
COMPETITION AND CONSUMER AMENDMENT (NATIONAL ACCESS
REGIME) BILL 2021

EXPOSURE DRAFT EXPLANATORY MATERIALS

Table of contents

Glossary..... 1

Chapter 1 Improving timeliness of processes..... 3

Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
ACCC	Australian Competition and Consumer Commission
Bill	Competition and Consumer Amendment (National Access Regime) Bill 2021
Council	National Competition Council
Competition and Consumer Act	<i>Competition and Consumer Act 2010</i>
Tribunal	Australian Competition Tribunal

Chapter 1

Improving timeliness of processes

Outline of chapter

1.1 This Bill will amend the Competition and Consumer Act to improve the timeliness of processes under the National Access Regime by:

- removing the Tribunal’s ability to review the merits of declaration and revocation decisions;
- limiting repeat declaration and revocation processes, and
- terminating arbitration proceedings and determinations where the underlying declaration is revoked or expires.

1.2 All legislative references in this chapter are to the Competition and Consumer Act unless otherwise stated.

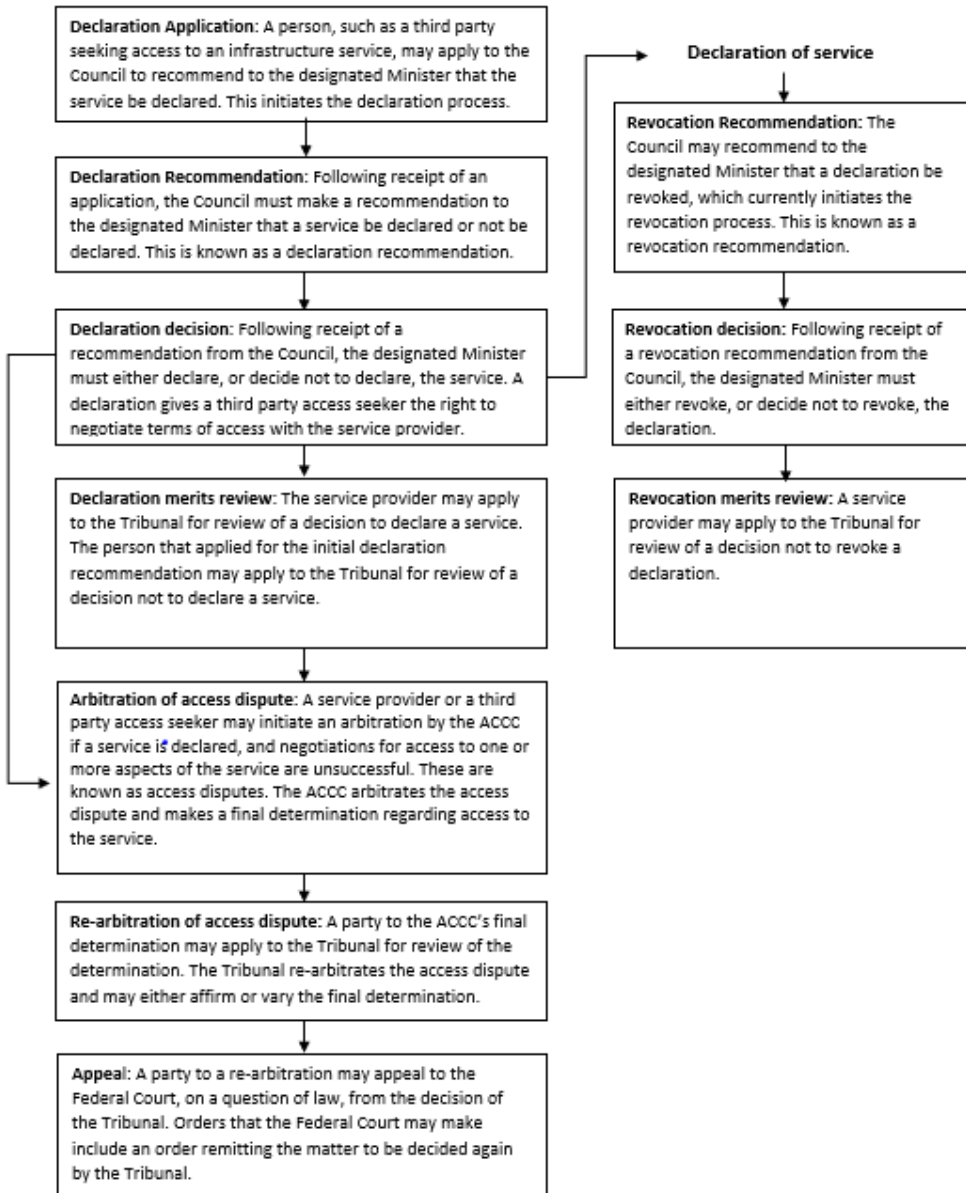
Context of amendments

1.3 Part IIIA of the Competition and Consumer Act establishes the National Access Regime to facilitate third party access to services provided by means of nationally significant infrastructure facilities. The National Access Regime is designed to promote the economically efficient operation of, use of and investment in, infrastructure, thereby promoting effective competition in upstream and downstream markets.

1.4 Under the National Access Regime, a person, such as a third party seeking access to an infrastructure service, may apply to the Council asking it to recommend that an infrastructure service be declared. That is, made subject to the National Access Regime. The designated Minister then decides whether or not to declare the service. Once the declaration process is initiated, the current design of the National Access Regime involves multiple steps and avenues of review.

1.5 A broad summary of the declaration and revocation processes under the National Access Regime is set out in diagram 1.1 below.

Diagram 1.1 Summary of current processes under the National Access Regime



1.6 Due to the number and complexity of steps involved, matters can take several years to reach an outcome, during which time the parties have limited certainty regarding term of access to services. In particular, the regulatory process can be prolonged by parties seeking both merits and judicial review of decisions made under the National Access Regime.

1.7 A lack of timeliness in regulatory processes can increase uncertainty and diminish or delay business investment. It may also deter others from utilising or engaging with National Access Regime processes. This has the potential to frustrate the purpose of the National Access Regime to promote economically efficient operation of, use of and investment in, the infrastructure by which services are provided, thereby promoting competition in markets.

1.8 On 16 February 2021, the Government announced that the timeliness of processes under the National Access Regime would be examined. A consultation paper setting out potential options to streamline and add greater certainty to decisions under the National Access Regime was released on 19 March 2021, with submissions due by 19 April 2021. The consultation process received 13 submissions which highlighted that:

- prolonged National Access Regime processes could impose unnecessary costs;
- repeat applications initiated relatively shortly after a previous declaration or revocation decision can extend processes, increase costs, and reduce certainty for parties;
- parties to National Access Regime matters can have a tendency to go to court to test whether decisions are legally sound, meaning that Tribunal review does not finally resolve matters, and
- arbitration determinations can, because of the design of the National Access Regime, extend beyond when an infrastructure service is declared.

1.9 Following the results of consultation, the Government announced reforms to improve the timeliness of National Access Regime processes as part of 2021-22 Commonwealth Budget. The proposed amendments in this Bill will implement those reforms.

Summary of new law

1.10 The Bill will amend the Competition and Consumer Act to improve the timeliness of processes under the National Access Regime in three key areas.

1.11 First, the proposed amendments will remove the Tribunal's ability to review a decision of the designated Minister to declare a service, not declare a service or not revoke a declaration.

1.12 Second, the proposed amendments will limit repeat declaration and revocation processes.

1.13 If, in the previous 10 years, the designated Minister has decided a service is not appropriate to be declared or remain declared, persons will be

limited from making repeat applications to the Council to initiate the declaration process.

1.14 If, in the previous 10 years, the designated Minister received a recommendation from the Council and decided a service is appropriate to be declared or remain declared; or the Council (when considering recommending revocation) decided a service is appropriate to remain declared, the Council will be limited from making a repeat revocation recommendation to the Minister.

1.15 These limitations will not apply if there has been a material change of circumstances or the designated Minister initiates the new declaration or revocation process.

1.16 Third, the proposed amendments will terminate arbitration proceedings and determinations if the underlying declaration is revoked or expires.

1.17 Arbitration of an access dispute by the ACCC and re-arbitration of the access dispute by the Tribunal will terminate when the underlying declaration is revoked or expires.

1.18 The ACCC and Tribunal will be required to include an expiry date that is no later than the expiry date of the underlying declaration on all final determinations. A final determination will remain in effect until its expiry date unless it is revoked earlier. If the underlying declaration is revoked, a final determination will be taken to be revoked 6 months later, unless the expiry date of the determination is earlier. An interim determination will expire if the underlying declaration expires, and be taken to be revoked if the declaration is revoked.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
The Tribunal cannot review a decision by the Minister to declare a service, not declare a service or not revoke the declaration of a service. Judicial review of these decisions remains available.	The Tribunal may review a decision by the Minister to declare a service, not declare a service or not revoke the declaration of a service. Judicial review of these decisions is available.

<p>A person cannot apply to the Council to recommend that the Minister declare a service if the Minister has refused to declare the service or revoked a declaration in relation to that service in the past 10 years. This rule does not apply if the applicant is the Minister or if there has been a material change of circumstances between repeat applications.</p>	<p>A person may apply to the Council to recommend that the Minister declare a service, whether or not the Minister has made a recent decision not to declare the service or has recently revoked a declaration in relation to the service. There is no requirement for a period of time to have passed between repeat applications.</p>
<p>The Council cannot recommend revocation of a declaration if the declaration is subject to the revocation exclusion period (this period is engaged if in the past 10 years, the designated Minister received a recommendation from the Council and decided a service is appropriate to be declared or remain declared; or the Council (when considering recommending revocation) decided a service is appropriate to remain declared). This rule does not apply if there has been a material change of circumstances or the Minister requests the Council consider recommending revocation.</p>	<p>The Council may recommend revocation of a declaration whether or not a decision maker has recently considered whether the service is appropriate to be declared. There is no requirement for a period of time to have passed between repeat revocation recommendations.</p>
<p>If the ACCC is arbitrating an access dispute and the underlying declaration expires or is revoked, the ACCC must terminate the arbitration, and must not make a determination. If the Tribunal is re-arbitrating an access dispute and the underlying declaration expires or is revoked, the Tribunal must also terminate the review.</p>	<p>The revocation or expiration of a declaration does not affect the arbitration of an access dispute, or re-arbitration of an access dispute that is ongoing when the declaration is revoked or expires.</p>
<p>The ACCC and Tribunal must include an expiry date on a final determination that is no later than the expiry date of the underlying declaration. A final determination remains in effect until its expiry date unless revoked earlier. A final determination is revoked 6 months after the revocation of the underlying declaration, unless the expiry date of</p>	<p>A final determination of an access dispute is not required to include an expiry date. A final determination and interim determination may remain in force after the expiry or revocation of the underlying declaration.</p>

the determination is earlier, in which case the determination is revoked on that date. An interim determination is taken to be revoked on the day the underlying declaration is revoked and expires if the declaration expires.	
---	--

Detailed explanation of new law

Removal of merits review

1.19 The proposed amendments will remove the Tribunal's ability to review the merits of the following decisions under the National Access Regime:

- a decision by the designated Minister, including a deemed decision, to declare a service under subsections 44H(1) and (9);
- a decision by the designated Minister, including a deemed decision, not to declare a service under subsections 44H(1) and (9), and
- a decision by the designated Minister, including a deemed decision, not to revoke the declaration of a service under subsections 44J(3) and 44J(7). [*Schedule 1, item , sections 44K and 44L of the Competition and Consumer Act*]

1.20 Removing merits review will ensure that final decisions on declarations and revocations are made by the Minister. This is consistent with the principle expressed by the 1993 Hilmer National Competition Policy Review that, as the decision to provide a right of access rests on an evaluation of important public interest considerations, it should be one for Government.

1.21 Merits review of these decisions can also be ineffective in finally resolving matters due to the tendency of parties to seek judicial review of Tribunal decisions, to test whether they are affected by an error of law. Merits review therefore adds unnecessary time and complexity to the declaration and revocation processes under the National Access Regime. Removing the Tribunal's ability to review these decisions is intended to ensure that the declaration and revocation process is resolved more quickly. This will expedite the resolution of disputes and improve business certainty and confidence in the National Access Regime decision-making processes.

1.22 The Tribunal will retain its ability to review the merits of other decisions made under Part IIIA, as the review of such decisions is unlikely to impact the effectiveness of the National Access Regime.

1.23 In relation to due process, recommendations from the Council and decisions by the designated Minister regarding declarations and revocations involve a thorough examination of the issues. Submissions are typically lodged by large businesses that are experienced and well-resourced participants in the process, capable of pursuing their own interests in relation to the National Access Regime. It is unlikely that the parties in these processes would not be capable of upholding their rights and ensuring that all relevant information is provided to the decision maker.

1.24 Removing the Tribunal's ability to review these decisions would also mean that, where judicial review of the designated Minister's decision was successful and the matter returned to the original decision maker by the court, the matter would be returned to the Minister, rather than the Tribunal. This is consistent with the 1993 Hilmer National Competition Policy Review, which states that as the decision to provide a right of access rests on an evaluation of important public interest considerations, the ultimate decision on this issue should be one for Government, rather than a court, tribunal, or other unelected body.

1.25 The proposed amendments are also consistent with the principles developed by the Administrative Review Council in its publication *What decisions should be subject to merits review?* In particular, the designated Minister's decisions are informed by the recommendation of the Council, which involves extensive public inquiry processes and consultations. This cannot be adequately replicated in the Tribunal.

1.26 If a party's view is that the designated Minister's decision is affected by an error of law, the party retains the capacity to seek review by the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977*, as well as through other appeal mechanisms in the Federal and High Courts provided for under the *Judiciary Act 1903*.

Limiting repeat declaration and revocation processes

Limiting repeat declaration processes

1.27 Under subsection 44F, a person can apply to the Council to recommend to the designated Minister that a service be declared, regardless of whether:

- the Minister has recently decided not to declare the service under subsection 44H(1), including a deemed decision under subsection 44H(9), or
- the Minister has recently decided to revoke an earlier declaration in relation to the service under subsection 44J(3), including a deemed revocation decision under subsection 44J(7).

1.28 This can result in repeat applications being made to the Council to recommend that the same service at the same facility be declared, relatively shortly after the Minister has decided it is not appropriate to be declared or remain declared. This includes where there has been no material change in the circumstances. For each application, the Council must make a recommendation to the Minister, and the Minister must decide whether to declare the service. This contributes to lengthy processes requiring the participation of infrastructure users and owners, reduces certainty, and compromises the effectiveness of the National Access Regime.

1.29 The proposed amendments address this by limiting persons from making repeat applications to the Council to recommend a service be declared, where the Minister has relatively recently decided that the service is not appropriate to be declared or remain declared.

1.30 Specifically, a person will not be able to apply to the Council to recommend to the designated Minister that a service provided by a facility is declared if:

- the Minister has previously decided not to declare the service, or a substantially similar service, at that facility, and it has been less than 10 years since the Minister received the relevant declaration recommendation from the Council, or
- the Minister has previously decided to revoke a declaration in relation to the service, or a substantially similar service, at that facility, and it has been less than 10 years since the Minister received the relevant revocation recommendation from the Council. *[Schedule 1, items 23 and 25, paragraph 44F(1)(e) and subsection 44F(1) of the Competition and Consumer Act]*

1.31 A substantially similar service is not defined. However, it is intended to be engaged where one service is, in substance, the same as another service provided by the same facility. This is intended to ensure a person cannot make minor changes to the description of a service provided by a facility in an application to the Council, to avoid the limitations on repeat applications.

1.32 The limitation on repeat applications is subject to two exceptions. A person may make a repeat application if:

- there has been a material change of circumstances since the Minister received the Council's recommendation in the earlier process, or
- the person applying to the Council is the designated Minister. *[Schedule 1, items 23 and 25, paragraph 44F(1)(e) and subsection 44F(1) of the Competition and Consumer Act]*

1.33 These exceptions are intended to strike a balance between streamlining the declaration process and reducing administrative burden, while recognising that material changes in circumstances can occur over time.

1.34 The meaning of a material change of circumstances is not defined. This is consistent with the usage of this term in other sections of the Competition and Consumer Act. A material change of circumstances is intended to capture a change in facts or law that is significant enough that a different decision may be made. Changes which are inconsequential to the decision, such as minor or procedural changes to the law, would not meet this test, while significant changes, including in a relevant market or the infrastructure facility, could do so.

1.35 The exception allowing the designated Minister to apply to the Council to recommend a service be declared, regardless of whether the 10 year period has elapsed, maintains the position under the current law, which enables the Minister to initiate the declaration process.

Limiting repeat revocation processes

1.36 Under section 44J, the Council may recommend to the designated Minister that a declaration be revoked. Following receipt of a revocation recommendation, the designated Minister must decide to either revoke or not revoke the declaration.

1.37 There is no formal trigger for the Council to begin consideration of whether to recommend revocation; it commences consideration on its own initiative. However, in practice, the Council may choose to commence consideration following informal requests from infrastructure service providers. Informal requests could be made by a provider several times in a short period in relation to the same service at the same facility.

1.38 In effect, this allows service providers to initiate repeat revocation processes for infrastructure shortly after a previous decision, where there has been no material change in circumstances. For each revocation recommendation made by the Council, the Minister must decide whether to revoke the declaration. This contributes to lengthy processes requiring the participation of infrastructure users and owners, reduces certainty, and compromises the effectiveness of the National Access Regime.

1.39 The proposed amendments will formalise the ability of the designated Minister or any other person to write to the Council to request the Council consider recommending revocation, in addition to the Council's existing ability to consider recommending revocation of a declaration on its own initiative. *[Schedule 1, item 30, subsection 44J(1) of the Competition and Consumer Act]*

1.40 The proposed amendments will also limit the Council from making repeat revocation recommendations.

1.41 Specifically, the Council will be not be able to recommend to the designated Minister that a declaration be revoked if the declaration is subject to a ***revocation exclusion period***. This is in addition to restrictions on revocation recommendations under the current law, which will continue. *[Schedule 1, item 31, subsection 44J(2) of the Competition and Consumer Act]*

1.42 The **revocation exclusion period** will be engaged if less than 10 years has elapsed since any one of the following three events:

- the designated Minister received the initial declaration recommendation from the Council;
- the designated Minister received a revocation recommendation from the Council (in circumstances where the Minister did not revoke the declaration), or
- the Council published a notice of a decision not to recommend revocation of the declaration. This represents the point in time that the Council concludes its consideration of whether to recommend revocation of a declaration. *[Schedule 1, items 21 and 31, section 44B and subsection 44J(2) of the Competition and Consumer Act]*

1.43 These events are significant, as they represent the point that the designated Minister received a recommendation and decided a service is appropriate to be declared or remain declared, or the Council (when considering recommending revocation) decided a service is appropriate to remain declared. It is suitable that 10 years elapses before the declaration is reconsidered to increase certainty and ensure the effectiveness of the National Access Regime is not compromised.

1.44 The limitation on recommending revocation is subject to two exceptions. The Council may make a recommendation to revoke a declaration if:

- the Council is satisfied that there has been a material change in the circumstances since the start of the **revocation exclusion period**, or
- the designated Minister requests the Council consider whether to recommend revocation of the declaration. *[Schedule 1, item 31, subsection 44J(2) of the Competition and Consumer Act]*

1.45 These exceptions are intended to strike a balance between streamlining the revocation process and reducing administrative burden, while recognising that material changes in circumstances can occur over time.

1.46 The proposed amendments will require the Council to publish notice of its decision not to recommend revocation. The publication of this notice formalises the Council's decision not to recommend revocation, for the purposes of triggering the **revocation exclusion period**. The Council will also be required to provide a copy of the notice to the service provider and the designated Minister. This requirement does not apply if the Council decides not to make a revocation recommendation because the declaration is subject to the **revocation exclusion period** and the Council is not satisfied there has been a material change of circumstances since the start of that period. The Council

will not be required to publish the reasons it does not make a revocation recommendation. [*Schedule 1, item 31, subsection 44J(2) of the Competition and Consumer Act*]

1.47 The meaning of a material change of circumstances is not defined. This is consistent with the usage of this term in other sections of the Competition and Consumer Act. A material change of circumstances is intended to capture a change in facts or law that is significant enough that a different decision may be made. Changes which are inconsequential to the decision, such as minor or procedural changes to the law, would not meet this test, while significant changes, including in a relevant market or the infrastructure facility, could do so.

1.48 The exception allowing the designated Minister to request the Council recommend revocation, regardless of whether the declaration is subject to the *revocation exclusion period*, will enable the Minister to initiate the revocation process, consistent with the approach for declaration processes.

Reforms to arbitration proceedings and determinations

Termination of arbitration and re-arbitration

1.49 Under the existing law, the revocation or expiry of a declaration does not affect arbitration of an access dispute before the ACCC or re-arbitration of an access dispute in the Tribunal related to that declaration. Such proceedings can continue even where the underlying declaration is no longer in force.

1.50 In addition, the expiry or revocation of a declaration does not prevent the ACCC or Tribunal from making a determination in these proceedings. As a result, determinations can be made after revocation or expiration of a declaration and can remain in operation, and be enforceable, even if the service is no longer declared.

1.51 The proposed amendments address this by:

- repealing subsection 44I(4), which currently prevents the expiry or revocation of a declaration from affecting the arbitration of an access dispute that commenced before the expiry or revocation, or the operation or enforcement of a determination made in the arbitration; [*Schedule 1, item 3, subsection 44I(4) of the Competition and Consumer Act*]
- requiring the ACCC to terminate arbitration of an access dispute in relation to a declared service if the underlying declaration expires or is revoked, and [*Schedule 1, item 40, section 44YAA of the Competition and Consumer Act*]
- requiring the Tribunal to terminate the re-arbitration of an access dispute (that is, the review of the ACCC's final determination), if the underlying declaration expires or is

revoked. *[Schedule 1, item 45, section 44ZPA of the Competition and Consumer Act]*

1.52 The proposed amendments also prohibit the ACCC from making a determination in relation to a service in an arbitration that is ongoing when the underlying declaration is revoked or expires. This is intended to make it clear that, in addition to terminating arbitration proceedings, the ACCC must not make a determination. *[Schedule 1, item 39, subsection 44W(2) of the Competition and Consumer Act]*

Federal Court appeals

1.53 Under section 44ZR, a party to re-arbitration may appeal to the Federal Court, on a question of law, from the decision of the Tribunal in relation to a final determination. The proposed amendments require the Federal Court to take into account whether a declaration has expired or been revoked when determining such an appeal. This is relevant, as the Tribunal will be required to terminate the re-arbitration of an access dispute if the underlying declaration is revoked or expires. This requirement will not limit the matters the Federal Court may take into account. *[Schedule 1, item 46, section 44ZR of the Competition and Consumer Act]*

Expiry of determinations

1.54 Under the existing law, there is no express requirement for final determinations to contain an expiry date. This leaves open the possibility for parties to be bound by the terms of access under a final determination despite the relevant service no longer being declared, and therefore no longer being regulated under the National Access Regime.

1.55 The proposed amendments will address this by requiring all final determinations made or varied by the ACCC, or affirmed or varied by the Tribunal, to specify an expiry date. The expiry date must be no later than the expiry date for the underlying declaration. This will ensure that obligations do not continue under a determination for which there is no underlying declaration. *[Schedule 1, items 38, 44 and 47, subsections 44V(1), 44ZP(6) and section 44ZU of the Competition and Consumer Act]*

1.56 When the expiry date is reached, the final determination will expire with immediate effect and will no longer be enforceable. The introduction of an expiry date is not intended to affect the enforcement of a final determination in relation to the period it was in force. Rather, it is intended to ensure that a final determination does not bind the parties when the underlying declaration is no longer in force, and the relevant infrastructure service is no longer subject to the National Access Regime.

1.57 The ACCC will be required to include the expiry date of each determination in its public register for transparency. *[Schedule 1, item 50, subsection 44ZZL of the Competition and Consumer Act]*

Duration of determinations

1.58 Under the proposed amendments, a final determination will remain in force until its expiry date, unless it is revoked earlier due to the revocation of the underlying declaration. *[Schedule 1, items 42 and 48, subsection 44ZO(2) and section 44ZUAA of the Competition and Consumer Act]*

1.59 Should an underlying declaration be revoked, a final determination will be taken to be revoked 6 months after the declaration is revoked. This creates a transitional period for the relevant parties to organise their affairs and agree alternative arrangements. If the expiry date of the final determination is within the 6 month transitional period, the determination is taken to be revoked on the expiry date. This reflects the fact that parties will be aware of the expiry of the final determination and will have sufficient time to organise their affairs. *[Schedule 1, item 48, section 44ZU of the Competition and Consumer Act]*

1.60 In addition to final determinations, the existing law allows an interim determination to be made during arbitration proceedings to ensure that a third party access seeker can obtain access to the service whilst the arbitration process is conducted. The proposed amendments will ensure that an interim determination expires if the underlying declaration expires, and is revoked on the day the underlying declaration is revoked. *[Schedule 1, items 43 and 49, subsection 44ZOA(2) and section 44ZUA of the Competition and Consumer Act]*

Consequential amendments

1.61 The Bill will make consequential amendments to the Competition and Consumer Act necessary to:

- remove merits review for declaration decisions, including by repealing redundant provisions and removing references to provisions that will be repealed; *[Schedule 1, items 1 to 19, heading of Division 6B of Part IIIA, sections 44KA, 44KB, 44YA and 44ZCBA, subsections 44I(1), 44I(2), 44V(1), 44W(4A), 44ZZOAAA(2), table item 4 of subsection 44XA(2), column 1 of table item 3 of subsection 44ZZOA(3), paragraphs 44ZZOAAA(3)(a), 44ZZOA(5)(c), 44ZZOA(9)(b) and paragraph (a) of the definition of decision maker in subsection 44ZZOAA(9), subparagraphs 44ZZOAAA(6)(a)(ii), 44ZZOAA(a)(iii), 44ZZOAA(a)(iv), and 44ZZOAA(b)(ii) of the Competition and Consumer Act]*
- limit repeat declaration and revocation processes, including by updating provision references, notes, and headings, and *[Schedule 1, items 22, 24, 26 -29 and 32-33, note to subsection 44F(1), subsections 44F(1), 44F(1A), 44F(2), 44F(5), 44J(1), 44J(6) and 44J(7) of the Competition and Consumer Act]*
- implement reforms to arbitration proceedings and determinations, including by updating notes and headings. *[Schedule 1, items 35, 37 and 41, subsections 44I(3), 44V(1) and heading*

Application and transitional provisions

1.62 The Bill will commence on the day after Royal Assent. *[Section 2]*

Removal of merits review

1.63 The proposed amendments to remove merits review for decisions made by the designated Minister to declare, or not declare a service will apply if:

- a person applies to the Council to recommend the service be declared under section 44F, thereby initiating the declaration process, on or after the commencement of Part 1 of Schedule 1 to the Bill, and
- the designated Minister makes the decision to declare, or not declare the service in relation to that recommendation under section 44H on or after commencement of Part 1 of Schedule 1 to the Bill. *[Schedule 1, item 20]*

1.64 In effect, the Tribunal will not be able to review the merits of a decision to declare or not to declare a service made on or after the commencement of Part 1 of Schedule 1 to the Bill, unless the declaration process was initiated prior to commencement.

1.65 The proposed amendments to remove merits review for decisions made by the designated Minister not to revoke a declaration will apply if:

- the Council recommends that the Minister revoke the declaration under section 44J, thereby initiating the revocation process, on or after the commencement of Part 1 of Schedule 1 to the Bill, and
- the Minister revokes the declaration under section 44J on or after the commencement of Part 1 of Schedule 1 to the Bill. *[Schedule 1, item 20]*

1.66 In effect, the Tribunal will not be able to review the merits of a decision not to revoke a declaration made on or after the commencement of Part 1 of Schedule 1 to the Bill unless the revocation process was initiated prior to commencement.

Limiting repeat declaration and revocation processes

1.67 Proposed amendments to section 44F limiting persons from making repeat applications to the Council to recommend that a service be declared, will apply to applications made on or after the commencement of Part 2 of Schedule 1 to the Bill. However, for the purpose of determining

whether an application made after commencement is subject to the limitations on repeat applications, decisions made by the designated Minister before, on or after commencement of Part 2 of Schedule 1 will be relevant. *[Schedule 1, item 34]*

1.68 Proposed amendments to section 44J restricting the Council from making repeat recommendations to the designated Minister to revoke a declaration will apply in relation to all declarations, regardless of whether the declaration was made before, on or after commencement of Part 2 of Schedule 1. This means that the new limitations will apply to all new revocation recommendations made by the Council after commencement. *[Schedule 1, item 34]*

1.69 The Council will only be required to publish a notice of a decision not to recommend revocation of a declaration and give a copy of the notice to the service provider and the designated Minister if the decision occurs on or after the commencement of Part 2 of Schedule 1. *[Schedule 1, item 34]*

Reforms to arbitration proceedings and determinations

1.70 The proposed amendments to arbitration proceedings and determinations in Part 3 of Schedule 1 to the Bill will apply to:

- any arbitration of an access dispute that is notified on or after the commencement of Part 3 of Schedule 1 to the Bill, and
- any determination that is made in an arbitration that is notified on or after commencement of Part 3 of Schedule 1 to the Bill. *[Schedule 1, item 51]*

1.71 The reforms apply to access disputes that are notified on or after commencement, and determinations made on or after commencement in relation to such disputes, regardless of whether the underlying declaration was made before, on or after commencement of Part 3 of Schedule 1. *[Schedule 1, item 51]*

1.72 The expiry or revocation of a declaration will only terminate the arbitration of an access dispute that is notified on or after commencement and result in the revocation of determinations made in disputes that are notified on or after commencement.

1.73 The reforms will not affect access disputes notified prior to commencement, or determinations made in such disputes. This means that where arbitration proceedings are under way, or a determination is in force when the reforms commence, they will be permitted to run their course.