

# EXPOSURE DRAFT

2019-2020-2021

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT
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## **Competition and Consumer Amendment (National Access Regime) Bill 2021**

**No.     , 2021**

*(Treasury)*

**A Bill for an Act to amend the *Competition and  
Consumer Act 2010*, and for related purposes**

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1     **A Bill for an Act to amend the *Competition and***  
2     ***Consumer Act 2010*, and for related purposes**

3     The Parliament of Australia enacts:

4     **1 Short title**

5                     This Act is the *Competition and Consumer Amendment (National*  
6                     *Access Regime) Act 2021*.

7     **2 Commencement**

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

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1

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**Commencement information**

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**Column 1**

**Column 2**

**Column 3**

**Provisions**

**Commencement**

**Date/Details**

1. The whole of  
this Act

The day after this Act receives the Royal  
Assent.

2

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This table relates only to the provisions of this Act as originally  
enacted.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.

3

4

5

(2) Any information in column 3 of the table is not part of this Act.

6

Information may be inserted in this column, or information in it

7

may be edited, in any published version of this Act.

8

### 3 Schedules

9

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repealed as set out in the applicable items in the Schedule  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.

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12

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2

*Competition and Consumer Amendment (National Access Regime) Bill* No. , 2021  
2021

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National access regime reforms **Schedule 1**  
Removing merits review of declaration decisions **Part 1**

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1 **Schedule 1—National access regime reforms**

2 **Part 1—Removing merits review of declaration**  
3 **decisions**

4 *Competition and Consumer Act 2010*

5 **1 Subsection 44I(1)**

6 Omit “Subject to this section, a”, substitute “A”.

7 **2 Subsection 44I(2)**

8 Repeal the subsection.

9 **3 Sections 44K, 44KA, 44KB and 44L**

10 Repeal the sections.

11 **4 Subsection 44V(1)**

12 Omit “section 44Y, 44YA, 44ZZCB or 44ZZCBA”, substitute  
13 “section 44Y or 44ZZCB”.

14 **5 Subsection 44W(4A)**

15 Repeal the subsection.

16 **6 Subsection 44XA(2) (table item 4)**

17 Repeal the item.

18 **7 Section 44YA**

19 Repeal the section.

20 **8 Division 6B of Part IIIA (heading)**

21 Omit “**registered contracts, access undertakings and Tribunal**  
22 **review**”, substitute “**registered contracts and access undertakings**”.

23 **9 Section 44ZZCBA**

24 Repeal the section.

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## Schedule 1 National access regime reforms

### Part 1 Removing merits review of declaration decisions

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1 **10 Subsection 44ZZOAAA(2)**

2 Omit “44K, 44L,”.

3 **11 Paragraph 44ZZOAAA(3)(a)**

4 Omit “44H(9), 44J(7),”.

5 **12 Subparagraph 44ZZOAAA(6)(a)(ii)**

6 Omit “44K, 44L,”.

7 **13 Subsection 44ZZOAAA(9) (paragraph (a) of the definition**  
8 **of *decision maker*)**

9 Omit “44K, 44L,”.

10 **14 Subparagraph 44ZZOAA(a)(iii)**

11 Omit “44K(6), 44L(5),”.

12 **15 Subparagraph 44ZZOAA(a)(iv)**

13 Omit “44K(6A), 44L(5A),”.

14 **16 Subparagraph 44ZZOAA(b)(ii)**

15 Omit “44K(6A), 44L(5A),”.

16 **17 Subsection 44ZZOA(3) (table item 3, column 1)**

17 Omit “44K(6A), 44L(5A),”.

18 **18 Paragraph 44ZZOA(5)(c)**

19 Omit “44K, 44L,”.

20 **19 Paragraph 44ZZOA(9)(b)**

21 Omit “44K, 44L,”.

22 **20 Application of amendments**

23 The amendments of the *Competition and Consumer Act 2010* made by  
24 this Part apply in relation to the following:

25 (a) a decision by the designated Minister:



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National access regime reforms **Schedule 1**  
Removing merits review of declaration decisions **Part 1**

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- 1 (i) made on or after the commencement of this Part under  
2 section 44H of that Act (including a decision that is  
3 taken to be made under subsection 44H(9) of that Act);  
4 and  
5 (ii) that relates to a declaration recommendation applied for  
6 under section 44F of that Act on or after the  
7 commencement of this Part;  
8 (b) a decision by the designated Minister:  
9 (i) made on or after the commencement of this Part under  
10 section 44J of that Act (including a decision that is  
11 taken to be made under subsection 44J(7) of that Act);  
12 and  
13 (ii) that relates to a revocation recommendation given by  
14 the Council on or after the commencement of this Part.

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Schedule 1 National access regime reforms

Part 2 Limiting repeat declaration and revocation processes

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1 **Part 2—Limiting repeat declaration and revocation**  
2 **processes**

3 *Competition and Consumer Act 2010*

4 **21 Section 44B**

5 Insert:

6 *revocation exclusion period* has the meaning given by  
7 subsection 44J(2A).

8 **22 Before subsection 44F(1)**

9 Insert:

10 *Applying to Council to request recommendation*

11 **23 After paragraph 44F(1)(e)**

12 Insert:

13 ; or (f) in the case of a person other than the designated Minister—  
14 subsection (1AA) or (1AB) applies in relation to the service.

15 **24 Subsection 44F(1) (note)**

16 Omit “(e)”, substitute “(f)”.

17 **25 After subsection 44F(1)**

18 Insert:

19 *Exception in paragraph (1)(f)—services the subject of previous*  
20 *decisions*

21 (1AA) This subsection applies in relation to a service if:

22 (a) the designated Minister has previously made a decision under  
23 section 44H not to declare the service, or not to declare a  
24 substantially similar service that is provided by means of the  
25 same facility as the first-mentioned service, having received a

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National access regime reforms **Schedule 1**  
Limiting repeat declaration and revocation processes **Part 2**

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1 declaration recommendation as referred to in  
2 subsection 44H(1); and  
3 (b) a period of less than 10 years has elapsed since receipt of that  
4 declaration recommendation.

5 (1AB) This subsection applies in relation to a service if:  
6 (a) a declaration has previously been in operation for the service,  
7 or for a substantially similar service that is provided by  
8 means of the same facility as the first-mentioned service; and  
9 (b) the designated Minister made a decision under section 44J to  
10 revoke the declaration, having received a revocation  
11 recommendation as referred to in subsection 44J(3); and  
12 (c) a period of less than 10 years has elapsed since receipt of that  
13 revocation recommendation.

14 (1AC) However, subsection (1AA) or (1AB) does not apply if the Council  
15 is satisfied that there has been a material change of circumstances  
16 since the receipt of the relevant recommendation.

17 *Notice for applications that cannot be made*

## 18 **26 Subsection 44F(1A)**

19 Omit “(e)”, substitute “(f)”.

## 20 **27 Before subsection 44F(2)**

21 Insert:

22 *Dealing with applications*

## 23 **28 Before subsection 44F(5)**

24 Insert:

25 *Withdrawal and variation of applications*

## 26 **29 Before subsection 44J(1)**

27 Insert:

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Schedule 1 National access regime reforms

Part 2 Limiting repeat declaration and revocation processes

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1 *Council may recommend revocation*

2 **30 After subsection 44J(1)**

3 Insert:

4 (1A) The Council may consider whether to recommend revocation of a  
5 declaration:

- 6 (a) on its own initiative; or  
7 (b) if requested in writing to do so by the designated Minister or  
8 any other person.

9 **31 Subsection 44J(2)**

10 Repeal the subsection, substitute:

11 (2) The Council cannot recommend revocation of a declaration unless:

- 12 (a) the Council is satisfied that, at the time of the  
13 recommendation:  
14 (i) one or more of paragraphs 44F(1)(a) to (e) would  
15 prevent the making of an application for a  
16 recommendation that the service concerned be declared;  
17 or  
18 (ii) subsection 44H(4) would prevent the service concerned  
19 from being declared; and  
20 (b) one of the following applies:  
21 (i) the declaration is not subject to a revocation exclusion  
22 period;  
23 (ii) the declaration is subject to a revocation exclusion  
24 period, but the Council is satisfied that there has been a  
25 material change of circumstances since the start of the  
26 period;  
27 (iii) the designated Minister requested the Council to  
28 consider revocation of the recommendation.

29 *Revocation exclusion period*

30 (2A) A declaration is subject to a *revocation exclusion period* if a  
31 period of less than 10 years has elapsed since whichever is the

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National access regime reforms **Schedule 1**  
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- 1 most recent of the following events to have occurred in relation to  
2 the declaration:
- 3 (a) the designated Minister's receipt of the declaration  
4 recommendation as referred to in subsection 44H(1) that  
5 enabled the declaration to be made;
- 6 (b) if the designated Minister has previously made a decision  
7 under subsection (3) of this section not to revoke the  
8 declaration, having received a revocation recommendation in  
9 relation to the declaration as referred to in that subsection—  
10 the designated Minister's receipt of that revocation  
11 recommendation;
- 12 (c) if the Council has published under subsection (2B) of this  
13 section a notice of a decision not to recommend revocation of  
14 the declaration—the publication of the notice.

15 *Notice if Council considers revocation without making*  
16 *recommendation*

- 17 (2B) If the Council considers whether to recommend revoking a  
18 declaration under subsection (1) but decides not to make such a  
19 recommendation, the Council must as soon as practicable after that  
20 decision:
- 21 (a) publish, by electronic or other means, a notice of the  
22 decision; and
- 23 (b) give a copy of the notice to the provider of the declared  
24 service and the designated Minister.
- 25 (2C) However, if the Council's decision not to make the  
26 recommendation to revoke the declaration is because:
- 27 (a) the declaration is subject to a revocation exclusion period;  
28 and
- 29 (b) the Council is not satisfied that there has been a material  
30 change of circumstances since the start of the period;
- 31 the Council is not required to publish or give notice of the decision  
32 under subsection (2B).

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Schedule 1 National access regime reforms

Part 2 Limiting repeat declaration and revocation processes

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1 *Designated Minister must decide whether to revoke*

2 **32 Before subsection 44J(6)**

3 Insert:

4 *Limits on revocation*

5 **33 Before subsection 44J(7)**

6 Insert:

7 *Deemed decision of designated Minister*

8 **34 Application of amendments**

- 9 (1) Section 44F of the *Competition and Consumer Act 2010*, as amended by  
10 this Part, applies in relation to persons applying to the Council on or  
11 after the commencement of this Part asking the Council to recommend  
12 that a service be declared (regardless of whether the relevant previous  
13 decisions of the designated Minister were made before, on or after that  
14 commencement).
- 15 (2) Section 44J of the *Competition and Consumer Act 2010*, as amended by  
16 this Part, applies in relation to a declaration made before, on or after the  
17 commencement of this Part, regardless of whether the events referred to  
18 in paragraphs 44J(2A)(a) and (b) of that Act (as inserted by this Part)  
19 occurred before, on or after that commencement.
- 20 (3) However subsection 44J(2B) of the *Competition and Consumer Act*  
21 *2010*, as inserted by this Part, applies only in relation to a decision of  
22 the Council not to recommend revocation of a declaration that occurs on  
23 or after the commencement of this Part.

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National access regime reforms **Schedule 1**  
Arbitration and access determination reforms **Part 3**

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1 **Part 3—Arbitration and access determination**  
2 **reforms**

3 *Competition and Consumer Act 2010*

4 **35 At the end of subsection 44I(3)**

5 Add:

6 Note 1: The expiry or revocation of a declaration of a service can have other  
7 consequences as follows:

- 8 (a) it requires a pending arbitration of an access dispute relating to  
9 the service to be terminated (section 44YAA);  
10 (b) in the case of revocation of the declaration, it causes a final or  
11 interim determination in relation to the service to be revoked  
12 (section 44ZUAA and subsection 44ZUA(3));  
13 (c) in the case of expiry of the declaration, it can cause an interim  
14 determination in relation to the service to expire  
15 (paragraph 44ZOA(2)(d));  
16 (d) it requires a review by the Tribunal of a final determination in  
17 relation to the service to be terminated (section 44ZPA).

18 Note 2: The expiry date of a final determination in relation to a declared  
19 service cannot be later than the expiry date specified in the declaration  
20 of the service: see subsection 44V(1A).

21 **36 Subsection 44I(4)**

22 Repeal the subsection.

23 **37 Subsection 44V(1)**

24 After “44Y”, insert “, 44YAA”.

25 **38 After subsection 44V(1)**

26 Insert:

27 (1A) A final determination on access to the service must specify the  
28 expiry date of the determination. The expiry date must not be later  
29 than the expiry date specified in the declaration of the service.

30 Note: A declaration of a service must specify an expiry date: see  
31 subsection 44H(8).

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Schedule 1 National access regime reforms

Part 3 Arbitration and access determination reforms

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1 **39 After subsection 44W(2)**

2 Insert:

3 (2A) If, after the notification under section 44S of an access dispute in  
4 relation to a declared service, the declaration of the service expires  
5 or is revoked, the Commission must not make a determination in  
6 relation to the service.

7 **40 At the end of Subdivision C of Division 3 of Part IIIA**

8 Add:

9 **44YAA Commission must terminate arbitration on expiry or**  
10 **revocation of declaration**

11 If the Commission is arbitrating a dispute in relation to a declared  
12 service and the declaration of the service expires or is revoked, the  
13 Commission must terminate the arbitration.

14 **41 Subdivision E of Division 3 of Part IIIA (heading)**

15 After “Effect”, insert “and duration”.

16 **42 After subsection 44ZO(2)**

17 Insert:

18 *Duration of final determination*

19 (2A) A final determination that takes effect continues in effect until its  
20 expiry date, unless it is revoked earlier.

21 Note: A final determination must specify an expiry date: see  
22 subsection 44V(1A). For revocation of a final determination, see  
23 section 44ZUAA.

24 (2B) To avoid doubt, the expiry or revocation of the final determination  
25 does not affect the availability of remedies under Division 7 in  
26 respect of the period when the determination was in operation.

27 **43 At the end of subsection 44ZOA(2)**

28 Add:

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1 ; (d) the declaration of the service to which the access dispute  
2 relates expires.

3 Note: For revocation of an interim determination, see section 44ZUA.

## 4 **44 After subsection 44ZP(6)**

5 Insert:

6 (6A) The determination, as affirmed or varied by the Tribunal, must  
7 specify the expiry date of the determination. The expiry date must  
8 not be later than the expiry date specified in the declaration of the  
9 service that is the subject of the determination.

## 10 **45 After section 44ZP**

11 Insert:

### 12 **44ZPA Tribunal must terminate review on expiry or revocation of 13 declaration**

14 If the Tribunal is reviewing a final determination of an access  
15 dispute in relation to a declared service under section 44ZP, and  
16 the declaration of the service expires or is revoked, the Tribunal  
17 must terminate the review.

## 18 **46 At the end of section 44ZR**

19 Add:

20 (5) In making any orders on appeal, the Federal Court must take into  
21 account whether, in relation to the declared service that is the  
22 subject of the decision of the Tribunal, the declaration of the  
23 service has expired or been revoked.

24 (6) Subsection (5) does not limit the matters the Federal Court may  
25 take into account.

## 26 **47 At the end of section 44ZU**

27 Add:

28 (3) Despite subsection (1), the Commission cannot vary the expiry  
29 date of a final determination to be later than the expiry date

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Schedule 1 National access regime reforms

Part 3 Arbitration and access determination reforms

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1 specified in the declaration of the service that is the subject of the  
2 determination.

## 3 **48 After section 44ZU**

4 Insert:

### 5 **44ZUAA Revocation of final determinations**

6 (1) If:

7 (a) a final determination is in operation in relation to a declared  
8 service; and

9 (b) the declaration of the service is revoked under section 44J;  
10 the final determination is taken to be revoked on the day after the  
11 end of the period of 6 months beginning on the day the declaration  
12 is revoked.

13 (2) However, if the expiry date specified in the final determination is a  
14 day during the 6-month period referred to in subsection (1), then  
15 the final determination is instead taken to be revoked on the expiry  
16 date.

17 Note: A final determination must specify an expiry date: see  
18 subsection 44V(1A).

## 19 **49 At the end of section 44ZUA**

20 Add:

21 (3) If:

22 (a) an interim determination is in operation in relation to a  
23 declared service; and

24 (b) the declaration of the service is revoked under section 44J;  
25 the interim determination is taken to be revoked on the day the  
26 declaration is revoked.

## 27 **50 At the end of section 44ZZL**

28 Add:

29 ; (d) the expiry date of the determination.

30 Note: A final determination must specify an expiry date: see  
31 subsection 44V(1A).

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National access regime reforms **Schedule 1**  
Arbitration and access determination reforms **Part 3**

---

1 **51 Application of amendments**

- 2 (1) The amendments of the *Competition and Consumer Act 2010* made by  
3 this Part apply in relation to:
- 4 (a) the arbitration of an access dispute that is notified on or after  
5 the commencement of this Part; and
- 6 (b) a determination that is made on or after the commencement  
7 of this Part in relation to such an arbitration.
- 8 (2) For the purposes of subitem (1), it is irrelevant, in relation to the  
9 declared service to which the arbitration or determination relates,  
10 whether the declaration of the service is made before, on or after the  
11 commencement of this Part.