

# EXPOSURE DRAFT

EXPOSURE DRAFT (21/02/2023)

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Inserts for  
**Financial Sector Reform (Competition in  
Clearing and Settlement) Bill 2023:  
Exposure Draft**

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Schedule 1	The day after this Act receives the Royal Assent.	
2. Schedule 2	The day after this Act receives the Royal Assent.	

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## 1 Schedule 1—CS services rules

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

#### 3 **1 After paragraph 127(2A)(d)**

4 Insert:

5 (da) the Australian Competition and Consumer Commission;

### 6 *Corporations Act 2001*

#### 7 **2 Section 9**

8 Insert:

9 *ACCC* means the Australian Competition and Consumer  
10 Commission.

11 *CS service* has the meaning given by section 828.

12 *CS services rules*: see subsection 828A(1).

#### 13 **3 At the end of subsection 822A(1)**

14 Add “, and the matters specified in the CS services rules for the  
15 purposes of this subsection”.

#### 16 **4 After paragraph 822B(2)(c)**

17 Insert:

18 (d) the CS services rules;

#### 19 **5 At the end of subsection 822E(4)**

20 Add “, and the matters specified in the CS services rules for the  
21 purposes of this subsection”.

#### 22 **6 Paragraph 827A(2)(h)**

23 After “ASIC”, insert “, the ACCC”.

#### 24 **7 Subsection 827D(2A)**

25 After “the standards and”, insert “the CS services rules,”.

#### 26 **8 After Part 7.3**

27 Insert:

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## 1 Part 7.3A—CS services

### 2 Division 1—Preliminary

#### 3 828 Meaning of *CS service*

4 A *CS service* is a service that can only be provided if it has access  
5 to a clearing and settlement facility, or to data used in the operation  
6 of a clearing and settlement facility.

### 7 Division 2—Regulation of CS services: CS services rules

#### 8 Subdivision A—Power to make CS services rules

##### 9 828A CS services rules

- 10 (1) ASIC may, by legislative instrument, make rules (the *CS services*  
11 *rules*) that deal with the following:
- 12 (a) the activities, conduct or governance of CS facility licensees,  
13 and associated entities of CS facility licensees, in relation to  
14 CS services;
  - 15 (b) if regulations made for the purposes of this paragraph specify  
16 other persons—the activities, conduct or governance of those  
17 persons in relation to CS services;
  - 18 (c) matters that are incidental to the matters mentioned in  
19 paragraphs (a) and (b).
- 20 (2) Without limiting the scope of subsection (1), the rules may deal  
21 with the following:
- 22 (a) the specification of persons who are required to comply with  
23 requirements imposed by the rules;
  - 24 (b) for the purposes of subsection 822A(1)—matters with which  
25 the operating rules of a licensed CS facility must deal, in  
26 relation to CS services;
  - 27 (c) for the purposes of subsection 822A(2)—matters in respect  
28 of which a licensed CS facility must have written procedures,  
29 in relation to CS services;
  - 30 (d) for the purposes of subsection 822E(4)—matters to which the  
31 Minister must have regard, as mentioned in that subsection,  
32 in relation to CS services.

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1 (3) For the purposes of this section, governance of a person may be in  
2 relation to CS services even if there only an indirect relationship  
3 between the governance and CS services.

4 (4) Despite subsection (1), the rules cannot provide for matters in  
5 relation to a clearing and settlement facility that is exempt from the  
6 operation of Part 7.3 because of an exemption under section 820C.

## 7 **828B CS services in relation to which rules may impose** 8 **requirements**

9 *Requirements can only be imposed in relation to CS services*  
10 *covered by a determination under this section*

11 (1) The CS services rules cannot impose requirements in relation to CS  
12 services unless the CS services are covered by a determination  
13 under this section.

14 *Minister may determine classes of CS services*

15 (2) For the purposes of subsection (1), the Minister may, by legislative  
16 instrument, make a determination specifying one or more classes of  
17 CS services.

18 *Making determinations by reference to matters*

19 (3) A determination under subsection (2) may specify a class of CS  
20 services by reference to any of the following matters:

21 (a) CS facilities to which the CS services have access;

22 (b) CS facilities, where data to which the CS services have  
23 access is used in the operation of the CS facilities;

24 (c) financial products to which the CS services relate.

25 (4) Subsection (3) does not limit:

26 (a) the matters by reference to which a determination under  
27 subsection (2) may specify a class of CS services; and

28 (b) the operation of subsection 13(3) of the *Legislation Act 2003*.

29 *Making determinations: matters to which the Minister has regard*

30 (5) In considering whether to make a determination under  
31 subsection (2), the Minister:

32 (a) must have regard to:

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- 1 (i) the likely effect on the Australian economy, and on the  
2 efficiency, integrity and stability of the Australian  
3 financial system, of making the determination; and  
4 (ii) the likely regulatory impact of making the  
5 determination; and  
6 (iii) the likely effect of making the determination on the  
7 safety, fairness and effectiveness of competition in the  
8 provision of CS services; and  
9 (b) may have regard to any other matters that the Minister  
10 considers relevant.

11 Note: Matters that the Minister may have regard to under paragraph (b) may,  
12 for example, include:

- 13 (a) any relevant international standards and international  
14 commitments; and  
15 (b) matters raised in consultations under subsection (8), or in advice  
16 under subsection (6).

17 *Making determinations: obligation to consult*

- 18 (6) The Minister must not make a determination under subsection (2)  
19 unless the Minister has consulted ASIC, the ACCC and the  
20 Reserve Bank of Australia about the proposed determination.  
21 (7) A failure to consult as required by subsection (5) does not  
22 invalidate a determination.

23 *ASIC, ACCC or Reserve Bank may advise Minister*

- 24 (8) ASIC, the ACCC or the Reserve Bank of Australia may (on its  
25 own initiative or at the request of the Minister):  
26 (a) consider whether a determination should be made under  
27 subsection (2) specifying one or more particular classes of  
28 CS services; and  
29 (b) advise the Minister accordingly.

30 *Amendment and revocation of determinations*

- 31 (9) The Minister may amend or revoke a determination under  
32 subsection (2) in like manner and subject to like conditions (see  
33 subsections 33(3) and (3AA) of the *Acts Interpretation Act 1901*).

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## 1 Subdivision B—Compliance with CS services rules

### 2 828C Obligation to comply with CS services rules

- 3 (1) A person must comply with provisions of the CS services rules that  
4 apply to the person.

5 Note 1: This section is a civil penalty provision (see section 1317E). For relief  
6 from liability to a civil penalty relating to this section, see  
7 section 1317S.

8 Note 2: If there is an inconsistency between the standards determined under  
9 section 827D and the CS services rules, the standards prevail: see  
10 subsection 827D(2A).

### 11 828D Obligation to notify ASIC in respect of breach

- 12 (1) A person must give written notice to ASIC, as soon as practicable,  
13 if the person becomes aware that the person may no longer be able  
14 to meet, or has breached, an obligation under section 828C.

15 Note: Failure to comply with this subsection is an offence (see  
16 subsection 1311(1)).

- 17 (2) A person contravenes this subsection if the person contravenes  
18 subsection (1).

19 Note: This subsection is a civil penalty provision (see section 1317E).

- 20 (3) If ASIC receives a notice under subsection (1), ASIC may give the  
21 Minister advice about the matter to which the notice relates.

### 22 828E Alternatives to civil proceedings

- 23 (1) The regulations may provide for a person who is alleged to have  
24 contravened section 828C to do one or more of the following as an  
25 alternative to civil proceedings:

26 (a) pay a penalty to the Commonwealth;

27 (b) undertake or institute remedial measures (including education  
28 programs);

29 (c) accept sanctions other than the payment of a penalty to the  
30 Commonwealth;

31 (d) enter into a legally enforceable undertaking.

- 32 (2) The penalty payable under regulations made under paragraph (1)(a)  
33 in relation to an alleged contravention of a CS services rule must  
34 not exceed:

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- 1 (a) for an individual—3,000 penalty units; and  
2 (b) for a body corporate—15,000 penalty units.
- 3 (3) Without limiting regulations that may be made for the purpose of  
4 paragraph (1)(d), those regulations may provide for one or more of  
5 the following kinds of undertakings:  
6 (a) an undertaking to take specified action within a specified  
7 period;  
8 (b) an undertaking to refrain from taking specified action;  
9 (c) an undertaking to pay a specified amount within a specified  
10 period to the Commonwealth or to some other specified  
11 person.

## 12 **828F Failure to comply with CS services rules does not invalidate** 13 **transaction etc.**

14 A failure, in relation to a transaction, to comply with a requirement  
15 of the CS services rules does not invalidate the transaction or affect  
16 any rights or obligations arising under, or relating to, the  
17 transaction.

## 18 **Subdivision C—Power of ASIC to give directions etc.**

### 19 **828G ASIC’s power to give directions to person not complying with** 20 **obligations**

- 21 (1) If ASIC considers that a person is not complying , or is not likely  
22 to comply, with its obligations under the CS services rules, ASIC  
23 may give the person a direction, in writing, to do specified things  
24 that ASIC believes will promote compliance by the person with  
25 those obligations.
- 26 (2) When ASIC gives the person the direction, ASIC must also give  
27 the person a statement, in writing, setting out the reasons for giving  
28 the direction.
- 29 (3) The direction has effect until the earlier of the following times:  
30 (a) the time ASIC revokes the direction under subsection (7);  
31 (b) the end of the period specified in the direction as the period  
32 during which the direction is effective.
- 33 (4) While the direction has effect, the person must comply with the  
34 direction.

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1 Note: Failure to comply with this subsection is an offence (see  
2 subsection 1311(1)).

3 (5) If the person fails to comply with the direction, ASIC may apply to  
4 the Court for, and the Court may make, an order that the person  
5 comply with the direction.

6 (6) ASIC may vary the direction by giving written notice to the person.

7 (7) ASIC may revoke the direction by giving written notice to the  
8 person.

## 9 **Subdivision D—The process of making CS services rules**

### 10 **828H Matters to which ASIC must have regard when making rules**

11 In considering whether to make a CS services rule, ASIC:

12 (a) must have regard to:

13 (i) the likely effect of the proposed rule on the Australian  
14 economy, and on the efficiency, integrity and stability  
15 of the Australian financial system; and

16 (ii) the likely regulatory impact of the proposed rule; and

17 (iii) the likely effect of the proposed rule on the safety,  
18 fairness and effectiveness of competition in the  
19 provision of CS services; and

20 (b) must have regard to the matters (if any) raised by the ACCC  
21 or the Reserve Bank of Australia in consultations mentioned  
22 in paragraph 828J(1)(b); and

23 (c) may have regard to any other matters that ASIC considers  
24 relevant.

25 Note: Matters that ASIC may have regard to under paragraph (c) may, for  
26 example, include any relevant international standards and international  
27 commitments.

### 28 **828J ASIC to consult before making rules**

29 (1) ASIC must not make a CS services rule unless ASIC:

30 (a) has consulted the public about the proposed rule; and

31 (b) has also consulted the following about the proposed rule:

32 (i) the ACCC;

33 (ii) the Reserve Bank of Australia;

34 (iii) any other person or body as required by regulations  
35 made for the purpose of this subparagraph.



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- 1 Note: In some situations, consultation is not required: see section 828L.
- 2 (2) Without limiting the ways in which ASIC may comply with the  
3 obligation in paragraph (1)(a) to consult the public about a  
4 proposed rule, ASIC is taken to comply with that obligation if  
5 ASIC, on its website:
- 6 (a) makes the proposed rule, or a description of the content of  
7 the proposed rule, available; and  
8 (b) invites the public to comment on the proposed rule.
- 9 (3) A failure to consult as required by subsection (1) does not  
10 invalidate a CS services rule.

## 11 **828K Ministerial consent to rules required**

- 12 (1) ASIC must not make a CS services rule unless the Minister has  
13 consented, in writing, to the making of the rule.
- 14 Note: In some situations, consent is not required: see section 828L.
- 15 (2) A consent under subsection (1) is not a legislative instrument.

## 16 **828L Emergency rules: consultation and consent not required**

- 17 (1) ASIC may make a CS services rule without consulting as required  
18 by section 828J, and without the consent of the Minister as  
19 required by section 828K, if ASIC is of the opinion that it is  
20 necessary, or in the public interest, to do so in order to protect:
- 21 (a) the Australian economy; or  
22 (b) the efficiency, integrity and stability of the Australian  
23 financial system; or  
24 (c) safety, fairness and effective competition in the provision of  
25 CS services.
- 26 (2) However, if ASIC does so, ASIC must:
- 27 (a) provide the Minister, on the following day, with a written  
28 explanation of the need for the rule; and  
29 (b) amend or revoke the rule in accordance with any written  
30 directions of the Minister.
- 31 (3) A direction under paragraph (2)(b) is not a legislative instrument.
- 32 (4) ASIC must not make a CS services rule in accordance with  
33 subsection (1) unless ASIC has consulted the Reserve Bank of  
34 Australia about the proposed rule.

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- 1 (5) A failure to consult as required by subsection (4) does not  
2 invalidate a CS services rule.

## 3 **828M Amendment and revocation of CS services rules**

- 4 (1) ASIC may amend or revoke a CS services rule in like manner and  
5 subject to like conditions (see subsections 33(3) and (3AA) of the  
6 *Acts Interpretation Act 1901*).
- 7 (2) However, the requirements of sections 828H, 828J and 828K do  
8 not apply in relation to an amendment or revocation pursuant to a  
9 direction by the Minister under paragraph 828L(2)(b).

## 10 **Division 3—Other provisions**

### 11 **828N ASIC may give advice to Minister**

12 ASIC may give advice to the Minister in relation to:

- 13 (a) any matter in respect of which the Minister has a discretion  
14 under this Part; or  
15 (b) any other matter concerning the CS services rules.

16 Note: In some cases, the Minister must have regard to ASIC's advice: see  
17 paragraph 827A(2)(h).

### 18 **828P ACCC may give advice to Minister**

19 The ACCC may give advice to the Minister in relation to any  
20 matter concerning the CS services rules.

21 Note: In some cases, the Minister must have regard to the ACCC's advice:  
22 see paragraph 827A(2)(h).

### 23 **828Q Reserve Bank of Australia may give advice to Minister**

24 The Reserve Bank of Australia may give advice to the Minister in  
25 relation to:

- 26 (a) any matter in respect of which the Minister has a discretion  
27 under this Part; or  
28 (b) any other matter concerning the CS services rules.

29 Note: In some cases, the Minister must have regard to the Reserve Bank's  
30 advice: see paragraph 827A(2)(h).

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## 828R Exemptions by the regulations or by ASIC

- 1  
2 (1) The *provisions covered by this section* are:  
3 (a) the following provisions:  
4 (i) the provisions of this Part;  
5 (ii) the provisions of regulations made for the purposes of  
6 provisions of this Part;  
7 (iii) the provisions of rules made under Division 2; and  
8 (b) definitions in this Act, or in the regulations, as they apply to  
9 references in provisions referred to in paragraph (a).
- 10 (2) The regulations, or ASIC by written instrument, may exempt a  
11 person or class of persons from all or specified provisions covered  
12 by this section.
- 13 (3) An exemption may apply unconditionally or subject to specified  
14 conditions. A person to whom a condition specified in an  
15 exemption applies must comply with the condition. The Court  
16 may, on application by ASIC, order the person to comply with the  
17 condition in a specified way.
- 18 (4) An exemption by ASIC is a legislative instrument if the exemption  
19 is expressed to apply in relation to a class of persons, (whether or  
20 not it is also expressed to apply in relation to one or more persons  
21 identified otherwise than by reference to membership of a class).
- 22 (5) If subsection (4) does not apply to an exemption by ASIC, the  
23 exemption is a notifiable instrument.
- 24 (6) If there is an inconsistency between:  
25 (a) an exemption prescribed by regulations made for the  
26 purposes of subsection (2); and  
27 (b) an exemption by ASIC under that subsection;  
28 (including in relation to any conditions specified by ASIC), the  
29 regulations prevail to the extent of the inconsistency.

## 9 After paragraph 1317C(gcc)

30  
31 Insert:

- 32 (gcd) a decision by ASIC to:  
33 (i) make CS services rules; or  
34 (ii) give a direction under subsection 828G(1); or  
35 (iii) make an exemption under subsection 828R(2); or  
36 (gce) a decision by the Minister to:
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- 1 (i) make a determination under subsection 828B(2); or  
2 (ii) consent under subsection 828K(1) to the making of CS  
3 services rules; or  
4 (iii) make directions under paragraph 828L(2)(b); or

## 10 In the appropriate position in subsection 1317E(3)

6 Insert:

section 828C	complying with CS services rules	uncategorised
section 828D	obligation to notify ASIC of inability to meet obligations under section 828C	uncategorised

## 11 In the appropriate position in Schedule 3

8 Insert:

9

Subsection 828D(1)	100 penalty units
Subsection 828G(4)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed

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1 **Schedule 2—Access negotiation and**  
2 **arbitration to certain clearing and**  
3 **settlement services**

4 **Part 1—ASIC-related amendments**

5 *Competition and Consumer Act 2010*

6 **1 Subsection 4(1)**

7 Insert:

8 *ASIC* means the Australian Securities and Investments  
9 Commission.

10 **2 Subsection 26(1)**

11 Omit all the words after “staff member of”, substitute “ASIC”.

12 **3 Subsection 26(2)**

13 Omit “the Australian Securities and Investments Commission”,  
14 substitute “ASIC”.

15 **4 Subsection 86E(4)**

16 Repeal the subsection.

17 **5 Paragraph 155AAA(12)(d)**

18 Repeal the paragraph, substitute:  
19 (d) ASIC;

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## Part 2—Main amendments

### *Competition and Consumer Act 2010*

#### 6 Paragraph 44T(1)(b)

Omit “determination”, substitute “final determination”.

#### 7 After subparagraph 76(1)(a)(iia)

Insert:

(iiib) subsection 153ZEL(2);

#### 8 Subsection 76(1A) (after table item 13)

Insert:

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13A	subsection 153ZEL(2)	600 penalty units	\$500,000
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#### 9 Subparagraph 80(1)(a)(v)

Omit “Part XICA; or”, substitute “Part XICA;”.

#### 10 At the end of paragraph 80(1)(a)

Add:

(vi) section 153ZEL; or

#### 11 After Part XICA

Insert:

## Part XICB—Access to CS services

### Division 1—Preliminary

#### 153ZEA Objects of Part

The objects of this Part are to:

- (a) facilitate access to CS services on terms and conditions, including pricing, that are transparent, non-discriminatory, fair and reasonable; and
- (b) support the long-term interests of the Australian market by delivering outcomes that are consistent with those that might be expected in a competitive market for CS services; and

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- 1 (c) address the imbalance in bargaining power between  
2 providers of CS services and access seekers in Australia; and  
3 (d) provide incentives for providers of CS services to negotiate  
4 commercial and non-discriminatory terms of access with  
5 access seekers of the CS services in Australia; and  
6 (e) provide for the timely resolution of access disputes between  
7 providers of CS services and access seekers, if they arise; and  
8 (f) discourage providers of CS services from exerting market  
9 power to the detriment of competition in upstream and  
10 downstream markets.

## 11 153ZEB Definitions

12 In this Part:

13 *access dispute* means an access dispute notified under section  
14 153ZEM.

15 *access seeker*, for a CS service, means a person who wants access  
16 to the CS service or wants a change to some aspect of the person's  
17 existing access to the CS service.

18 *Australian CS facility licence* has the same meaning as in  
19 section 761A of the *Corporations Act 2001*.

20 *covered by a declaration*: see subsection 153ZEF(3).

21 *CS facility* means a clearing and settlement facility (within the  
22 meaning of section 761A of the *Corporations Act 2001*).

23 *CS facility licensee* has the same meaning as in section 761A of  
24 the *Corporations Act 2001*.

25 *CS service* has the same meaning as in section 828 of the  
26 *Corporations Act 2001*.

27 *declared CS service*: a CS service is a *declared CS service* if:

- 28 (a) the provider of the CS service is a CS facility licensee or a  
29 person that is related to a CS facility licensee; and  
30 (b) the CS facility licensee holds an Australian CS facility  
31 licence that authorises the CS facility licensee to operate a  
32 CS facility; and  
33 (c) the CS service can only be provided because it has access to,  
34 or to data used in the operation of, the CS facility; and

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1 (d) the CS service is covered by a declaration under section  
2 153ZEF.

3 **determination** means:

4 (a) a final determination made under paragraph 153ZEP(1)(a);  
5 and

6 (b) an interim determination made under paragraph  
7 153ZEP(1)(b).

8 **linked**: a CS facility is **linked to** a CS service if:

9 (a) the CS service is a declared CS service; and

10 (b) the CS facility is the CS facility mentioned in paragraphs (b)  
11 and (c) of the definition of declared CS service.

## 12 **153ZEC How this Part applies to partnerships and joint ventures**

13 (1) This section applies if a provider of a CS service is a partnership or  
14 joint venture that consists of 2 or more corporations. Those  
15 corporations are referred to in this section as the participants.

16 (2) If this Part requires or permits something to be done by the  
17 provider, the thing may be done by one or more of the participants  
18 on behalf of the provider.

19 (3) If a provision of this Part refers to the provider bearing any costs,  
20 the provision applies as if the provision referred to any of the  
21 participants bearing any costs.

22 (4) If a provision of this Part refers to the provider doing something,  
23 the provision applies as if the provision referred to one or more of  
24 the participants doing that thing on behalf of the provider.

25 (5) If:

26 (a) a provision of this Part requires the provider to do something,  
27 or prohibits the provider from doing something; and

28 (b) a contravention of the provision is an offence;

29 the provision applies as if a reference to the provider were a  
30 reference to any person responsible for the day-to-day management  
31 and control of the provider.

32 (6) If:

33 (a) a provision of this Part requires a provider to do something,  
34 or prohibits a provider doing something; and

35 (b) a contravention of the provision is not an offence;

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1 the provision applies as if the reference to provider were a  
2 reference to each participant and to any other person responsible  
3 for the day-to-day management and control of the provider.

## 4 **153ZED Constitutional limits on operation of this Part**

5 This Part does not apply in relation to an access seeker's access to  
6 a CS service unless:

- 7 (a) the provider of the CS service is a corporation (or a  
8 partnership or joint venture consisting wholly of  
9 corporations); or  
10 (b) the access seeker is a corporation; or  
11 (c) the access is (or would be) in the course of, or for the  
12 purposes of, constitutional trade or commerce.

## 13 **153ZEE This Part binds the Crown**

- 14 (1) This Part binds the Crown in right of the Commonwealth, of each  
15 of the States, of the Australian Capital Territory and of the  
16 Northern Territory.
- 17 (2) Nothing in this Part makes the Crown liable to be prosecuted for an  
18 offence.
- 19 (3) The protection in subsection (2) does not apply to an authority of  
20 the Commonwealth or an authority of a State or Territory.

## 21 **Division 2—Declaration of CS services**

### 22 **153ZEF Minister may declare a CS service**

- 23 (1) The Minister may, by legislative instrument, make a declaration  
24 specifying any of the following as services to which access may be  
25 the subject of negotiation or arbitration under this Part:  
26 (a) one or more CS services;  
27 (b) one or more classes of CS services.
- 28 (2) A declaration under subsection (1) may also specify one or more  
29 CS services that are taken not to be covered by the declaration.
- 30 (3) A CS service is covered by a declaration if:  
31 (a) the CS service is specified, or is in a class of CS services  
32 specified, in a declaration under subsection (1) that is in  
33 force; and

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- 1 (b) the CS service is not specified as a CS service that is taken  
2 not to be covered by a declaration in a declaration under  
3 subsection (1) that is in force.

4 *Matters to which the Minister has regard*

- 5 (4) In considering whether to make a declaration under subsection (1),  
6 the Minister:
- 7 (a) must have regard to:
- 8 (i) the likely effect on the Australian economy, and on the  
9 efficiency, integrity and stability of the Australian  
10 financial system, of making the declaration; and
- 11 (ii) the likely regulatory impact of the declaration; and
- 12 (iii) the extent to which a provider of a CS service that will  
13 be affected by the declaration has a monopoly or  
14 significant market power over the provision of the  
15 service; and
- 16 (b) may have regard to any other matters that the Minister  
17 considers relevant.

- 18 Note: Matters that the Minister may have regard to under paragraph (b) may,  
19 for example, include:
- 20 (a) any relevant international standards and international  
21 commitments; and
- 22 (b) matters raised in consultations under subsection (5), or in advice  
23 under subsection (7).

24 *Obligation to consult*

- 25 (5) The Minister must not make a declaration under subsection (1)  
26 unless the Minister has consulted the Commission about the  
27 proposed declaration.
- 28 (6) A failure to consult as required by subsection (5) does not  
29 invalidate a declaration.

30 *Commission may advise Minister*

- 31 (7) The Commission may (on its own initiative) and must (at the  
32 request of the Minister):
- 33 (a) consider whether a declaration should be made under  
34 subsection (1); and
- 35 (b) advise the Minister accordingly.

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1 *Commission may request advice from ASIC or Reserve Bank*

2 (8) The Commission may request advice from ASIC or the Reserve  
3 Bank of Australia for the purposes of informing its consideration  
4 and advice under subsection (7).

5 (9) ASIC and the Reserve Bank of Australia may give advice to the  
6 Commission relating to whether a declaration should be made  
7 under subsection (1).

## 8 **153ZEG Amendment and revocation of declarations**

9 (1) The Minister may amend or revoke a declaration under  
10 subsection 153ZEF(1) in like manner and subject to like conditions  
11 (see subsections 33(3) and (3AA) of the *Acts Interpretation Act*  
12 *1901*).

13 (2) The amendment or revocation of a declaration does not affect:  
14 (a) the arbitration of an access dispute that was notified under  
15 subsection 153ZEM(2) before the amendment or revocation;  
16 or  
17 (b) the operation or enforcement of any determination made in  
18 the arbitration of an access dispute that was notified under  
19 subsection 153ZEM(2) before the amendment or revocation.

## 20 **Division 3—Negotiation of access**

### 21 **153ZEH Notification of negotiations under this Division**

22 (1) This section applies in relation to a CS service if it is a declared CS  
23 service.

24 (2) An access seeker for the CS service may notify the provider that it  
25 wishes to negotiate under this Division over one or more specified  
26 issues relating to any aspect of access to the CS service, including:  
27 (a) whether access can be granted; and  
28 (b) the price and other terms and conditions of the access.

29 (3) The notification must set out the following matters:  
30 (a) a contact person for the access seeker;  
31 (b) contact details for the contact person;  
32 (c) the specified issues mentioned in subsection (2);  
33 (d) if regulations made for the purposes of this paragraph specify  
34 other matters—those matters.

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*Notifying the Commission*

- 1  
2 (4) The access seeker must give a copy of the notification to the  
3 Commission as soon as practicable after notifying the provider  
4 under subsection (2).

5 **153ZEI Ending negotiations under this Division**

- 6 (1) The access seeker may give notice to the provider that the  
7 negotiation is at an end, whether or not the access seeker also  
8 refers or has referred a related access dispute to arbitration under  
9 this Part.
- 10 (2) The provider may give notice to the access seeker that the  
11 negotiation is at an end for the purposes of this Part if the CS  
12 service ceases to be a declared CS service.

13 *Timing*

- 14 (3) The negotiation is taken to have ended for the purposes of this Part  
15 when the notice under subsection (1) or (2) is given.

16 *Notifying the Commission*

- 17 (4) If the negotiation ends under subsection (1) or (2), the following  
18 person must notify the Commission as soon as practicable:  
19 (a) if subsection (1) applies—the access seeker;  
20 (b) if subsection (2) applies—the provider.

21 **153ZEJ Conducting negotiations under this Division**

22 *Parties to the negotiation*

- 23 (1) The parties to the negotiation are:  
24 (a) the access seeker; and  
25 (b) the provider; and  
26 (c) any other person that the access seeker and the provider agree  
27 to include as a party to the negotiations.

28 *Good faith*

- 29 (2) Each party to the negotiation must participate in the negotiation in  
30 good faith.

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## *Timetable for negotiations*

- 1
- 2 (3) Each party to the negotiation must seek to accommodate all  
3 reasonable requirements of the other parties regarding the timetable  
4 for the negotiation.

## *Subject of negotiations*

- 5
- 6 (4) The negotiation must be about:  
7 (a) the specified issues mentioned in subsection 153ZEH(2); and  
8 (b) any other issue that the parties to the negotiation agree, in  
9 writing, that they wish to negotiate over.

## *Notifying the Commission if agreement reached*

- 10
- 11 (5) If the parties to the negotiation reach agreement over each issue  
12 mentioned in subsection (4), they must ensure that a written  
13 notification of the agreement is given to the Commission as soon  
14 as practicable.

## **153ZEK Information request by bargaining party—general**

- 15
- 16 (1) A party (the *requesting party*) to the negotiation may give another  
17 party (the *responding party*) a request that the responding party  
18 give the requesting party specified information if:  
19 (a) the information is held by the responding party or a related  
20 body corporate of the responding party; and  
21 (b) it is reasonable for the requesting party to make the request  
22 for the purposes of this Division.
- 23 (2) The request must:  
24 (a) be made in writing; and  
25 (b) set out reasons why it is reasonable for the requesting party  
26 to make the request for the purposes of this Division; and  
27 (c) if regulations made for the purposes of this paragraph specify  
28 other requirements—comply with those requirements.
- 29 (3) After the request is made, the responding party must ensure that:  
30 (a) the request is complied with no later than 21 days after the  
31 request was given to the responding party, or any later date  
32 the requesting party agrees to; and  
33 (b) the information requested is given in a readily readable form,  
34 including (where requested) in electronic file format with all  
35 underlying data files and inputs; and

# EXPOSURE DRAFT

- 
- 1 (c) the information given is, or is relevant to, the specified  
2 information mentioned in subsection (1); and  
3 (d) if regulations made for the purposes of this paragraph specify  
4 other requirements for that information—those requirements  
5 are satisfied.

## 6 *Duty of good faith*

- 7 (4) Each party to a negotiation under this Division must request or  
8 provide information under this section in a manner and at a time  
9 consistent with the duty of the party to negotiate in good faith  
10 under subsection 153ZEJ(2).

## 11 **153ZEL Information request by bargaining party—miscellaneous** 12 **rules**

- 13 (1) Nothing in section 153ZEK requires or authorises the giving of  
14 information that is personal information (within the meaning of the  
15 *Privacy Act 1988*).
- 16 (2) If the responding party gives information to the requesting party in  
17 order to comply with subsection 153ZEK(3), the requesting party  
18 must ensure that the information is not used for a purpose other  
19 than a purpose relating to this Part.

## 20 **Division 4—Notification of access disputes**

### 21 **153ZEM Notification of access disputes**

- 22 (1) This section applies in relation to a CS service if it is a declared CS  
23 service.
- 24 (2) If:
- 25 (a) an access seeker for the CS service is unable to agree with  
26 the provider on one or more aspects of access to the CS  
27 service that are or have been the subject of a negotiation  
28 under Division 3; and
- 29 (b) the access seeker and the provider are or were parties to the  
30 negotiation;
- 31 either party may notify the Commission in writing that an access  
32 dispute exists.

33 Note: An example of one of the things on which a provider and an access  
34 seeker for a CS service might disagree is whether a previous  
35 determination ought to be varied.

# EXPOSURE DRAFT

- 
- 1 (3) The notification must include information about:  
2 (a) the issues (if any) on which agreement has been reached in  
3 the negotiation under Division 3; and  
4 (b) the issues that are in dispute; and  
5 (c) if regulations made for the purposes of this paragraph specify  
6 other matters—those matters.
- 7 (4) On receiving the notification, the Commission must give notice in  
8 writing of the access dispute, as soon as practicable, to:  
9 (a) the provider, if the access seeker notified the access dispute;  
10 and  
11 (b) the access seeker, if the provider notified the access dispute;  
12 and  
13 (c) any other person whom the Commission thinks might want to  
14 become a party to the arbitration.

## 15 **153ZEN Withdrawal of notifications**

- 16 (1) A notification under subsection 153ZEM(2) may be withdrawn as  
17 follows (and not otherwise):  
18 (a) if the provider notified the dispute:  
19 (i) the provider may withdraw the notification at any time  
20 before the Commission makes its final determination;  
21 (ii) the access seeker may withdraw the provider's  
22 notification at any time after the Commission issues a  
23 draft final determination, but before it makes its final  
24 determination;  
25 (b) if the access seeker notified the dispute, the access seeker  
26 may withdraw the notification at any time before the  
27 Commission makes its final determination.
- 28 (2) Despite subparagraph (1)(a)(ii), if the provider notified a dispute  
29 over variation of a final determination, the access seeker may not  
30 withdraw the provider's notification.
- 31 (3) If the notification is withdrawn, it is taken for the purposes of this  
32 Part never to have been given.

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## 1 Division 5—Arbitration of access disputes

### 2 153ZEO Parties to the arbitration

3 The parties to the arbitration of an access dispute notified under  
4 subsection 153ZEM(2) regarding access to a CS service are:

- 5 (a) the provider mentioned in the notification; and
- 6 (b) the access seeker mentioned in the notification; and
- 7 (c) any other person who applies in writing to be made a party  
8 and is accepted by the Commission as having a sufficient  
9 interest.

### 10 153ZEP Determination by Commission

11 (1) Unless it terminates the arbitration under section 153ZEU, the  
12 Commission:

- 13 (a) must make a written final determination; and
- 14 (b) may make a written interim determination;  
15 on access by the access seeker to the CS service.

16 (2) A determination may deal with any matter relating to access to the  
17 CS service by the access seeker, including matters that were not the  
18 basis for notification of the access dispute.

19 Example: A determination may do any of the following:

- 20 (a) require the provider to provide access to the CS service by the  
21 access seeker;
- 22 (b) require the access seeker to accept, and pay for, access to the CS  
23 service;
- 24 (c) specify the terms and conditions of the access seeker's access to  
25 the CS service;
- 26 (d) vary or revoke an earlier determination relating to access to the  
27 CS service by the access seeker.

28 (3) Before making a determination, the Commission:

- 29 (a) may give a draft determination to the parties; and
- 30 (b) must consult ASIC and the Reserve Bank of Australia about  
31 the determination.

32 (4) When the Commission makes a determination, it must give the  
33 parties its reasons for making the determination.

34 Note: The Commission must also publish a written report about a final  
35 determination it makes (see section 153ZET).

36 (5) A determination is not a legislative instrument.



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## 153ZEQ Restrictions on access determinations

- 1
- 2 (1) The Commission must not make a determination that would have
- 3 any of the following effects:
- 4 (a) preventing an existing user that is not related to the provider
- 5 from obtaining sufficient access to the CS service to be able
- 6 to meet the user's reasonably anticipated requirements,
- 7 measured at the time when the dispute was notified;
- 8 (b) preventing a person that is not related to the provider from
- 9 obtaining, by the exercise of a pre-notification right,
- 10 sufficient access to the CS service to be able to meet the
- 11 person's actual requirements;
- 12 (d) resulting in the access seeker becoming the owner (or one of
- 13 the owners) of any part of the CS facility that is linked to the
- 14 CS service, or of extensions of the CS facility, without the
- 15 consent of the provider;
- 16 (e) requiring the provider to bear some or all of the costs of
- 17 extending the CS facility;
- 18 (f) requiring the provider to bear some or all of the costs of
- 19 maintaining extensions of the CS facility.
- 20 (2) Paragraphs (1)(a) and (b) do not apply in relation to the
- 21 requirements and rights of the access seeker and the provider when
- 22 the Commission is making a determination in arbitration of an
- 23 access dispute relating to an earlier determination of an access
- 24 dispute between the access seeker and the provider.
- 25 (3) A determination is of no effect to the extent it has any of the effects
- 26 mentioned in subsection (1).
- 27 (4) If the Commission makes a determination that has the effect of
- 28 depriving a person (the *second person*) of a pre-notification right
- 29 to require the provider to supply the CS service to the second
- 30 person, the determination must also require the access seeker:
- 31 (a) to pay to the second person such amount (if any) as the
- 32 Commission considers is fair compensation for the
- 33 deprivation; and
- 34 (b) to reimburse the provider and the Commonwealth for any
- 35 compensation that the provider or the Commonwealth agrees,
- 36 or is required by a court order, to pay to the second party as
- 37 compensation for the deprivation.

38 Note: Without infringing paragraph (1)(b), a determination may deprive a

39 second person of the right to be supplied with an amount of service

40 equal to the difference between the total amount of service the person

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1 was entitled to under a pre-notification right and the amount that the  
2 person actually needs to meet his or her actual requirements.

3 (5) If the provider is not the holder of the Australian CS facility  
4 licence that authorises the operation of the CS facility, this section  
5 applies in relation to the holder in the same way as it applies in  
6 relation to the provider.

7 (6) In this section:

8 *existing user* means a person (including the provider) who was  
9 using the CS service at the time when the access dispute was  
10 notified.

11 *pre-notification right* means a right under a contract, or under a  
12 determination, that was in force at the time when the access dispute  
13 was notified.

## 14 **153ZER Matters that the Commission must take into account**

### 15 *Final determinations*

16 (1) The Commission must take the following matters into account in  
17 making a final determination:

18 (a) the objects of this Part;

19 (b) the operational and technical requirements (including those  
20 relating to interoperability and financial stability) necessary  
21 for the safe and reliable operation of a current or proposed  
22 CS facility that is or may be linked to the CS service;

23 (c) any advice provided by ASIC or the Reserve Bank of  
24 Australia in response to consultations undertaken under  
25 paragraph 153ZEP(3)(b);

26 (d) any advice provided by ASIC or the Reserve Bank of  
27 Australia under subsection 153ZEX(3) in relation to the  
28 arbitration;

29 (e) if an obligation of the provider under an Australian law in  
30 relation to the CS service is mentioned in a party's case—that  
31 obligation;

32 (f) if the provider is not the holder of the Australian CS facility  
33 licence that authorises the operation of the CS facility, and an  
34 obligation of the holder under an Australian law in relation to  
35 the CS service is mentioned in a party's case—that  
36 obligation.

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- 1 (2) The Commission may take the following matters into account in  
2 making a final determination:
- 3 (a) the pricing principles specified in subsection (3);  
4 (b) the legitimate business interests of the provider, and the  
5 provider's investment in the CS facility;  
6 (c) if the provider is not the holder of the Australian CS facility  
7 licence that authorises the operation of the CS facility—the  
8 legitimate business interests of the holder, and the holder's  
9 investment in the CS facility;  
10 (d) the interests of all persons who have rights to access the CS  
11 service;  
12 (e) any guidance or policies relating to CS services made by the  
13 Commission, ASIC or the Reserve Bank of Australia;  
14 (f) the public interest, including the public interest in having  
15 competition in markets (whether or not in Australia);  
16 (g) any other matters that it thinks are relevant.
- 17 (3) For the purposes of paragraph (2)(a), the pricing principles are as  
18 follows:
- 19 (a) access prices should generate expected revenue for a CS  
20 service that reflects the costs of providing access to the CS  
21 service;  
22 (b) access price structures should not allow a vertically  
23 integrated provider to set terms and conditions that  
24 discriminate in favour of its related entities, except to the  
25 extent that the cost of providing access to other access  
26 seekers is higher; and  
27 (c) access pricing should provide incentives to reduce costs or  
28 otherwise improve productivity.
- 29 *Interim determinations*
- 30 (4) The Commission may take a matter referred to in subsection (1) or  
31 (2) into account in making an interim determination.
- 32 (5) In making an interim determination, the Commission does not have  
33 a duty to consider whether to take into account a matter referred to  
34 in subsection (1) or (2).

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## 153ZES Time limit for Commission's final determination

*Commission to make final determination within 180 days*

- (1) The Commission must make a final determination within the period of 180 days (the *expected period*) starting at the start of the day the access dispute is notified.

*Extending the period*

- (2) Before the end of the expected period, the Commission may, if satisfied it is appropriate to do so, extend the expected period.
- (3) When the Commission extends the expected period, it must:
- (a) notify the parties of the extension before it takes effect; and
  - (b) give the parties reasons for the extension.
- (4) The expected period may be extended one or more times, but must not exceed 270 days.

*Deemed final determination*

- (5) If the Commission does not make a final determination within the expected period, it is taken, immediately after the end of the expected period, to have:
- (a) made a final determination that does not impose any obligations on the parties or alter any obligations (if any) that exist at that time between the parties; and
  - (b) published a written report about the final determination under section 153ZET.

## 153ZET Arbitration reports

- (1) The Commission must prepare a written report about a final determination it makes. It must publish, by electronic or other means, the report.
- (2) The report may include the whole or a part of the determination and the reasons for the determination or the part of the determination.

*Report must include certain matters*

- (3) The report must set out the following matters:

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- 1 (a) the issues on which agreement was reached between the  
2 parties to the arbitration and the issues which were in dispute;  
3 (b) the principles the Commission applied in making the  
4 determination;  
5 (c) the methodologies the Commission applied in making the  
6 determination;  
7 (d) how the Commission took into account the matters  
8 mentioned in subsection 153ZER(1) in making the  
9 determination;  
10 (e) any matter the Commission took into account under  
11 subsection 153ZER(2) in making the determination and the  
12 reasons for doing so;  
13 (f) any information provided by the parties to the arbitration that  
14 was relevant to those principles or methodologies.

15 Note: Confidentiality issues are dealt with in subsections (5) and (6).

16 *Report may include other matters*

- 17 (4) The report may include any other matter that the Commission  
18 considers relevant.

19 *Confidentiality*

- 20 (5) The Commission must not include in the report any information the  
21 Commission decided not to give to a party to the arbitration under  
22 section 44ZL (as applied in relation to the arbitration by section  
23 153ZEV).
- 24 (6) Before publishing the report, the Commission must give each party  
25 to the arbitration a notice in writing:  
26 (a) specifying what the Commission is proposing to publish; and  
27 (b) inviting the party to make a written submission to the  
28 Commission within 14 days after the notice is given  
29 identifying any information the party considers should not be  
30 published because of its confidential commercial nature.
- 31 (7) The Commission must have regard to any submission so made in  
32 deciding what to publish. It may have regard to any other matter it  
33 considers relevant.

34 *Legislation Act 2003*

- 35 (8) A report prepared under subsection (1) is not a legislative  
36 instrument.

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## 153ZEU Commission may terminate arbitration in certain cases

- 1 (1) The Commission must terminate the arbitration of an access  
2 dispute (without making a final determination) if paragraphs (a),  
3 (b) and (c) of the definition of declared CS service no longer apply  
4 to the CS service.  
5
- 6 (2) The Commission may at any time terminate the arbitration of an  
7 access dispute (without making a final determination) if it thinks  
8 that:
  - 9 (a) the notification of the access dispute was vexatious; or
  - 10 (b) the subject matter of the access dispute is trivial,  
11 misconceived or lacking in substance; or
  - 12 (c) the party who notified the access dispute has not engaged in  
13 negotiations (including negotiations under Division 3) in  
14 good faith; or
  - 15 (d) the negotiation under Division 3 that led to the notification of  
16 the access dispute is insufficiently relevant to the matters that  
17 a final determination is likely to deal with; or
  - 18 (e) access to the CS service should continue to be governed by  
19 an existing contract between some or all of the parties to the  
20 arbitration.
- 21 (3) In addition, if the dispute is about varying an existing  
22 determination, the Commission may terminate the arbitration if it  
23 thinks there is no sufficient reason why the previous determination  
24 should not continue to have effect in its present form.

## 25 Division 6—Procedure in arbitration

### 26 153ZEV Subdivision D of Division 3 of Part IIIA to apply

- 27 (1) The following provisions apply in relation to an arbitration of an  
28 access dispute under this Part:
  - 29 (a) Subdivision D of Division 3 of Part IIIA;
  - 30 (b) regulations made for the purposes of provisions in that  
31 Subdivision.
- 32 (2) For the purposes of subsection (1):
  - 33 (a) treat an arbitration of an access dispute under this Part as an  
34 arbitration of an access dispute under Part IIIA; and
  - 35 (b) treat any reference in that Subdivision or in those regulations  
36 to:

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- 1 (i) a provision in that Subdivision or those regulations as a  
2 reference to a provision in that Subdivision or those  
3 regulations as they apply because of this section; and  
4 (ii) a third party as a reference to an access seeker; and  
5 (b) treat the reference in subsection 44ZG(3) to any other  
6 provision of this Part as a reference to any other provision of  
7 that Subdivision or Part XICB.
- 8 (3) The regulations may modify the provisions mentioned in  
9 paragraph (1)(b) in their application under subsection (1) in  
10 relation to an arbitration of an access dispute under this Part.
- 11 (4) If the Commission holds a joint arbitration hearing in respect of 2  
12 or more access disputes under section 44ZNA (as applied by  
13 subsection (1)), the Commission may make a single determination  
14 that covers all of the disputes.

## 15 **153ZEW Commission's powers if information not provided in** 16 **negotiations**

17 *Use in arbitration of information requested but not provided in*  
18 *negotiations*

- 19 (1) If:
- 20 (a) a party to the arbitration of an access dispute seeks to include  
21 certain information in its case; and  
22 (b) in the negotiation under Division 3 that led to the notification  
23 of the access dispute, the information was the subject of a  
24 request under section 153ZEK; and  
25 (c) the party, or a person related to the party, was the responding  
26 party (within the meaning of subsection 153ZEK(1)) to the  
27 request; and  
28 (d) the responding party did not ensure that the requirements in  
29 subsection 153ZEK(3) were satisfied in respect of the  
30 request;
- 31 the party must seek the Commission's permission in writing to  
32 include the information in its case.
- 33 (2) In determining whether to grant permission under subsection (1),  
34 the Commission must have regard to:
- 35 (a) the desirability of the parties to the negotiation complying  
36 with the requirements in section 153ZEK; and

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- 1 (b) whether the responding party was given a reasonable  
2 opportunity to ensure that the requirements in subsection  
3 153ZEK(3) were satisfied in respect of the request before the  
4 access dispute was notified.

5 *Commission's powers generally*

- 6 (3) If the Commission is satisfied that a party to the arbitration of an  
7 access dispute has failed to provide information in accordance with  
8 section 153ZEK in the negotiation under Division 3 that led to the  
9 notification of the access dispute, the Commission may do any of  
10 the following in the arbitration:
- 11 (a) direct that the party is not entitled to rely on specified  
12 information or materials;
  - 13 (b) draw such adverse inferences from the failure as the  
14 circumstances justify;
  - 15 (c) for the purposes of making a determination, not have regard  
16 to information that the party in the negotiation failed to  
17 provide in accordance with section 153ZEK.

18 **153ZEX Sharing information with and requesting advice from**  
19 **ASIC and Reserve Bank**

- 20 (1) The Commission may do any of the following:
- 21 (a) notify ASIC or the Reserve Bank of Australia that an access  
22 dispute exists;
  - 23 (b) request advice from ASIC or the Reserve Bank of Australia  
24 relating to the arbitration of an access dispute;
  - 25 (c) give information relating to an access dispute to ASIC or the  
26 Reserve Bank of Australia for the purposes of a notification  
27 or request under paragraph (a) or (b).
- 28 (2) To avoid doubt, paragraph (1)(c) applies to confidential  
29 commercial information that the Commission thinks should not be  
30 given to the other parties to the arbitration under section 44ZL (as  
31 applied in relation to the arbitration by section 153ZEV).
- 32 (3) ASIC and the Reserve Bank of Australia may give advice to the  
33 Commission relating to the arbitration of an access dispute.



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## 1 Division 7—Effect of determinations

### 2 153ZEY Operation of final determinations

- 3 (1) Unless otherwise specified, a final determination of an access  
4 dispute has effect 21 days after the determination is made.

#### 5 *Backdating*

- 6 (2) Any or all of the provisions of the final determination may be  
7 expressed to apply from a specified day that is earlier than the day  
8 on which it takes effect under subsection (1).

9 Example: The Commission makes a final determination on 1 August. It takes  
10 effect under subsection (1) on 22 August, but it is expressed to apply  
11 from 1 July.

- 12 (3) The specified day must not be earlier than the day on which the  
13 notification of negotiations under section 153ZEH was given that  
14 led to the notification of the access dispute under section 153ZEM.

- 15 (4) However, the specified day cannot be a day on which the access  
16 seeker did not have access to the CS service.

#### 17 *Operation of interim determination*

- 18 (5) If a provision of a final determination is expressed to apply from a  
19 day when an interim determination was in effect, the provision of  
20 the final determination prevails over the interim determination to  
21 the extent set out in the final determination.

#### 22 *Interest*

- 23 (6) If:  
24 (a) a provision of a final determination is covered by  
25 subsection (2); and  
26 (b) the provision requires a party to the determination (the *first*  
27 *party*) to pay money to another party;  
28 the determination may require the first party to pay interest to the  
29 other party, at the rate specified in the determination, on the whole  
30 or a part of the money, for the whole or a part of the period:  
31 (c) beginning on the day specified under subsection (2); and  
32 (d) ending on the day on which the determination takes effect  
33 under subsection (1).

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## 153ZEZ Effect and duration of interim determinations

- 1
- 2 (1) An interim determination made in the arbitration of an access  
3 dispute takes effect on the day specified in the determination.
- 4 (2) Unless sooner revoked, such an interim determination continues in  
5 effect until the earliest of the following:
- 6 (a) the notification of the access dispute is withdrawn under  
7 section 153ZEN;
- 8 (b) the arbitration is terminated under section 153ZEU;
- 9 (c) a final determination relating to the access dispute takes  
10 effect.

11 Note: A backdated final determination may prevail over an interim  
12 determination: see subsection 153ZEY(5).

## 13 Division 8—Variation and revocation of determinations

### 14 153ZFA Variation and revocation of determinations

- 15 (1) The Commission may, if satisfied it is appropriate to do so, by  
16 written instrument vary or revoke a determination:
- 17 (a) on its own initiative; or  
18 (b) on the application of any party to the determination.
- 19 (2) Sections 153ZEQ and 153ZER apply to the making of a variation  
20 of a final determination as if:
- 21 (a) an access dispute arising out of the final determination had  
22 been notified when the application was made to the  
23 Commission for the variation of the determination; and  
24 (b) the variation were the making of a final determination in the  
25 terms of the varied determination.
- 26 (3) Before making a variation, the Commission may give a draft  
27 variation to the parties.
- 28 (4) When the Commission varies or revokes a determination, it must  
29 give the parties to the determination its reasons for doing so.
- 30 (5) A variation or revocation is not a legislative instrument.

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## 1 Division 9—Enforcement and remedies

### 2 153ZFB Prohibition on hindering access to declared services

- 3 (1) The provider or a user of a CS service to which an access seeker  
4 has access under a determination, or a body corporate related to the  
5 provider or a user of the CS service, must not engage in conduct  
6 for the purpose of preventing or hindering the access seeker's  
7 access to the CS service under the determination.
- 8 (2) A person may be taken to have engaged in conduct for the purpose  
9 referred to in subsection (1) even though, after all the evidence has  
10 been considered, the existence of that purpose is ascertainable only  
11 by inference from the conduct of the person or from other relevant  
12 circumstances. This subsection does not limit the manner in which  
13 the purpose of a person may be established for the purposes of  
14 subsection (1).
- 15 (3) In this section, a *user* of a CS service includes a person who has a  
16 right to use the CS service.

### 17 153ZFC Division 7 of Part IIIA to apply

- 18 (1) Division 7 of Part IIIA applies in relation to a determination under  
19 this Part.
- 20 (2) For the purposes of subsection (1), treat:
- 21 (a) a reference in that Division to:
- 22 (i) a determination as a reference to a determination made  
23 under this Part; and
- 24 (ii) section 44ZZ as a reference to section 153ZFB; and
- 25 (b) the reference in subsection 44ZZE(3) to Divisions 2 and 3 as  
26 a reference to this Part (other than this section); and
- 27 (c) section 44ZZJ as having been omitted; and
- 28 (d) any reference in Division 7 of Part IIIA to a provision in that  
29 Division as a reference to the provision as it applies because  
30 of this section.

# EXPOSURE DRAFT

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## 1 **Division 10—Miscellaneous**

### 2 **153ZFD Register of determinations**

- 3 (1) The Commission must maintain a public register that specifies the  
4 following information for each determination:  
5 (a) the names of the parties to the determination;  
6 (b) the service to which the determination relates;  
7 (c) the date on which the determination was made.
- 8 (2) The regulations may make provision about the inspection of the  
9 public register (including provision about fees).

### 10 **153ZFE Provisions of Division 8 of Part IIIA to apply**

- 11 (1) The following provisions apply in relation to a determination under  
12 this Part:  
13 (a) section 44ZZN;  
14 (b) section 44ZZNA;  
15 (c) section 44ZZO.
- 16 (2) For the purposes of subsection (1), the provisions apply:  
17 (a) in relation to a determination under this Part in the same way  
18 as they apply in relation to a determination made under  
19 Part IIIA; and  
20 (b) in relation to this Part in the same way as they apply in  
21 relation to Part IIIA.