



# **Treasury Laws Amendment (More Competition, Better Prices) Act 2022**

**No. 54, 2022**

***An Act to amend the *Competition and Consumer Act 2010* and the *Australian Securities and Investments Commission Act 2001*, and for related purposes***

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)



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# Treasury Laws Amendment (More Competition, Better Prices) Act 2022

No. 54, 2022

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**An Act to amend the *Competition and Consumer Act 2010* and the *Australian Securities and Investments Commission Act 2001*, and for related purposes**

[Assented to 9 November 2022]

The Parliament of Australia enacts:

## **1 Short title**

This Act is the *Treasury Laws Amendment (More Competition, Better Prices) Act 2022*.

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## 2 Commencement

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

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	9 November 2022
2. Schedule 1	The day after this Act receives the Royal Assent.	10 November 2022
3. Schedule 2	The day after the end of the period of 12 months beginning on the day this Act receives the Royal Assent.	9 November 2023

Note: This table relates only to the provisions of this Act as originally enacted.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

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

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.



## **Schedule 1—More competition, better prices**

### **Part 1—Amendments to definitions**

#### *Competition and Consumer Act 2010*

##### **1 Subsection 4(1)**

Insert:

***adjusted turnover***, of a body corporate during a period, means the sum of the values of all the supplies that the body corporate, and any body corporate related to the body corporate, have made, or are likely to make, during the period, other than:

- (a) supplies made from any of those bodies corporate to any other of those bodies corporate; or
- (b) supplies that are input taxed; or
- (c) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the *A New Tax System (Goods and Services Tax) Act 1999*); or
- (d) supplies that are not made in connection with an enterprise that the body corporate carries on; or
- (e) supplies that are not connected with the indirect tax zone.

Expressions used in this definition that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as in that Act.

***breach turnover period***, of a body corporate, for an offence, a contravention, or an act or omission, means the longer of the following periods:

- (a) the period of 12 months ending at the end of the month in which:
  - (i) for an offence—the body corporate ceased committing the offence, or was charged with the offence (whichever is earlier); or
  - (ii) for a contravention—the contravention ceased, or proceedings in relation to the contravention were instituted (whichever is earlier); or

**Schedule 1** More competition, better prices

**Part 1** Amendments to definitions

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- (iii) for an act or omission—the act or omission ceased, or proceedings in relation to the act or omission were instituted (whichever is earlier);
- (b) the period ending at the same time as the period determined under paragraph (a) and starting:
  - (i) for an offence—at the beginning of the month in which the body corporate committed, or began committing, the offence (as the case requires); or
  - (ii) for a contravention—at the beginning of the month in which the contravention occurred or began occurring (as the case requires); or
  - (iii) for an act or omission—at the beginning of the month in which the act or omission occurred or began occurring (as the case requires).

## **Part 2—Amendments to competition provisions**

### ***Competition and Consumer Act 2010***

#### **2 Section 45AB (definition of *annual turnover*)**

Repeal the definition.

#### **3 Section 45AE**

Omit “paragraph 76(1A)(aa)”, substitute “paragraph 76(1B)(b)”.

#### **4 Paragraph 45AF(3)(a)**

Omit “\$10,000,000”, substitute “\$50,000,000”.

#### **5 Paragraph 45AF(3)(c)**

Repeal the paragraph, substitute:

- (c) if the court cannot determine the total value of those benefits—30% of the corporation’s adjusted turnover during the breach turnover period for the offence.

#### **6 Paragraph 45AG(3)(a)**

Omit “\$10,000,000”, substitute “\$50,000,000”.

#### **7 Paragraph 45AG(3)(c)**

Repeal the paragraph, substitute:

- (c) if the court cannot determine the total value of those benefits—30% of the corporation’s adjusted turnover during the breach turnover period for the offence.

#### **8 After section 45AI**

Insert:

#### **45AIA Section 4AB of the Crimes Act does not apply**

Section 4AB of the *Crimes Act 1914* does not apply to any provision of this Subdivision.

**9 Section 45AB of Schedule 1 (definition of *annual turnover*)**

Repeal the definition.

**10 Section 45AE of Schedule 1**

Omit “paragraph 76(1A)(aa)”, substitute “paragraph 76(1B)(b)”.

**11 Paragraph 45AF(3)(a) of Schedule 1**

Omit “\$10,000,000”, substitute “\$50,000,000”.

**12 Paragraph 45AF(3)(c) of Schedule 1**

Repeal the paragraph, substitute:

- (c) if the court cannot determine the total value of those benefits—30% of the corporation’s adjusted turnover during the breach turnover period for the offence.

**13 Paragraph 45AG(3)(a) of Schedule 1**

Omit “\$10,000,000”, substitute “\$50,000,000”.

**14 Paragraph 45AG(3)(c) of Schedule 1**

Repeal the paragraph, substitute:

- (c) if the court cannot determine the total value of those benefits—30% of the corporation’s adjusted turnover during the breach turnover period for the offence.

**15 After section 45AI of Schedule 1**

Insert:

**45AIA Section 4AB of the Crimes Act does not apply**

Section 4AB of the *Crimes Act 1914* does not apply to any provision of this Subdivision.

## **Part 3—Amendments to other provisions**

### *Competition and Consumer Act 2010*

#### **16 Subparagraph 51AE(2A)(a)(iii)**

Omit “annual turnover”, substitute “adjusted turnover”.

#### **17 Subsection 51AE(2B)**

Omit “paragraph 76(1A)(b)”, substitute “subsection 76(1C)”.

#### **18 Paragraph 56BN(3)(c)**

Omit “annual turnover”, substitute “adjusted turnover”.

#### **19 Subsection 56BN(4)**

Repeal the subsection.

#### **20 Paragraph 56CC(2)(c)**

Omit “annual turnover”, substitute “adjusted turnover”.

#### **21 Subsection 56CC(3)**

Repeal the subsection.

#### **22 Paragraph 56EV(2)(c)**

Omit “annual turnover”, substitute “adjusted turnover”.

#### **23 Subsection 56EV(3)**

Repeal the subsection.

#### **24 Section 57GA**

Omit “paragraphs 76(1A)(cc) and (1B)(aac)”, substitute “item 11 of the table in subsection 76(1A)”.

#### **25 Subsections 76(1A) and (1B)**

Repeal the subsections, substitute:

**Schedule 1** More competition, better prices  
**Part 3** Amendments to other provisions

(1A) The pecuniary penalty payable by a person under subsection (1) is not to exceed the amount worked out using the following table.

<b>Amount of pecuniary penalty</b>			
<b>Item</b>	<b>For each act or omission to which this section applies that relates to ...</b>	<b>if the person is a body corporate—the pecuniary penalty is not to exceed ...</b>	<b>if the person is not a body corporate—the pecuniary penalty is not to exceed ...</b>
1	section 45AJ or 45AK	the greater of the amounts mentioned in subsection (1B)	\$2,500,000
2	section 45D, 45DB, 45E or 45EA	\$750,000	(see subsection (2))
3	any provision of Part IV not covered by items 1 and 2 of this table (see note 1)	the greater of the amounts mentioned in subsection (1B)	\$2,500,000 (for acts or omissions relating to section 45DA, see subsection (2))
4	a civil penalty provision of an industry code	the amount set out in the civil penalty provision of the industry code	the amount set out in the civil penalty provision of the industry code
5	a provision of Division 4 of Part IVBA	6,000 penalty units	\$500,000
6	section 52ZC, 52ZH, 52ZS or 52ZZE	the greater of the amounts mentioned in subsection (1B)	\$2,500,000
7	any provision of Part IVBA not covered by items 5 and 6 of this table	600 penalty units	\$500,000
8	section 55B, 60C or 60K	6,471 penalty units	1,295 penalty units
9	subsection 56BO(1) or 56BU(1), section 56CD or a civil penalty provision of the consumer data rules not covered by item 10 of this table	the greater of the amounts mentioned in subsection (1C)	\$500,000

<b>Amount of pecuniary penalty</b>			
<b>Item</b>	<b>For each act or omission to which this section applies that relates to ...</b>	<b>if the person is a body corporate—the pecuniary penalty is not to exceed ...</b>	<b>if the person is not a body corporate—the pecuniary penalty is not to exceed ...</b>
10	a civil penalty provision of the consumer data rules that sets out at its foot a pecuniary penalty indicated by the words “Civil penalty”	the amount of the pecuniary penalty for a body corporate set out at the foot of the provision	the amount of the pecuniary penalty for a person other than a body corporate set out at the foot of the provision
11	a civil penalty provision of Part IVE described by section 57GA	the number of penalty units for a body corporate set out at the foot of the provision	the number of penalty units for a person other than a body corporate set out at the foot of the provision
12	section 92	\$33,000	\$6,600
13	a provision of Division 2 of Part XICA	the greater of the amounts mentioned in subsection (1B)	\$2,500,000 (see note 2)
14	any other provision to which this section applies	\$10,000,000	\$500,000

Note 1: Item 3 also applies to pecuniary penalties ordered under subsection (1) in respect of an act or omission that relates to subsection 10.49A(1), 10.60(1) or 10.65(1): see subsection 10.49A(2), 10.60(2) or 10.65(2).

Note 2: Pecuniary penalties may not be ordered under subsection (1) against certain individuals in relation to contraventions of section 153E, 153F, 153G or 153H in certain circumstances: see section 153ZD.

(1B) For the purposes of items 1, 3, 6 and 13 of the table in subsection (1A), the amounts are as follows:

- (a) \$50,000,000;
- (b) if item 1 or 13 of the table applies, and the Court can determine the total value of the benefits that have been obtained (within the meaning of Division 1 of Part IV) by one or more persons and that are reasonably attributable to the act or omission—3 times that total value;

- (c) if item 3 or 6 of the table applies, and the Court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the act or omission—3 times the value of that benefit;
  - (d) if the Court cannot determine the value of those benefits or that benefit—30% of the body corporate’s adjusted turnover during the breach turnover period for the act or omission.
- (1C) For the purposes of item 9 of the table in subsection (1A), the amounts are as follows:
- (a) \$10,000,000;
  - (b) if the Court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the act or omission—3 times the value of that benefit;
  - (c) if the Court cannot determine the value of that benefit—10% of the body corporate’s adjusted turnover during the 12-month period ending at the end of the month in which the act or omission occurred or started to occur.

**26 Subsection 76(4)**

Omit “paragraphs (1A)(aa), (a) and (b)”, substitute “items 1, 2 and 3 of the table in subsection (1A)”.

**27 Subsections 76(5) and (6)**

Repeal the subsections.

**28 Paragraph 151BX(3)(a)**

After “for each contravention”, insert “, the greater of the following”.

**29 Subparagraphs 151BX(3)(a)(i) and (ii)**

Repeal the subparagraphs, substitute:

- (i) if the contravention continued for 21 days or fewer—the sum of \$50 million and \$1 million for each day that the contravention continued;



- (ii) if the contravention continued for more than 21 days—  
the sum of \$71 million and \$3 million for each day in  
excess of 21 that the contravention continued;
- (iii) if the Court can determine the value of the benefit that  
the body corporate, and any body corporate related to  
the body corporate, have obtained directly or indirectly  
and that is reasonably attributable to the  
contravention—3 times the value of that benefit;
- (iv) if the Court cannot determine the value of that benefit—  
30% of the body corporate’s adjusted turnover during  
the breach turnover period for the contravention; or

**30 Paragraph 151BX(4)(b)**

Omit “\$500,000”, substitute “\$2.5 million”.

## Part 4—Amendments to the Australian Consumer Law

### *Competition and Consumer Act 2010*

#### 31 Subsection 2(1) of Schedule 2

Insert:

*adjusted turnover*, of a body corporate during a period, means the sum of the values of all the supplies that the body corporate, and any body corporate related to the body corporate, have made, or are likely to make, during the period, other than:

- (a) supplies made from any of those bodies corporate to any other of those bodies corporate; or
- (b) supplies that are input taxed; or
- (c) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the *A New Tax System (Goods and Services Tax) Act 1999*); or
- (d) supplies that are not made in connection with an enterprise that the body corporate carries on; or
- (e) supplies that are not connected with the indirect tax zone.

Expressions used in this definition that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as in that Act.

#### 32 Subsection 2(1) of Schedule 2 (definition of *annual turnover*)

Repeal the definition.

#### 33 Section 2(1) of Schedule 2

Insert:

*breach turnover period*, of a body corporate, for an offence or an act or omission, means the longer of the following periods:

- (a) the period of 12 months ending at the end of the month in which:

- (i) for an offence—the body corporate ceased committing the offence, or was charged with the offence (whichever is earlier); or
- (ii) for an act or omission—the act or omission ceased, or proceedings in relation to the act or omission were instituted (whichever is earlier);
- (b) the period ending at the same time as the period determined under paragraph (a) and starting:
  - (i) for an offence—at the beginning of the month in which the body corporate committed, or began committing, the offence (as the case requires); or
  - (ii) for an act or omission—at the beginning of the month in which the act or omission occurred or began occurring (as the case requires).

**34 Paragraph 151(5)(a) of Schedule 2**

Omit “\$10,000,000”, substitute “\$50,000,000”.

**35 Paragraph 151(5)(c) of Schedule 2**

Repeal the paragraph, substitute:

- (c) if the court cannot determine the value of that benefit—30% of the body corporate’s adjusted turnover during the breach turnover period for the offence.

**36 Subsection 151(6) of Schedule 2**

Omit “\$500,000”, substitute “\$2,500,000”.

**37 Paragraph 152(2A)(a) of Schedule 2**

Omit “\$10,000,000”, substitute “\$50,000,000”.

**38 Paragraph 152(2A)(c) of Schedule 2**

Repeal the paragraph, substitute:

- (c) if the court cannot determine the value of that benefit—30% of the body corporate’s adjusted turnover during the breach turnover period for the offence.

**39 Subsection 152(2B) of Schedule 2**

Omit “\$500,000”, substitute “\$2,500,000”.

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**40 Paragraph 153(3)(a) of Schedule 2**

Omit “\$10,000,000”, substitute “\$50,000,000”.

**41 Paragraph 153(3)(c) of Schedule 2**

Repeal the paragraph, substitute:

- (c) if the court cannot determine the value of that benefit—30% of the body corporate’s adjusted turnover during the breach turnover period for the offence.

**42 Subsection 153(4) of Schedule 2**

Omit “\$500,000”, substitute “\$2,500,000”.

**43 Paragraph 154(5A)(a) of Schedule 2**

Omit “\$10,000,000”, substitute “\$50,000,000”.

**44 Paragraph 154(5A)(c) of Schedule 2**

Repeal the paragraph, substitute:

- (c) if the court cannot determine the value of that benefit—30% of the body corporate’s adjusted turnover during the breach turnover period for the offence.

**45 Subsection 154(5B) of Schedule 2**

Omit “\$500,000”, substitute “\$2,500,000”.

**46 Paragraph 155(3)(a) of Schedule 2**

Omit “\$10,000,000”, substitute “\$50,000,000”.

**47 Paragraph 155(3)(c) of Schedule 2**

Repeal the paragraph, substitute:

- (c) if the court cannot determine the value of that benefit—30% of the body corporate’s adjusted turnover during the breach turnover period for the offence.

**48 Subsection 155(4) of Schedule 2**

Omit “\$500,000”, substitute “\$2,500,000”.

**49 Paragraph 156(3)(a) of Schedule 2**

Omit “\$10,000,000”, substitute “\$50,000,000”.

**50 Paragraph 156(3)(c) of Schedule 2**

Repeal the paragraph, substitute:

- (c) if the court cannot determine the value of that benefit—30% of the body corporate’s adjusted turnover during the breach turnover period for the offence.

**51 Subsection 156(4) of Schedule 2**

Omit “\$500,000”, substitute “\$2,500,000”.

**52 Paragraph 157(3A)(a) of Schedule 2**

Omit “\$10,000,000”, substitute “\$50,000,000”.

**53 Paragraph 157(3A)(c) of Schedule 2**

Repeal the paragraph, substitute:

- (c) if the court cannot determine the value of that benefit—30% of the body corporate’s adjusted turnover during the breach turnover period for the offence.

**54 Subsection 157(3B) of Schedule 2**

Omit “\$500,000”, substitute “\$2,500,000”.

**55 Paragraph 158(10A)(a) of Schedule 2**

Omit “\$10,000,000”, substitute “\$50,000,000”.

**56 Paragraph 158(10A)(c) of Schedule 2**

Repeal the paragraph, substitute:

- (c) if the court cannot determine the value of that benefit—30% of the body corporate’s adjusted turnover during the breach turnover period for the offence.

**57 Subsection 158(10B) of Schedule 2**

Omit “\$500,000”, substitute “\$2,500,000”.

**58 Paragraph 159(4)(a) of Schedule 2**

Omit “\$10,000,000”, substitute “\$50,000,000”.

**59 Paragraph 159(4)(c) of Schedule 2**

Repeal the paragraph, substitute:

- (c) if the court cannot determine the value of that benefit—30% of the body corporate’s adjusted turnover during the breach turnover period for the offence.

**60 Subsection 159(5) of Schedule 2**

Omit “\$500,000”, substitute “\$2,500,000”.

**61 Paragraph 161(7)(a) of Schedule 2**

Omit “\$10,000,000”, substitute “\$50,000,000”.

**62 Paragraph 161(7)(c) of Schedule 2**

Repeal the paragraph, substitute:

- (c) if the court cannot determine the value of that benefit—30% of the body corporate’s adjusted turnover during the breach turnover period for the offence.

**63 Subsection 161(8) of Schedule 2**

Omit “\$500,000”, substitute “\$2,500,000”.

**64 Paragraph 162(6)(a) of Schedule 2**

Omit “\$10,000,000”, substitute “\$50,000,000”.

**65 Paragraph 162(6)(c) of Schedule 2**

Repeal the paragraph, substitute:

- (c) if the court cannot determine the value of that benefit—30% of the body corporate’s adjusted turnover during the breach turnover period for the offence.

**66 Subsection 162(7) of Schedule 2**

Omit “\$500,000”, substitute “\$2,500,000”.

**67 Paragraph 163(5A)(a) of Schedule 2**

Omit “\$10,000,000”, substitute “\$50,000,000”.

**68 Paragraph 163(5A)(c) of Schedule 2**

Repeal the paragraph, substitute:

- (c) if the court cannot determine the value of that benefit—30% of the body corporate’s adjusted turnover during the breach turnover period for the offence.

**69 Subsection 163(5B) of Schedule 2**

Omit “\$500,000”, substitute “\$2,500,000”.

**70 Paragraph 164(4)(a) of Schedule 2**

Omit “\$10,000,000”, substitute “\$50,000,000”.

**71 Paragraph 164(4)(c) of Schedule 2**

Repeal the paragraph, substitute:

- (c) if the court cannot determine the value of that benefit—30% of the body corporate’s adjusted turnover during the breach turnover period for the offence.

**72 Subsection 164(5) of Schedule 2**

Omit “\$500,000”, substitute “\$2,500,000”.

**73 Paragraph 166(8)(a) of Schedule 2**

Omit “\$10,000,000”, substitute “\$50,000,000”.

**74 Paragraph 166(8)(c) of Schedule 2**

Repeal the paragraph, substitute:

- (c) if the court cannot determine the value of that benefit—30% of the body corporate’s adjusted turnover during the breach turnover period for the offence.

**75 Subsection 166(9) of Schedule 2**

Omit “\$500,000”, substitute “\$2,500,000”.

**76 Paragraph 167(3)(a) of Schedule 2**

Omit “\$10,000,000”, substitute “\$50,000,000”.

**77 Paragraph 167(3)(c) of Schedule 2**

Repeal the paragraph, substitute:

- (c) if the court cannot determine the value of that benefit—30% of the body corporate’s adjusted turnover during the breach turnover period for the offence.

**78 Subsection 167(4) of Schedule 2**

Omit “\$500,000”, substitute “\$2,500,000”.

**79 Paragraph 168(2A)(a) of Schedule 2**

Omit “\$10,000,000”, substitute “\$50,000,000”.

**80 Paragraph 168(2A)(c) of Schedule 2**

Repeal the paragraph, substitute:

- (c) if the court cannot determine the value of that benefit—30% of the body corporate’s adjusted turnover during the breach turnover period for the offence.

**81 Subsection 168(2B) of Schedule 2**

Omit “\$500,000”, substitute “\$2,500,000”.

**82 Paragraph 194(8)(a) of Schedule 2**

Omit “\$10,000,000”, substitute “\$50,000,000”.

**83 Paragraph 194(8)(c) of Schedule 2**

Repeal the paragraph, substitute:

- (c) if the court cannot determine the value of that benefit—30% of the body corporate’s adjusted turnover during the breach turnover period for the offence.

**84 Subsection 194(9) of Schedule 2**

Omit “\$500,000”, substitute “\$2,500,000”.



**85 Paragraph 195(4)(a) of Schedule 2**

Omit “\$10,000,000”, substitute “\$50,000,000”.

**86 Paragraph 195(4)(c) of Schedule 2**

Repeal the paragraph, substitute:

- (c) if the court cannot determine the value of that benefit—30% of the body corporate’s adjusted turnover during the breach turnover period for the offence.

**87 Subsection 195(5) of Schedule 2**

Omit “\$500,000”, substitute “\$2,500,000”.

**88 Paragraph 197(8)(a) of Schedule 2**

Omit “\$10,000,000”, substitute “\$50,000,000”.

**89 Paragraph 197(8)(c) of Schedule 2**

Repeal the paragraph, substitute:

- (c) if the court cannot determine the value of that benefit—30% of the body corporate’s adjusted turnover during the breach turnover period for the offence.

**90 Subsection 197(9) of Schedule 2**

Omit “\$500,000”, substitute “\$2,500,000”.

**91 Paragraph 198(4)(a) of Schedule 2**

Omit “\$10,000,000”, substitute “\$50,000,000”.

**92 Paragraph 198(4)(c) of Schedule 2**

Repeal the paragraph, substitute:

- (c) if the court cannot determine the value of that benefit—30% of the body corporate’s adjusted turnover during the breach turnover period for the offence.

**93 Subsection 198(5) of Schedule 2**

Omit “\$500,000”, substitute “\$2,500,000”.

**94 Paragraph 199(4)(a) of Schedule 2**

Omit “\$10,000,000”, substitute “\$50,000,000”.

**95 Paragraph 199(4)(c) of Schedule 2**

Repeal the paragraph, substitute:

- (c) if the court cannot determine the value of that benefit—30% of the body corporate’s adjusted turnover during the breach turnover period for the offence.

**96 Subsection 199(5) of Schedule 2**

Omit “\$500,000”, substitute “\$2,500,000”.

**97 Paragraph 203(9)(a) of Schedule 2**

Omit “\$10,000,000”, substitute “\$50,000,000”.

**98 Paragraph 203(9)(c) of Schedule 2**

Repeal the paragraph, substitute:

- (c) if the court cannot determine the value of that benefit—30% of the body corporate’s adjusted turnover during the breach turnover period for the offence.

**99 Subsection 203(10) of Schedule 2**

Omit “\$500,000”, substitute “\$2,500,000”.

**100 Paragraph 204(4)(a) of Schedule 2**

Omit “\$10,000,000”, substitute “\$50,000,000”.

**101 Paragraph 204(4)(c) of Schedule 2**

Repeal the paragraph, substitute:

- (c) if the court cannot determine the value of that benefit—30% of the body corporate’s adjusted turnover during the breach turnover period for the offence.

**102 Subsection 204(5) of Schedule 2**

Omit “\$500,000”, substitute “\$2,500,000”.

### 103 Subsection 224(3) of Schedule 2 (table)

Repeal the table, substitute:

<b>Amount of pecuniary penalty</b>			
<b>Item</b>	<b>For each act or omission to which this section applies that relates to ...</b>	<b>if the person is a body corporate—the pecuniary penalty is not to exceed ...</b>	<b>if the person is not a body corporate—the pecuniary penalty is not to exceed ...</b>
1	a provision of Part 2-2	the greater of the amounts mentioned in subsection (3A)	\$2,500,000
2	a provision of Part 3-1 (other than section 47(1))	the greater of the amounts mentioned in subsection (3A)	\$2,500,000
3	section 47(1)	\$5,000	\$1,000
4	section 66(2)	\$50,000	\$10,000
5	a provision of Division 2 of Part 3-2 (other than section 85)	\$50,000	\$10,000
6	a provision of Division 3 of Part 3-2 (other than section 96(2))	\$30,000	\$6,000
7	section 99B(1), 99C, 99D(1), 99E or 99F(2)	\$30,000	\$6,000
8	section 100(1) or (3) or 101(3) or (4)	\$15,000	\$3,000
9	section 102(2) or 103(2)	\$50,000	\$10,000
10	section 106(1), (2), (3) or (5), 107(1) or (2), 118(1), (2), (3) or (5) or 119(1) or (2)	the greater of the amounts mentioned in subsection (3A)	\$2,500,000
11	section 125(4)	\$16,500	\$3,300

**Schedule 1** More competition, better prices  
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<b>Amount of pecuniary penalty</b>			
<b>Item</b>	<b>For each act or omission to which this section applies that relates to ...</b>	<b>if the person is a body corporate—the pecuniary penalty is not to exceed ...</b>	<b>if the person is not a body corporate—the pecuniary penalty is not to exceed ...</b>
12	section 127(1) or (2)	the greater of the amounts mentioned in subsection (3A)	\$2,500,000
13	section 128(2) or (6), 131(1) or 132(1)	\$16,500	\$3,300
14	section 136(1), (2) or (3) or 137(1) or (2)	the greater of the amounts mentioned in subsection (3A)	\$2,500,000
15	section 221(1)	\$16,500	\$3,300
16	section 222(1)	\$27,500	\$5,500

**104 Paragraph 224(3A)(a) of Schedule 2**

Omit “\$10,000,000”, substitute “\$50,000,000”.

**105 Paragraph 224(3A)(c) of Schedule 2**

Repeal the paragraph, substitute:

- (c) if the court cannot determine the value of that benefit—30% of the body corporate’s adjusted turnover during the breach turnover period for the act or omission.

## **Part 5—Application provisions**

### ***Competition and Consumer Act 2010***

#### **106 Application of amendments in Parts 1 and 3**

The amendments made by Parts 1 and 3 of this Schedule apply in relation to:

- (a) offences committed; or
  - (b) contraventions, or acts or omissions, that occurred;
- on or after the commencement of this Schedule.

#### **107 In the appropriate position in Part XIII**

Insert:

### **Division 5—Application of amendments made by the Treasury Laws Amendment (More Competition, Better Prices) Act 2022**

#### **187 Application of amendments**

The amendments made by Part 2 of Schedule 1 to the *Treasury Laws Amendment (More Competition, Better Prices) Act 2022* apply in relation to offences committed on or after the commencement of that Schedule.

#### **108 In the appropriate position in Chapter 6 of Schedule 2**

Insert:

## **Part 7—Application provision relating to the Treasury Laws Amendment (More Competition, Better Prices) Act 2022**

### **304 Application of amendments relating to penalties**

The amendments made by Part 4 of Schedule 1 to the *Treasury Laws Amendment (More Competition, Better Prices) Act 2022* apply in relation to offences committed, or acts or omissions that occurred, on or after the commencement of that Schedule.

## **Schedule 2—Unfair contract terms**

### **Part 1—Prohibition of unfair contract terms**

#### **Division 1—Amendment of the Competition and Consumer Act 2010**

##### *Competition and Consumer Act 2010*

#### **1 After subsection 23(2) of Schedule 2**

Insert:

- (2A) A person contravenes this subsection if:
- (a) the person makes a contract; and
  - (b) the contract is a consumer contract or small business contract; and
  - (c) the contract is a standard form contract; and
  - (d) a term of the contract is unfair; and
  - (e) the person proposed the unfair term.

Note: A pecuniary penalty may be imposed for a contravention of this subsection: see section 224.

- (2B) A person who contravenes subsection (2A) commits a separate contravention of that subsection in respect of each term that is unfair and that the person proposed.

- (2C) A person contravenes this subsection if:
- (a) the person applies or relies on, or purports to apply or rely on, a term of a contract; and
  - (b) the contract is a consumer contract or small business contract; and
  - (c) the contract is a standard form contract; and
  - (d) the term is unfair.

Note: A pecuniary penalty may be imposed for a contravention of this subsection: see section 224.

## **Division 2—Amendment of the Australian Securities and Investments Commission Act 2001**

### *Australian Securities and Investments Commission Act 2001*

#### **2 After subsection 12BF(2)**

Insert:

- (2A) A person contravenes this subsection if:
- (a) the person makes a contract; and
  - (b) the contract is a consumer contract or small business contract; and
  - (c) the contract is a standard form contract; and
  - (d) the contract is either a financial product or a contract for the supply, or possible supply, of financial services; and
  - (e) a term of the contract is unfair; and
  - (f) the person proposed the unfair term.
- (2B) A person who contravenes subsection (2A) commits a separate contravention of that subsection in respect of each term that is unfair and that the person proposed.
- (2C) A person contravenes this subsection if:
- (a) the person applies or relies on, or purports to apply or rely on, a term of a contract; and
  - (b) the contract is a consumer contract or small business contract; and
  - (c) the contract is a standard form contract; and
  - (d) the contract is either a financial product or a contract for the supply, or possible supply, of financial services; and
  - (e) the term is unfair.

#### **3 Subsection 12BG(1)**

Omit “subsection 12BF(1)”, substitute “section 12BF”.

#### **4 Subsection 12BH(1)**

Omit “subsection 12BF(1)”, substitute “section 12BF”.



## **Part 2—Remedies**

### **Division 1—Amendment of the Competition and Consumer Act 2010**

#### *Competition and Consumer Act 2010*

##### **5 Section 137D**

Repeal the section, substitute:

##### **137D Compensation orders etc. arising out of unconscionable conduct or unfair contract term**

In determining whether to make an order under subsection 237(1) or 238(1) of the Australian Consumer Law in relation to a contravention of a provision of Part 2-2 or 2-3 of the Australian Consumer Law, the court may have regard to the conduct of the parties to the proceeding referred to in that subsection since the contravention occurred.

##### **6 Paragraphs 137F(2)(b), (c) and (d)**

Repeal the paragraphs, substitute:

- (b) an application under section 232 of the Australian Consumer Law for an injunction against the person in relation to a contravention of a provision of Chapter 2, 3 or 4 of the Australian Consumer Law; or
- (c) an action under subsection 236(1) of the Australian Consumer Law against the person in relation to a contravention of a provision of Part 2-1 or 2-3, or of Chapter 3, of the Australian Consumer Law; or
- (d) an application for an order under subsection 237(1) or 239(1) of the Australian Consumer Law against the person in relation to a contravention of a provision of Chapter 2, 3 or 4 of the Australian Consumer Law.

##### **7 Paragraph 137H(1)(b)**

Omit “or 239(1)”, substitute “, 239(1), 243A(1) or 243B(1)”.

**8 Paragraph 157(1AA)(b)**

After “237(1)”, insert “, 243A(1) or 243B(1)”.

**9 Subsection 2(1) of Schedule 2 (definition of *declared term*)**

Repeal the definition, substitute:

*declared term*: see sections 239(1)(a)(ii), 243A(1) and 243B(1).

**10 Subsection 2(1) of Schedule 2 (paragraph (b) of the definition of *enforcement proceeding*)**

Omit “and 239”, substitute “, 239, 243A and 243B”.

**11 Before subparagraph 224(1)(a)(ii) of Schedule 2**

Insert:

(ia) section 23(2A) or (2C) (which is about unfair terms in standard form consumer or small business contracts);

**12 Subsection 224(3) of Schedule 2 (before table item 2)**

Insert:

2A	section 23(2A) or (2C)	the greater of the amounts mentioned in subsection (3A)	\$2,500,000
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**13 Subsection 224(3A) of Schedule 2**

After “items 1,”, insert “2A,”.

**14 Subsection 232(3) of Schedule 2**

Repeal the subsection.

**15 Subdivision A of Division 4 of Part 5-2 of Schedule 2 (heading)**

Repeal the heading.

**16 Paragraphs 237(1)(a) and (b) of Schedule 2**

Repeal the paragraphs, substitute:

(a) on application of a person (the *injured person*) who has suffered, or is likely to suffer, loss or damage because

another person has engaged in conduct in contravention of a provision of Chapter 2, 3 or 4; or

- (b) on the application of the regulator made on behalf of, and with the consent in writing of, one or more such injured persons;

### **17 Subsection 237(1) of Schedule 2 (notes 1 and 2)**

Repeal the notes, substitute:

Note: The orders that the court may make include all or any of the orders set out in section 243.

### **18 Subsection 237(3) of Schedule 2**

Repeal the subsection, substitute:

- (3) An application under subsection (1) may be made at any time before the end of 6 years from the day on which the cause of action accrued that relates to the conduct referred to in that subsection.

### **19 Subsection 238(1) of Schedule 2**

Repeal the subsection, substitute:

(1) If:

- (a) a proceeding is instituted in a court under a provision of Chapter 4 or this Chapter (other than this section); and  
(b) the court finds that a party to the proceeding (the *injured person*) has suffered loss or damage, or is likely to suffer loss or damage, because another person has engaged in conduct in contravention of a provision of Chapter 2, 3 or 4;

the court may make such order or orders as it thinks appropriate against the other person, or against a person involved in that conduct.

Note: The orders that the court may make include all or any of the orders set out in section 243.

### **20 Subdivision B of Division 4 of Part 5-2 of Schedule 2 (heading)**

Repeal the heading.

**21 Subsection 239(1) of Schedule 2 (notes 1 and 2)**

Repeal the notes, substitute:

Note: The orders that the court may make include all or any of the orders set out in section 243.

**22 Subdivision C of Division 4 of Part 5-2 of Schedule 2 (heading)**

Repeal the heading.

**23 Section 242 of Schedule 2**

Repeal the section.

**24 Sections 244 and 245 of Schedule 2**

Repeal the sections, substitute:

**243A Orders made in favour of party to contract containing unfair term**

- (1) If a declaration has been made under section 250 in relation to a term (the *declared term*) of a contract, a court may:
- (a) on the application of a party to the contract; or
  - (b) on the application of the regulator made on behalf of, and with the consent in writing of, one or more parties to the contract;
- make against a party (the *respondent*) to the contract who is advantaged by the declared term such order or orders (other than an award of damages) as the court thinks appropriate:
- (c) to redress, in whole or in part, loss or damage that has been caused to any person by the declared term; or
  - (d) to prevent or reduce loss or damage that is likely to be so caused.
- (2) Without limiting subsection (1), the orders that a court may make against the respondent include all or any of the following:
- (a) an order declaring the whole or any part of the contract, or of a collateral arrangement relating to the contract:
    - (i) to be void; and

- (ii) if the court thinks fit—to have been void ab initio or void at all times on and after such date as is specified in the order (which may be a date that is before the date on which the order is made);
  - (b) an order:
    - (i) varying the contract, or such a collateral arrangement, as specified in the order; and
    - (ii) if the court thinks fit—declaring the contract or arrangement to have had effect as so varied on and after such date as is specified in the order (which may be a date that is before the date on which the order is made);
  - (c) an order refusing to enforce any or all of the provisions of the contract, or of such a collateral arrangement.
- (3) An application under subsection (1) may be made at any time before the end of 6 years from the day on which the declaration under section 250 was made.

### **243B Orders made on application of the regulator to prevent and remedy unfair contract terms**

- (1) If a declaration has been made under section 250 in relation to a term (the *declared term*) of a contract, a court may, on the application of the regulator, make against a party (the *respondent*) to the contract who is advantaged by the declared term such order or orders (other than an award of damages) as the court thinks appropriate:
- (a) to prevent a term (a *similar term*) that is the same, or substantially similar, in effect to the declared term from being included in any future contract:
    - (i) to which the respondent is a party; and
    - (ii) that is a consumer contract or small business contract; and
    - (iii) that is a standard form contract; or
  - (b) to redress, in whole or in part, loss or damage that has been caused, or to prevent or reduce loss or damage that is likely to be caused, to any person by a similar term that is included in any existing contract:
    - (i) to which the respondent is a party; and

- (ii) that is a consumer contract or small business contract;  
and
  - (iii) that is a standard form contract;whether or not the future or existing contract is identifiable when the court makes the order or orders.
- (2) Without limiting subsection (1), the orders that a court may make against the respondent include all or any of the following:
  - (a) an injunction restraining the respondent from making any future contract that is of the kind referred to in paragraph (1)(a) and includes a similar term;
  - (b) an injunction restraining the respondent from applying or relying on a similar term of any existing contract that is of the kind referred to in paragraph (1)(b);
  - (c) an order declaring the whole or any part of any existing contract of the kind referred to in paragraph (1)(b), or of a collateral arrangement relating to such a contract:
    - (i) to be void; and
    - (ii) if the court thinks fit—to have been void ab initio or void at all times on and after such date as is specified in the order (which may be a date that is before the date on which the order is made);
  - (d) an order:
    - (i) varying such an existing contract, or such a collateral arrangement, as specified in the order; and
    - (ii) if the court thinks fit—declaring the contract or arrangement to have had effect as so varied on and after such date as is specified in the order (which may be a date that is before the date on which the order is made);
  - (e) an order refusing to enforce any or all of the provisions of such an existing contract, or of such a collateral arrangement.
- (3) An application under subsection (1) may be made at any time before the end of 6 years from the day on which the declaration under section 250 was made.
- (4) An order made under this section against the respondent binds a person affected by the order, even if the person is not a party to the proceedings in which the order is made.

### **245 Interaction with other provisions**

- (1) An application may be made under section 237(1), 239(1), 243A(1) or 243B(1) even if an enforcement proceeding in relation to the conduct or term referred to in that section has not been instituted.
- (2) A court may make an order under a provision of this Division whether or not the court:
  - (a) grants an injunction under Division 2; or
  - (b) makes an order under any other provision of this Division or under section 236, 246, 247 or 248.
- (3) Nothing in this Division limits the generality of Division 2.

### **25 Paragraph 247(1)(a) of Schedule 2**

After “Part 2-2”, insert “or 2-3”.

### **26 After subparagraph 248(1)(a)(i) of Schedule 2**

Insert:

- (ia) a provision of Part 2-3 (which is about unfair contract terms);

## **Division 2—Amendment of the Australian Securities and Investments Commission Act 2001**

### ***Australian Securities and Investments Commission Act 2001***

#### **27 Subsection 12BA(1) (definition of *enforcement proceeding*)**

Omit “section 12GNB”, substitute “sections 12GNB, 12GNE and 12GNF”.

#### **28 Before paragraph 12GBA(6)(a)**

Insert:

- (aa) a provision of Subdivision BA;

**29 Subsection 12GD(9)**

Repeal the subsection.

**30 Subsection 12GF(1)**

After “a provision of”, insert “Subdivision BA (sections 12BF to 12BM)”.

**31 Section 12GG**

Repeal the section, substitute:

**12GG Finding in proceedings to be evidence**

(1) In:

- (a) a proceeding against a person under section 12GF or 12GFA;  
or
  - (b) an application under subsection 12GM(2), 12GNB(1), 12GNE(1) or 12GNF(1) for an order against a person;
- a finding of any fact by a court is prima facie evidence of that fact if the finding was made in proceedings:
- (c) under section 12GBA, 12GBB, 12GBCC, 12GD, 12GLA or 12GLB; or
  - (d) for an offence against section 12GB;
- in which that person was found to have contravened, or to have been involved in a contravention of, a provision of this Division.

(2) The finding may be proved by production of a document, under the seal of the court, from which the finding appears.

**32 Paragraph 12HB(1)(b)**

Omit “or 12GNB(1)”, substitute “, 12GNB(1), 12GNE(1) or 12GNF(1)”.

**33 Subsection 12GLA(4) (before paragraph (a) of the definition of *contravening conduct*)**

Insert:

- (aa) contravenes a provision of Subdivision BA (sections 12BF to 12BM); or



**34 Paragraph 12GLC(1)(a)**

After “Subdivision”, insert “BA,”.

**35 Paragraph 12GLD(1)(a)**

After “Subdivision”, insert “BA,”.

**36 Subsection 12GM(10)**

Repeal the subsection.

**37 Paragraph 12GN(1)(c)**

After “a provision of”, insert “Subdivision BA (sections 12BF to 12BM),”.

**38 Subsection 12GN(9)**

Repeal the subsection.

**39 Subparagraph 12GNB(1)(a)(i)**

After “Subdivision”, insert “BA,”.

**40 After section 12GND of Schedule 2**

Insert:

**12GNE Orders made in favour of party to contract containing unfair term**

- (1) If a declaration has been made under section 12GND in relation to a term (the *declared term*) of a contract, the Court may:
- (a) on the application of a party to the contract; or
  - (b) on the application of ASIC made on behalf of, and with the consent in writing of, one or more parties to the contract;
- make against a party (the *respondent*) to the contract who is advantaged by the declared term such order or orders (other than an award of damages) as the Court thinks appropriate:
- (c) to redress, in whole or in part, loss or damage that has been caused to any person by the declared term; or
  - (d) to prevent or reduce loss or damage that is likely to be so caused.

- (2) Without limiting subsection (1), the orders that the Court may make against the respondent include all or any of the following:
- (a) an order declaring the whole or any part of the contract, or of a collateral arrangement relating to the contract:
    - (i) to be void; and
    - (ii) if the Court thinks fit—to have been void ab initio or void at all times on and after such date as is specified in the order (which may be a date that is before the date on which the order is made);
  - (b) an order:
    - (i) varying the contract, or such a collateral arrangement, as specified in the order; and
    - (ii) if the Court thinks fit—declaring the contract or arrangement to have had effect as so varied on and after such date as is specified in the order (which may be a date that is before the date on which the order is made);
  - (c) an order refusing to enforce any or all of the provisions of the contract, or of such a collateral arrangement.
- (3) An application under subsection (1) may be made at any time before the end of 6 years from the day on which the declaration under section 12GND was made.

### **12GNF Orders made on application of ASIC to prevent and remedy unfair contract terms**

- (1) If a declaration has been made under section 12GND in relation to a term (the *declared term*) of a contract, the Court may, on the application of ASIC, make against a party (the *respondent*) to the contract who is advantaged by the declared term such order or orders (other than an award of damages) as the Court thinks appropriate:
- (a) to prevent a term (a *similar term*) that is the same, or substantially similar, in effect to the declared term from being included in any future contract:
    - (i) to which the respondent is a party; and
    - (ii) that is a consumer contract or small business contract; and
    - (iii) that is a standard form contract; or

- (b) to redress, in whole or in part, loss or damage that has been caused, or to prevent or reduce loss or damage that is likely to be caused, to any person by a similar term that is included in any existing contract:
- (i) to which the respondent is a party; and
  - (ii) that is a consumer contract or small business contract; and
  - (iii) that is a standard form contract;
- whether or not the future or existing contract is identifiable when the Court makes the order or orders.
- (2) Without limiting subsection (1), the orders that the Court may make against the respondent include all or any of the following:
- (a) an injunction restraining the respondent from making any future contract that is of the kind referred to in paragraph (1)(a) and includes a similar term;
  - (b) an injunction restraining the respondent from applying or relying on a similar term of any existing contract that is of the kind referred to in paragraph (1)(b);
  - (c) an order declaring the whole or any part of any existing contract of the kind referred to in paragraph (1)(b), or of a collateral arrangement relating to such a contract:
    - (i) to be void; and
    - (ii) if the Court thinks fit—to have been void ab initio or void at all times on and after such date as is specified in the order (which may be a date that is before the date on which the order is made);
  - (d) an order:
    - (i) varying such an existing contract, or such a collateral arrangement, as specified in the order; and
    - (ii) if the Court thinks fit—declaring the contract or arrangement to have had effect as so varied on and after such date as is specified in the order (which may be a date that is before the date on which the order is made);
  - (e) an order refusing to enforce any or all of the provisions of such an existing contract, or of such a collateral arrangement.

- (3) An application under subsection (1) may be made at any time before the end of 6 years from the day on which the declaration under section 12GND was made.
- (4) An order made under this section against the respondent binds a person affected by the order, even if the person is not a party to the proceedings in which the order is made.

**12GNG Interaction with other provisions**

- (1) An application may be made under subsection 12GNE(1) or 12GNF(1) even if an enforcement proceeding in relation to the declared term referred to in that subsection has not been instituted.
- (2) The Court may make an order under section 12GNE or 12GNF whether or not the Court:
  - (a) grants an injunction under section 12GD; or
  - (b) makes an order under any other provision of this Division (other than section 12GND).
- (3) Nothing in this Division limits the generality of section 12GD.

## **Part 3—Determining what is a standard form contract**

### **Division 1—Amendment of the Competition and Consumer Act 2010**

#### *Competition and Consumer Act 2010*

#### **41 Before paragraph 27(2)(b) of Schedule 2**

Insert:

- (ba) whether one of the parties has made another contract, in the same or substantially similar terms, prepared by that party, and, if so, how many such contracts that party has made;

#### **42 At the end of section 27 of Schedule 2**

Add:

- (3) A contract may be determined to be a standard form contract despite the existence of one or more of the following:
  - (a) an opportunity for a party to negotiate changes, to terms of the contract, that are minor or insubstantial in effect;
  - (b) an opportunity for a party to select a term from a range of options determined by another party;
  - (c) an opportunity for a party to another contract or proposed contract to negotiate terms of the other contract or proposed contract.

### **Division 2—Amendment of the Australian Securities and Investments Commission Act 2001**

#### *Australian Securities and Investments Commission Act 2001*

#### **43 Before paragraph 12BK(2)(b)**

Insert:

**Schedule 2** Unfair contract terms

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- (ba) whether one of the parties has made another contract, in the same or substantially similar terms, prepared by that party, and, if so, how many such contracts that party has made;

**44 At the end of section 12BK**

Add:

- (3) A contract may be determined to be a standard form contract despite the existence of one or more of following:
  - (a) an opportunity for a party to negotiate changes, to terms of the contract, that are minor or insubstantial in effect;
  - (b) an opportunity for a party to select a term from a range of options determined by another party;
  - (c) an opportunity for a party to another contract or proposed contract to negotiate terms of the other contract or proposed contract.

## **Part 4—Contract thresholds**

### **Division 1—Amendment of the Competition and Consumer Act 2010**

#### *Competition and Consumer Act 2010*

##### **45 Paragraph 139G(2)(aa)**

Omit “businesses employing fewer than 20 persons”, substitute “persons who carry on a business and employ fewer than 100 persons”.

##### **46 Paragraph 139G(2A)(a)**

Omit “businesses employing fewer than 20 persons”, substitute “persons who carry on a business and employ fewer than 100 persons”.

##### **47 Subsections 23(4) and (5) of Schedule 2**

Repeal the subsections, substitute:

- (4) A contract is a *small business contract* if:
- (a) the contract is for a supply of goods or services, or a sale or grant of an interest in land; and
  - (b) at least one party to the contract satisfies either or both of the following conditions:
    - (i) the party makes the contract in the course of carrying on a business and at a time when the party employs fewer than 100 persons;
    - (ii) the party’s turnover, worked out under subsection (6) for the party’s last income year (within the meaning of the *Income Tax Assessment Act 1997*) that ended at or before the time when the contract is made, is less than \$10,000,000.
- (5) In counting for the purposes of subparagraph (4)(b)(i) the number of persons that a person employs:
- (a) a casual employee is not to be counted unless employed on a regular and systematic basis; and

- (b) a part-time employee (including a part-time casual employee counted under paragraph (a) of this subsection) is to be counted as an appropriate fraction of a full-time equivalent.
- (6) For the purposes of subparagraph (4)(b)(ii), a party's turnover for a period is the sum of the values of all supplies the party made during the period, other than the following:
  - (a) supplies that are input taxed;
  - (b) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the *A New Tax System (Goods and Services Tax) Act 1999*);
  - (c) supplies that are not made in connection with an enterprise that the party carries on;
  - (d) supplies that are not connected with the indirect tax zone.
- (7) Expressions used in subsection (6) that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as in that Act.

#### **48 Paragraph 250(2)(a) of Schedule 2**

Omit "a business of the kind referred to in", substitute "covered by".

### **Division 2—Amendment of the Australian Securities and Investments Commission Act 2001**

#### ***Australian Securities and Investments Commission Act 2001***

#### **49 Subsections 12BF(4), (5) and (6)**

Repeal the subsections, substitute:

- (4) A contract is a ***small business contract*** if:
  - (a) the upfront price payable under the contract does not exceed \$5,000,000; and
  - (b) at least one party to the contract satisfies either or both of the following conditions:
    - (i) the party makes the contract in the course of carrying on a business and at a time when the party employs fewer than 100 persons;



- (ii) the party's turnover, worked out under subsection (7) for the party's last income year (within the meaning of the *Income Tax Assessment Act 1997*) that ended at or before the time when the contract is made, is less than \$10,000,000.
- (5) For the purposes of paragraph (4)(a), in working out the upfront price payable under a contract under which credit is provided or is to be provided, disregard any interest payable under the contract.
- (6) In counting for the purposes of subparagraph (4)(b)(i) the number of persons that a person employs:
  - (a) a casual employee is not to be counted unless employed on a regular and systematic basis; and
  - (b) a part-time employee (including a part-time casual employee counted under paragraph (a) of this subsection) is to be counted as an appropriate fraction of a full-time equivalent.
- (7) For the purposes subparagraph (4)(b)(ii), a party's turnover for a period is the sum of the values of all supplies the party made during the period, other than the following:
  - (a) supplies that are input taxed;
  - (b) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the *A New Tax System (Goods and Services Tax) Act 1999*);
  - (c) supplies that are not made in connection with an enterprise that the party carries on;
  - (d) supplies that are not connected with the indirect tax zone.
- (8) Expressions used in subsection (7) that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as in that Act.

Note: This section applies to Insurance Contracts Act insurance contracts in addition to the *Insurance Contracts Act 1984* (see paragraph 15(2)(d) of that Act).

## **50 Paragraph 12BH(2)(aa)**

Omit "businesses employing fewer than 20 persons", substitute "persons who carry on a business and employ fewer than 100 persons".

**51 Paragraph 12BL(3)(a)**

Omit “businesses employing fewer than 20 persons”, substitute  
“persons who carry on a business and employ fewer than 100 persons”.

**52 Paragraph 12GND(2)(a)**

Omit “a business of the kind referred to in paragraph 12BF(4)(a)”,  
substitute “covered by paragraph 12BF(4)(b)”.

## **Part 5—Terms and contracts excluded from rules about unfair contract terms**

### **Division 1—Amendment of the Competition and Consumer Act 2010**

#### *Competition and Consumer Act 2010*

#### **53 Subsection 26(1) of Schedule 2**

Repeal the subsection, substitute:

- (1) Section 23 does not apply to a term of a contract to the extent, but only to the extent, that:
  - (a) the term defines the main subject matter of the contract; or
  - (b) the term sets the upfront price payable under the contract; or
  - (c) the term is required, or expressly permitted, by a law of the Commonwealth or of a State or Territory; or
  - (d) the term is included in the contract, or is taken to be so included, by operation of a law of the Commonwealth, or of a State or Territory, that regulates the contract; or
  - (e) inclusion of the term has either or both of the following results:
    - (i) one or more other terms are included in the contract, or are taken to be so included, by operation of a law of the Commonwealth, or of a State or Territory, that regulates the contract;
    - (ii) such a law requires one or more other terms to be included in the contract.

Example: A State law provides that, if a retail lease contains a provision for termination on the ground of proposed demolition of the building containing the leased premises, then provisions set out in the State law are taken to be included in the lease.

Paragraph (d) covers the provisions that are set out in the State law and taken to be included in the lease. Paragraph (e) covers inclusion of the provision for termination, since it has the result that the provisions set out in the State law are taken to be included in the lease.

**54 At the end of section 28 of Schedule 2**

Add:

- (5) This Part does not apply to a contract:
- (a) that establishes, contains or incorporates rules governing the operation of a payment or settlement system approved under section 9 of the *Payment Systems and Netting Act 1998*; or
  - (b) that is made in the course of, or for the purposes of, operating such a system.

**55 At the end of Part 2-3 of Schedule 2**

Add:

**28A This Part does not apply to certain contracts connected with financial markets**

- (1) This Part does not apply to a contract:
- (a) that exists because of:
    - (i) section 793B of the *Corporations Act 2001* (legal effect of operating rules of a licensed market); or
    - (ii) section 822B of that Act (legal effect of operating rules of a licensed CS facility); or
  - (b) that is made under, or in accordance with:
    - (i) the operating rules of a licensed market; or
    - (ii) the operating rules of a licensed CS facility.

Note: A licensed CS facility is a clearing and settlement facility whose operation is authorised by an Australian CS facility licence.

- (2) This Part does not apply to a contract between:
- (a) the operator of a licensed market; and
  - (b) any of the following:
    - (i) an entity included in the market's official list;
    - (ii) the responsible entity for a registered scheme that is so included;
    - (iii) the operator of a foreign passport fund that is so included;
- to the extent that the contract consists of, or includes, listing rules of the licensed market.

- (3) An expression has in paragraph (1)(b) and subsection (2) the same meaning as in Chapter 7 of the *Corporations Act 2001*.

## **Division 2—Amendment of the Australian Securities and Investments Commission Act 2001**

### ***Australian Securities and Investments Commission Act 2001***

#### **56 Subsection 12BI(1)**

Repeal the subsection, substitute:

- (1) Section 12BF does not apply to a term of a contract to the extent, but only to the extent, that:
- (a) the term defines the main subject matter of the contract; or
  - (b) the term sets the upfront price payable under the contract; or
  - (c) the term is required, or expressly permitted, by a law of the Commonwealth or of a State or Territory; or
  - (d) the term is included in the contract, or is taken to be so included, by operation of a law of the Commonwealth, or of a State or Territory, that regulates the contract; or
  - (e) inclusion of the term has either or both of the following results:
    - (i) one or more other terms are included in the contract, or are taken to be so included, by operation of a law of the Commonwealth, or of a State or Territory, that regulates the contract;
    - (ii) such a law requires one or more other terms to be included in the contract; or
  - (f) if the contract is an Insurance Contracts Act insurance contract—the term is a transparent term and:
    - (i) is disclosed at or before the time when the contract is made; and
    - (ii) sets an amount of excess or deductible under the contract.

#### **57 At the end of section 12BL**

Add:

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- (4) This Subdivision does not apply to a contract:
- (a) that establishes, contains or incorporates rules governing the operation of a payment or settlement system approved under section 9 of the *Payment Systems and Netting Act 1998*; or
  - (b) that is made in the course of, or for the purposes of, operating such a system.

## 58 After section 12BL

Insert:

### 12BLA Replacement life insurance contracts to which this Subdivision does not apply

- (1) This Subdivision does not apply, and is taken never to have applied, to a contract made on or after 5 April 2021 that constitutes a life policy within the meaning of the *Life Insurance Act 1995* and:
- (a) replaces as mentioned in subsection (2) of this section:
    - (i) a contract that constitutes a life policy within the meaning of that Act and was made before 5 April 2021; or
    - (ii) a contract to which this Subdivision does not apply because of one or more previous applications of this section; or
  - (b) links, as mentioned in subsection (3) of this section, 2 or more contracts, each of which is a contract of a kind referred to in subparagraph (a)(i) or (ii) of this subsection; or
  - (c) is one of 2 or more contracts that unlink, as mentioned in subsection (4) of this section, a contract of a kind referred to in subparagraph (a)(i) or (ii) of this subsection.

Note: 5 April 2021 is the day on which Schedule 1 to the *Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2019 Measures)) Act 2020* commenced.

- (2) For the purposes of paragraph (1)(a), a contract (the **replacement policy**) **replaces** another contract (the **previous policy**) if:
- (a) the replacement policy reinstates the previous policy and is issued at the request of the owner of the previous policy after the previous policy lapses; or

- (b) the replacement policy is a reissue of the previous policy to correct an administrative error in the previous policy; or
  - (c) the replacement policy is issued, at the request of the owner of the previous policy, for one or more of the following reasons:
    - (i) to change the ownership of the policy;
    - (ii) to extend or vary, in accordance with a term of the previous policy, the cover provided under the policy;
    - (iii) to change the terms relating to premiums paid under the policy.
- (3) For the purposes of paragraph (1)(b), a contract (the **replacement policy**) **links** 2 or more contracts (the **previous policies**) if the only differences between the terms and effect of the replacement policy and those of the previous policies taken together are attributable to linking the cover under the respective previous policies to form the cover under the replacement policy.
- (4) For the purposes of paragraph (1)(c), 2 or more contracts (the **replacement policies**) **unlink** a contract (the **previous policy**) if the only differences between the terms and effect of the replacement policies taken together and those of the previous policy are attributable to unlinking elements of the cover under the previous policy to form the cover under the respective replacement policies.

### **12BLB Renewed life insurance contracts to which this Subdivision does not apply**

- (1) If a contract covered by subsection (2) or (3) is renewed, or was renewed on or after 5 April 2021, this Subdivision does not apply, and is taken never to have applied, to the contract as renewed.

Note: 5 April 2021 is the day on which Schedule 1 to the *Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2019 Measures)) Act 2020* commenced.

- (2) This subsection covers a contract that:
- (a) constitutes a life policy within the meaning of the *Life Insurance Act 1995*; and
  - (b) was made before 5 April 2021; and
  - (c) either:

- (i) is guaranteed renewable; or
  - (ii) the insurer guarantees not to cancel in response to a change in the risk.
- (3) This subsection covers a contract to which this Subdivision does not apply because of one or more previous applications of this section.

**12BLC This Subdivision does not apply to certain contracts connected with financial markets**

- (1) This Subdivision does not apply to a contract:
- (a) that exists because of:
    - (i) section 793B of the *Corporations Act 2001* (legal effect of operating rules of a licensed market); or
    - (ii) section 822B of that Act (legal effect of operating rules of a licensed CS facility); or
  - (b) that is made under, or in accordance with:
    - (i) the operating rules of a licensed market; or
    - (ii) the operating rules of a licensed CS facility.

Note: A licensed CS facility is a clearing and settlement facility whose operation is authorised by an Australian CS facility licence.

- (2) This Subdivision does not apply to a contract between:
- (a) the operator of a licensed market; and
  - (b) any of the following:
    - (i) an entity included in the market's official list;
    - (ii) the responsible entity for a registered scheme that is so included;
    - (iii) the operator of a foreign passport fund that is so included;
- to the extent that the contract consists of, or includes, listing rules of the licensed market.
- (3) An expression has in paragraph (1)(b) and subsection (2) the same meaning as in Chapter 7 of the *Corporations Act 2001*.



## **Part 6—Provisions referring to non-party consumers**

### **Division 1—Amendment of the Competition and Consumer Act 2010**

#### *Competition and Consumer Act 2010*

#### **59 Subsection 2(1) of Schedule 2**

Insert:

*non-party* means:

- (a) in relation to conduct—a person who is not, or has not been, a party to an enforcement proceeding in relation to the conduct; or
- (b) in relation to a term of a contract—a person who is not, or has not been, a party to an enforcement proceeding in relation to the term.

#### **60 Subsection 2(1) of Schedule 2 (definition of *non-party consumer*)**

Repeal the definition.

#### **61 Division 4 of Part 5-2 of Schedule 2 (heading)**

Omit “non-party consumers”, substitute “non-parties”.

#### **62 Subdivision B of Division 4 of Part 5-2 of Schedule 2 (heading)**

Omit “non-party consumers”, substitute “non-parties”.

#### **63 Section 239 of Schedule 2 (heading)**

Omit “non-party consumers”, substitute “non-parties”.

#### **64 Section 239 of Schedule 2**

Omit “non-party consumers” (wherever occurring), substitute “non-parties”.

**65 Section 240 of Schedule 2 (heading)**

Omit “non-party consumers”, substitute “non-parties”.

**66 Section 240 of Schedule 2**

Omit “non-party consumers” (wherever occurring), substitute “non-parties”.

**67 Section 241 of Schedule 2 (heading)**

Omit “consumer”.

**68 Section 241 of Schedule 2**

Omit “consumer” (wherever occurring).

**Division 2—Amendment of the Australian Securities and Investments Commission Act 2001**

*Australian Securities and Investments Commission Act 2001*

**69 Subsection 12BA(1) (definition of *non-party consumer*)**

Repeal the definition, substitute:

*non-party* means:

- (a) in relation to conduct—a person who is not, or has not been, a party to an enforcement proceeding in relation to the conduct; or
- (b) in relation to a term of a contract—a person who is not, or has not been, a party to an enforcement proceeding in relation to the term.

**70 Section 12GNB (heading)**

Omit “non-party consumers”, substitute “non-parties”.

**71 Section 12GNB**

Omit “non-party consumers” (wherever occurring), substitute “non-parties”.

**72 Subsection 12GNB(9) (heading)**

Omit “*consumer*”.

**73 Subsection 12GNB(9)**

Omit “consumer” (wherever occurring).

**74 Section 12GNC (heading)**

Omit “**non-party consumers**”, substitute “**non-parties**”.

**75 Section 12GNC**

Omit “consumer” (wherever occurring).

## Part 7—Application

### Division 1—Application of amendments of the Competition and Consumer Act 2010

#### 76 Application

The amendments of sections 137D and 137F of the *Competition and Consumer Act 2010* made by Schedule 2 to this Act apply in relation to a contract to the same extent as the amendments of Schedule 2 to that Act made by Schedule 2 to this Act apply in relation to the contract.

Note: For application provisions for the amendments of Schedule 2 to that Act made by Schedule 2 to this Act, see section 305 of Schedule 2 to that Act.

### Division 2—Application of amendments of the Australian Consumer Law

#### *Competition and Consumer Act 2010*

#### 77 Subsection 303(2) of Schedule 2

Omit “a services”, substitute “services”.

#### 78 At the end of Part 7 of Chapter 6 of Schedule 2

Add:

#### 305 Application of amendments relating to unfair contract terms

- (1) This section applies to the amendments of this Schedule made by Schedule 2 (the *amending Schedule*) to the *Treasury Laws Amendment (More Competition, Better Prices) Act 2022*.
- (2) The amendments:
  - (a) apply in relation to a contract made at or after the commencement (the *relevant commencement*) of the amending Schedule; and
  - (b) do not apply to a contract (an *existing contract*) made before the relevant commencement, except as provided in this section.

- (3) If an existing contract is renewed at or after the relevant commencement, the amendments apply to the contract as renewed, on and from the day (the *renewal day*) on which the renewal takes effect, in relation to conduct that occurs on or after the renewal day.
- (4) If an existing contract is varied at or after the relevant commencement by varying or adding a term and subsection (3) has not already applied in relation to the contract:
- (a) the amendments apply to the term as varied or added, and so apply:
    - (i) on and from the day (the *variation day*) on which the variation of the contract takes effect; and
    - (ii) as if the contract as varied had been made on the variation day; and
    - (iii) in relation to conduct that occurs on and after the variation day; and
  - (b) section 23(2A)(e) applies in relation to a person proposing the varied or added term, whether before, at or after the relevant commencement; and
  - (c) subsection 23(2), and section 27, as in force at and after the relevant commencement, apply to the contract.
- (5) If a contract is made or renewed at or after the relevant commencement, section 23(2A)(e) applies in relation to a person proposing a term of the contract, whether before, at or after the relevant commencement.
- (6) Despite subsections (3) to (5) of this section, the amendments do not apply to a contract, or a term of a contract, to the extent that the operation of the amendments would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph of the Constitution).

**Division 3—Application of amendments of the Australian Securities and Investments Commission Act 2001**

*Australian Securities and Investments Commission Act 2001*

**79 In the appropriate position**

Insert:

**Part 39—Application provisions relating to the Treasury Laws Amendment (More Competition, Better Prices) Act 2022**

**342 Amendments relating to unfair contract terms**

- (1) This section applies to the amendments of this Act made by Schedule 2 (the *amending Schedule*) to the *Treasury Laws Amendment (More Competition, Better Prices) Act 2022*, except item 58 of that Schedule.
- (2) The amendments:
  - (a) apply in relation to a contract made at or after the commencement (the *relevant commencement*) of the amending Schedule; and
  - (b) do not apply to a contract (an *existing contract*) made before the relevant commencement, except as provided in this section.
- (3) If an existing contract is renewed at or after the relevant commencement, the amendments apply to the contract as renewed, on and from the day (the *renewal day*) on which the renewal takes effect, in relation to conduct that occurs on or after the renewal day.
- (4) If an existing contract is varied at or after the relevant commencement by varying or adding a term and subsection (3) has not already applied in relation to the contract:

- (a) the amendments apply to the term as varied or added, and so apply:
    - (i) on and from the day (the *variation day*) on which the variation of the contract takes effect; and
    - (ii) as if the contract as varied had been made on the variation day; and
    - (iii) in relation to conduct that occurs on and after the variation day; and
  - (b) paragraph 12BF(2A)(f) applies in relation to a person proposing the varied or added term, whether before, at or after the relevant commencement; and
  - (c) subsection 12BF(2), and section 12BK, as in force at and after the relevant commencement, apply to the contract.
- (5) If a contract is made or renewed at or after the relevant commencement, paragraph 12BF(2A)(f) applies in relation to a person proposing a term of the contract, whether before, at or after the relevant commencement.
- (6) Despite subsections (3) to (5) of this section, the amendments do not apply to a contract, or a term of a contract, to the extent that the operation of the amendments would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph of the Constitution).

### **343 Application of sections 12BLA and 12BLB**

- (1) Sections 12BLA and 12BLB have effect despite section 325 as inserted by Schedule 1 to the *Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2019 Measures)) Act 2020*.
- (2) However, neither of sections 12BLA and 12BLB applies to the extent that its operation would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph of the Constitution).

## Part 8—Review of operation of provisions amended by this Schedule

### 80 Review of operation of amended provisions

- (1) The Commonwealth Minister must cause a review to be undertaken, in accordance with this section, of the operation of:
  - (a) the provisions of Schedule 2 to the *Competition and Consumer Act 2010* that are amended by this Schedule, as those provisions are applied under Subdivision A of Division 2 of Part IX of that Act; and
  - (b) the provisions of the *Competition and Consumer Act 2010* (other than Schedule 2) that are amended by this Schedule; and
  - (c) the provisions of the *Australian Securities and Investments Commission Act 2001* that are amended by this Schedule.
- (2) The review must relate to the operation of those provisions, as so amended, during the 2 years from the commencement of this Schedule.
- (3) The review must be completed, and a report on the review must be given to the Minister, within 6 months after the end of those 2 years.
- (4) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

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[Minister's second reading speech made in—  
House of Representatives on 28 September 2022  
Senate on 26 October 2022]

(101/22)

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