, as the case may be.

“(7) Where the Commission is satisfied that it is desirable to do so for any reason other than the confidential nature of matters contained in a document or submission, the Commission may exclude a document or part of a document referred to in paragraph (1) (d) or particulars referred to in paragraph (1) (e) from the register kept under sub-section (1).

“(8) If a person requests in accordance with sub-section (2) that a document or a part of a document, or that particulars of a submission or of part of a submission, be excluded from the register kept under sub-section (1), the document or the part of the document, or particulars of the submission or of the part of the submission, shall not be included in that register until the Commission has made a determination in relation to the request.”

(2) The register kept under sub-section 95 (1) of the Principal Act as amended by this Act shall include—

- (a) notices given under section 94 of the Principal Act to the Trade Practices Commission established under that Act; and
- (b) particulars of notices given by that Commission to corporations by which notices under that section were given.

64. Section 101 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the words “, not being a determination granting an authorization in pursuance of the requirements of sub-section 90 (9), ”; and
- (b) by omitting sub-section (2) and substituting the following sub-section:—

“(2) A review by the Tribunal is a re-hearing of the matter and sub-sections 90 (6), (7), (8) and (9) apply in relation to the

Applications
for review of
determinations.

Tribunal in like manner as they apply in relation to the Commission.”.

65. Section 102 of the Principal Act is repealed and the following sections are substituted:—

Applications
for review of
notices under
sub-
section 93
(3).

“101A. A person dissatisfied with the giving of a notice by the Commission under sub-section 93 (3) may, as prescribed and within the time allowed by or under the regulations, apply to the Tribunal for a review of the giving of the notice and, if the person was the person to whom the notice was given or the Tribunal is satisfied that the person has a sufficient interest, the Tribunal shall review the giving of the notice.

Functions
and powers
of Tribunal.

“102. (1) Upon a review of a determination of the Commission in relation to an application for an authorization, 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.

“(2) A determination by the Tribunal affirming, setting aside or varying a determination of the Commission in relation to an application for an authorization shall, for the purposes of this Act other than this Part, be deemed to be a determination by the Commission.

“(3) Upon a review by the Tribunal, the Tribunal shall comply with any directions given by the Minister to the Commission under paragraph 29 (1) (a) as if those directions had been given to the Tribunal.

“(4) Subject to sub-section (3), upon a review of the giving of a notice by the Commission under sub-section 93 (3)—

(a) if the person who applied for the review satisfies the Tribunal that in all the circumstances—

(i) the conduct or proposed conduct to which the notice relates has resulted or is likely to result, or would result or be likely to result, as the case may be, in a benefit to the public; and

(ii) that benefit would outweigh the detriment to the public constituted by any lessening of competition that has resulted or is likely to result from the conduct or would result or be likely to result from the proposed conduct,

the Tribunal shall make a determination setting aside the notice; or

(b) if the person who applied for the review does not so satisfy the Tribunal—the Tribunal shall make a determination affirming the notice.

“(5) Where the Tribunal makes a determination setting aside a notice given by the Commission under sub-section 93 (3), then, after the setting aside of the notice, sub-section 93 (7) has effect in relation to the

conduct referred to in the notice as if the Commission had not given the notice.

“(6) 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.

“(7) For the purposes of a review, 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, or the giving of the notice, to which the review relates.”.

66. Section 109 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:—

“(1A) A person to whom a notice was given by the Commission under sub-section 93 (3) is entitled to participate in any proceedings before the Tribunal instituted by another person in relation to that notice.”.

Participants
in
proceedings
before
Tribunal.

67. Section 149 of the Principal Act is amended by inserting after sub-section (3) the following sub-sections:—

“(3A) For the purposes of paragraph (3) (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.

Secrecy in
relation to
documents
furnished
under
previous law.

“(3B) This section applies to persons who were members of the Trade Practices Commission established by the *Trade Practices Act* 1974 as in force at the commencement of this sub-section in like manner as it applies to members of the Commission.”.

68. Section 155 of the Principal Act is amended by inserting in sub-section (1), after the word “Act,”, the words “or is relevant to the making of a decision by the Commission under sub-section 93 (3),”.

Power to
obtain
information,
documents
and
evidence.

69. Section 157 of the Principal Act is amended by omitting sub-sections (1) and (2) and substituting the following sub-sections:—

Disclosure of
documents
by
Commission.

“(1) Where—

- (a) a corporation makes an application to the Commission for an authorization;
- (b) the Commission gives a notice under sub-section 91 (4) to a corporation to which an authorization has been given;
- (c) a proceeding is instituted against a corporation or other person under section 77, 80 or 81; or
- (d) an application is made under section 80A or sub-section 87 (1A) for an order against a corporation or other person,

the Commission shall, at the request of the corporation or other person and upon payment of the prescribed fee (if any), furnish to the corporation or other person—

- (e) 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 proceeding relates and tends to establish the case of the corporation or other person; and
- (f) 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 proceeding relates and tends to establish the case of the corporation or other person,

not being a document obtained from the corporation or other person 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, or other person who, made the request, make an order directing the Commission to comply with the request.”

Protection of
members of
Tribunal,
barristers
and
witnesses.

70. Section 158 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the words “or a member of the Commission”;
- (b) by omitting from sub-section (2) the words “or the Commission”; and
- (c) by omitting from sub-section (3) the words “summoned to attend or appearing before the Tribunal or the Commission as a witness” and substituting the words “appearing before the Tribunal or the Commission to give evidence”.

Incrimi-
nating
answers.

71. Section 159 of the Principal Act is amended—

- (a) by omitting the words “the Tribunal or” (wherever appearing); and
- (b) by omitting from sub-section (1) the words “(including a person appearing before the Commission under section 155)”.

Failure of
witness to
attend.

72. Section 160 of the Principal Act is amended—

- (a) by omitting the words “or the Commission”; and
- (b) by omitting from paragraph (b) the words “or a member of the Commission, as the case may be”.

73. Section 161 of the Principal Act is amended—

- (a) by omitting the words “or the Commission”; and
- (b) by adding at the end thereof the following sub-section:—

“(2) It is a reasonable excuse for a person to refuse or fail to answer a question that he is required to answer under this section that the answer to the question may tend to incriminate him.”.

Refusal to be sworn or to answer questions.

74. Section 162 of the Principal Act is repealed and the following section substituted:—

“162. A person shall not—

- (a) insult 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 a conference held by the Commission under section 90A or 93A;
- (c) 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 such a conference; or
- (d) do any other act or thing that would, if the Tribunal were a court of record, constitute a contempt of that court.

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

Contempt.

75. Section 163A of the Principal Act is amended by omitting sub-section (3) and substituting the following sub-section:—

“(3) The Commission is not entitled to institute a proceeding in the Court under this section but may intervene in a proceeding instituted in the Court or in any other court, being a proceeding—

- (a) that involves a matter arising under Part IV other than a matter arising under section 48; and
- (b) in which a party is seeking the making of a declaration of a kind mentioned in paragraph (1) (a).”.

Jurisdiction of Court to make declarations and orders.

76. Section 164 of the Principal Act is repealed.

Proceedings by Commission to in its official name.

77. Section 166 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the words “a provision of a contract, or particulars of an arrangement or understanding,” and substituting the words “, or of a provision of, a contract, arrangement or understanding”; and

Certificates as to furnishing of particulars to Commission.

- (b) by omitting from sub-section (3) the words “a provision of a contract, or of an arrangement or understanding,” and substituting the words “, or of a provision of, a contract, arrangement or understanding”.

Repeal. **78.** Sections 168 and 169 of the Principal Act are repealed.

Legal and financial assistance. **79.** Section 170 of the Principal Act is amended by inserting in paragraph (b) of sub-section (3), after the word “determination”, the words “, or of the giving of a notice,”.

Regulations. **80.** Section 172 of the Principal Act is amended by omitting sub-sections (2) and (3) and substituting the following sub-sections:—

“(2) The regulations may, either unconditionally or subject to such conditions as are specified in the regulations, exempt from the application of this Act or of the provisions of this Act specified in the regulations—

- (a) conduct engaged in by a specified organization or body that performs functions in relation to the marketing of primary products;
- (b) 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; or
- (c) prescribed conduct engaged in in the course of a business carried on by the Commonwealth or by a prescribed authority of the Commonwealth.

“(3) Strict compliance with a form of application or notice prescribed for the purposes of this Act is not, and shall be deemed never to have been, required and substantial compliance is, and shall be deemed always to have been, sufficient.”.

Salaries and allowances of holders of judicial and certain other offices. **81.** Section 13 of the *Remuneration and Allowances Act 1973*³ is amended by omitting sub-sections (2) and (3).

Transitional provision relating to validity or enforceability of existing contracts. **82.** If a contract made before the commencement of this Act contained a provision that was in restraint of trade or commerce, then, subject to any order made under sub-section 87 (3) of the Principal Act as amended by this Act or under sub-section 52 (2) of this Act, nothing in the Principal Act shall be taken to have affected the validity or enforceability of the contract otherwise than in relation to that provision in so far as that provision was severable.

NOTES

1. Act No. 81, 1977; assented to 16 June 1977.
2. Act No. 51, 1974, as amended. For previous amendments *see* Acts Nos. 63 and 56, 1975; and Nos. 88 and 157, 1976.
3. Act No. 14, 1973, as amended. For previous amendments *see* Act No. 203, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 8, 1975; and No. 83, 1976.