

EXPOSURE DRAFT

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Inserts for
**Treasury Laws Amendment Bill 2024:
Acquisitions**

| Commencement information | | |
|---------------------------------|---|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Schedule 1, Part 1 | The day after this Act receives the Royal Assent. | |
| 2. Schedule 1, Part 2 | 1 December 2025. | 1 December 2025 |
| 3. Schedule 1, Part 3 | 1 January 2026. | 1 January 2026 |
| 4. Schedule 2, Part 1 | 1 January 2026. | 1 January 2026 |
| 5. Schedule 2, Parts 2 to 4 | The day after this Act receives the Royal Assent. | |

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1 **Schedule 1—Acquisitions**

2 **Part 1—Amendments commencing day after Royal**
3 **Assent**

4 *Competition and Consumer Act 2010*

5 **1 After subsection 88(1)**

6 Insert:

7 (1A) The application must be made on or before 30 June 2025 if any of
8 the specified provisions is section 50.

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1 **Part 2—Amendments commencing 1 December 2025**

2 *Administrative Decisions (Judicial Review) Act 1977*

3 **2 At the end of Schedule 1**

4 Add:

5 ; (zk) decisions under subsection 51ABZD(1) of the *Competition*
6 *and Consumer Act 2010*.

7 *Competition and Consumer Act 2010*

8 **3 Before Part 1**

9 Insert:

10 **Chapter 1—Preliminary**

11 **4 At the end of subsection 2B(1)**

12 Add:

13 ; (d) the acquisitions provisions.

14 **5 Section 2BA (heading)**

15 After “**Part IV**”, insert “**and acquisitions provisions**”.

16 **6 Subsection 2BA(1)**

17 Omit “applies”, substitute “and the acquisitions provisions apply”.

18 **7 Subsection 4(1)**

19 Insert:

20 *acquisition determination*, in respect of a notification of an
21 acquisition, means:

- 22 (a) a determination made under subsection 51ABW(1) in respect
23 of the notification; or
24 (b) a determination made under subsection 51ABZL(1) in
25 respect of a substantial public benefit application relating to
26 the notification.

27 *acquisitions provision* means any of the following provisions:

- 28 (a) a provision of Division 1A of Part IV;
29 (b) a provision of Part IVA;
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- 1 (c) a provision of Division 1B of Part IX;
2 (d) another provision of this Act, to the extent that it relates to a
3 provision covered by paragraph (a), (b) or (c).

4 **acquisitions register** means the register kept by the Commission
5 under section 51ABZX.

6 **ADI** (short for authorised deposit-taking institution) means:

- 7 (a) a body corporate that is an ADI for the purposes of the
8 *Banking Act 1959*; or
9 (b) the Reserve Bank of Australia; or
10 (c) a person who carries on State banking within the meaning of
11 paragraph 51(xiii) of the Constitution.

12 **authorised insurance company** means:

- 13 (a) a company authorised under the *Insurance Act 1973* to carry
14 on insurance business; or
15 (b) a company registered under section 21 of the *Life Insurance*
16 *Act 1995*.

17 **building society** includes a society registered or incorporated as a
18 cooperative housing society or similar society under:

- 19 (a) a law of a State or Territory; or
20 (b) a law of a foreign country or a part of a foreign country.

21 **business day**: in Part IVA, **business day** has the meaning given by
22 section 51ABP.

23 **determination period**:

- 24 (a) for a notification of an acquisition—has the meaning given
25 by subsection 51ABZB(3); and
26 (b) for a substantial public benefit application—has the meaning
27 given by section 51ABZR.

28 **directly related**: for when a restriction is **directly related** to an
29 acquisition, see section 51ABO.

30 **effective application date**, of a substantial public benefit
31 application, has the meaning given by subsection 51ABZG(7),
32 paragraph 51ABZH(7)(a) and subsections 51ABZI(4) and
33 51ABZW(2).

34 **effective notification date**, of a notification of an acquisition, has
35 the meaning given by subsection 51ABQ(4), paragraph

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1 51ABS(7)(a) and subsections 51ABT(4), 51ABU(2) and
2 51ABZW(2).

3 *fast track review* has the meaning given by section 100D.

4 *finally considered*, in relation to a notification of an acquisition,
5 has the meaning given by section 51ABJ.

6 *financial institution* means:

7 (a) an ADI; or

8 (b) a bank; or

9 (c) a building society; or

10 (d) a credit union.

11 **8 Subsection 4(1) (paragraph (b) of the definition of *merger*** 12 ***authorisation*)**

13 Before “Part IV”, insert “Division 1 or 2 of”.

14 **9 Subsection 4(1)**

15 Insert:

16 *notice of competition concerns* has the meaning given by
17 subsection 51ABZE(1).

18 *notification*, of an acquisition, means a notification, of a proposal
19 to put the acquisition into effect, to which section 51ABQ applies.

20 Note: Section 51ABQ only applies to notifications of certain acquisitions of
21 shares in the capital of a body corporate or of assets of a person: see
22 Subdivision B of Division 1 of Part IVA.

23 *notified acquisition* has the meaning given by subsections
24 51ABQ(2) and 51ABV(6).

25 *notifying party*, of a notification of an acquisition, has the meaning
26 given by subsection 51ABQ(3).

27 **10 Subsection 4(1) (definition of *party*)**

28 Repeal the definition, substitute:

29 *party*:

30 (a) to a contract that is a covenant—includes a person bound by,
31 or entitled to the benefit of, the covenant; and

32 (b) to an acquisition—has the meaning given by section 51ABM.

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11 Subsection 4(1)

Insert:

phase 1 determination period, for a notification of an acquisition, has the meaning given by section 51ABZC.

phase 2 determination period, for a notification of an acquisition, has the meaning given by section 51ABZF.

principal party, to an acquisition, has the meaning given by section 51ABM.

purportedly puts into effect, in relation to an acquisition, has the meaning given by subsection 45AV(2).

required to be notified, in relation to an acquisition, has the meaning given by section 51ABG.

stale, in relation to a notification of an acquisition, has the meaning given by section 51ABK.

standard review means a review of an acquisition determination under Division 1B of Part IX that is not a fast track review.

stayed, in relation to an acquisition, has the meaning given by section 51ABI.

subject to a condition: for when putting a notified acquisition into effect is *subject* to a condition, see section 51ABL.

subject to phase 2 review has the meaning given by paragraph 51ABZD(2)(a).

substantially lessening competition has a meaning affected by subsection 4G(2).

substantial public benefit application has the meaning given by subsection 51ABZG(6).

substantial public benefit assessment has the meaning given by subsection 51ABZQ(1).

12 Subsection 4A(5A)

After “and VII”, insert “and the acquisitions provisions”.

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13 Section 4G (heading)

Omit “to include preventing or hindering competition”.

14 Section 4G

Before “For the purposes”, insert “(1)”.

15 At the end of section 4G

Add:

Meaning of substantially lessening competition

(2) To avoid doubt:

(a) a reference in this Act to *substantially lessening competition* in a market includes a reference to substantially lessening competition in the market by creating, strengthening or entrenching a substantial degree of power in the market; and

(b) a reference in this Act to *substantially lessening competition*, other than a reference to substantially lessening competition in a particular market, includes a reference to substantially lessening competition by creating, strengthening or entrenching a substantial degree of power in any market; and

(c) none of the following affects the meaning of *substantially lessening competition*:

(i) section 51ABG or 51ABH;

(ii) any regulations made for the purposes of paragraph 51ABG(1)(a);

(iii) any legislative instrument made under subsection 51ABH(1).

(3) Subsections 46(3) to (8) apply in relation to paragraphs (2)(a) and (b) of this section in the same way as those subsections apply in relation to section 46.

16 After paragraph 5(1)(f)

Insert:

(fa) the acquisitions provisions;

17 Paragraph 6(2)(h)

After “or 151AJ”, insert “, in an acquisitions provision”.

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18 Subsection 6(2A)

Before “Part IV”, insert “Division 1 or 2 of”.

19 Before subsection 6(2C)

Insert:

Cartel conduct

20 After subsection 6(2E)

Insert:

Acquisitions

(2EA) In addition to the effect that this Act (other than Parts IIIA, VIIA and X) has as provided by another subsection of this section, this Act (other than Parts IIIA, VIIA and X) has, by force of this subsection, the effect it would have if:

(a) any references in the acquisitions provisions to an acquisition of shares in the capital of a body corporate, or an acquisition of any assets of a person, were, by express provision, confined to such an acquisition put into effect:

(i) in the course of, or in relation to, trade or commerce between Australia and places outside Australia; or

(ii) in the course of, or in relation to, trade or commerce among the States; or

(iii) in the course of, or in relation to, trade or commerce within a Territory, between a State and a Territory or between 2 Territories; and

(b) each reference in the acquisitions provisions to a corporation included a reference to a person not being a corporation.

(2EB) Subsection (2EA) has effect in relation to a participating Territory as if the words “within a Territory,” were omitted from subparagraph (2EA)(a)(iii). For this purpose, *participating Territory* means a Territory that is a participating Territory within the meaning of Part XIA but is not named in a notice in operation under section 150K.

(2EC) In addition to the effect that this Act (other than Parts IIIA, VIIA and X) has as provided by another subsection of this section, this Act (other than Parts IIIA, VIIA and X) has, by force of this subsection, the effect it would have if:

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- 1 (a) any references in the acquisitions provisions to an acquisition
2 of shares in the capital of a body corporate, or an acquisition
3 of any assets of a person, were, by express provision,
4 confined to such an acquisition to the extent to which putting
5 the acquisition into effect involves the use of, or relates to, a
6 postal, telegraphic, telephonic or other like service within the
7 meaning of paragraph 51(v) of the Constitution; and
8 (b) each reference in the acquisitions provisions to a corporation
9 included a reference to a person not being a corporation.

10 (2ED) In addition to the effect that this Act (other than Parts IIIA, VIIA
11 and X) has as provided by another subsection of this section, this
12 Act (other than Parts IIIA, VIIA and X) has, by force of this
13 subsection, the effect it would have if:

- 14 (a) any references in the acquisitions provisions to an acquisition
15 of shares in the capital of a body corporate, or an acquisition
16 of any assets of a person, were, by express provision,
17 confined to such an acquisition to the extent to which the
18 acquisition is put into effect in, or relates to, a
19 Commonwealth place (within the meaning of the
20 *Commonwealth Places (Application of Laws) Act 1970*); and
21 (b) each reference in the acquisitions provisions to a corporation
22 included a reference to a person not being a corporation.

23 *Payment surcharges*

24 **21 Before subsection 6(3)**

25 Insert:

26 *Certain provisions of Australian Consumer Law*

27 **22 Before subsection 6(5A)**

28 Insert:

29 *Offences relating to cartel conduct*

30 **23 Paragraph 29(1A)(a)**

31 After “IV,” insert “IVA”.

32 **24 Section 44ZZNA (heading)**

33 After “IV”, insert “, IVA”.

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25 Section 44ZZNA

After “IV”, insert “, IVA”.

26 Before Part IIIA

Insert:

Chapter 2—Access to services

27 Before Part IV

Insert:

Chapter 3—Restrictive trade practices

28 After section 45AM

Insert:

45AMA Acquisition subject to notification

- (1) Sections 45AF and 45AJ do not apply in relation to the making of a contract that contains a cartel provision, in so far as the cartel provision provides directly or indirectly for:
- (a) an acquisition of shares in the capital of a body corporate; or
 - (b) an acquisition of any assets of a person;
- if:
- (c) the contract is subject to a condition that the provision will not come into force unless and until the acquisition becomes a notified acquisition; and
 - (d) the acquisition becomes a notified acquisition within 30 days after the contract is made.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code* and subsection (2) of this section).

- (2) A person who wishes to rely on subsection (1) in relation to a contravention of section 45AJ bears an evidential burden in relation to that matter.

29 At the end of section 45AT

Add:

- (3) Sections 45AF, 45AG, 45AJ and 45AK do not apply in relation to a contract, arrangement or understanding containing a cartel provision, in so far as the cartel provision provides directly or

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1 indirectly for an acquisition, if the acquisition is a notified
2 acquisition.

3 Note: A defendant bears an evidential burden in relation to the matter in this
4 subsection (see subsection 13.3(3) of the *Criminal Code* and
5 subsection (4) of this section).

- 6 (4) A person who wishes to rely on subsection (3) in relation to a
7 contravention of section 45AJ or 45AK bears an evidential burden
8 in relation to that matter.

9 **30 After Division 1 of Part IV**

10 Insert:

11 **Division 1A—Acquisitions**

12 **Subdivision A—Preliminary**

13 **45AV Purportedly putting acquisitions into effect**

- 14 (1) A reference in this Division to putting an acquisition into effect
15 includes a reference to purportedly putting the acquisition into
16 effect.
- 17 (2) A person *purportedly puts into effect* an acquisition if the person
18 engages in conduct that, apart from this Division, would constitute
19 putting the acquisition into effect.

20 **Subdivision B—Obligations**

21 **45AW Commission must be notified of acquisitions**

22 A person contravenes this section if:

- 23 (a) the person is a principal party to an acquisition; and
24 (b) the acquisition is required to be notified; and
25 (c) the acquisition is put into effect; and
26 (d) when the acquisition is put into effect:
27 (i) the acquisition is not a notified acquisition; or
28 (ii) no notification of the acquisition has an effective
29 notification date (see section 51ABS); or
30 (iii) the latest notification of the acquisition that has an
31 effective notification date is stale.

32 Note 1: For when an acquisition is *required to be notified*, see section
33 51ABG.

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1 Note 2: For when an acquisition is *stale*, see section 51ABK.

2 Note 3: For enforcement, see Part VI.

3 **45AX Commission must be notified of material changes of fact in** 4 **relation to notified acquisitions**

- 5 (1) This section applies if:
- 6 (a) a person is the notifying party of a notification of an
7 acquisition; and
 - 8 (b) a change of fact occurs;
 - 9 (c) the person becomes aware of the change of fact at a time:
 - 10 (i) occurring on or after the time specified in
11 subsection (2); and
 - 12 (ii) at which the Commission has not decided to cease
13 considering the notification under section 51ABV; and
 - 14 (iii) at which the Commission has not made a determination
15 in respect of the notification under subsection
16 51ABW(1); and
 - 17 (d) the change of fact is material to the Commission making a
18 determination under subsection 51ABW(1) in respect of the
19 notification.
- 20 (2) For the purposes of subparagraph (1)(c)(i) of this section, the time
21 is:
- 22 (a) if the acquisition is required to be notified under section
23 51ABG—the time at which the notification is made; or
 - 24 (b) otherwise—the later of:
 - 25 (i) the time at which the notification is made; and
 - 26 (ii) the start of the effective notification date of the
27 notification.
- 28 (3) This section also applies if:
- 29 (a) a person is the notifying party of a notification of an
30 acquisition; and
 - 31 (b) a change of fact occurs; and
 - 32 (c) the person becomes aware of the change of fact at a time at
33 which:
 - 34 (i) the notifying party has made a substantial public benefit
35 application in respect of the notification; and
 - 36 (ii) the Commission has not decided to cease considering
37 the application under section 51ABZK; and

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- 1 (iii) the Commission has not made a determination under
2 subsection 51ABZL(1) in respect of the application; and
3 (d) the change of fact is material to the Commission making a
4 determination under subsection 51ABZL(1) in respect of the
5 application.

- 6 (4) The person contravenes this subsection if the Commission is not
7 notified of the change of fact, as soon as practicable after the
8 person becomes aware of the change, by:
9 (a) if the person is the only notifying party of the notification of
10 the acquisition—the person; or
11 (b) otherwise—all of the notifying parties jointly.

12 Note: For enforcement, see Part VI.

- 13 (5) For the purposes of this section, a person who ought reasonably to
14 be aware of a change is taken to be aware of the change.

15 **45AY Stayed acquisitions must not be put into effect**

16 A person contravenes this section if:

- 17 (a) the person puts an acquisition into effect; and
18 (b) the acquisition is stayed.

19 Note 1: For when an acquisition is *stayed*, see section 51ABI.

20 Note 2: For enforcement, see Part VI.

21 **45AZ Conditions must be complied with**

- 22 (1) This section applies to a person who puts a notified acquisition into
23 effect, if putting the acquisition into effect is subject to conditions.

24 Note: For when putting an acquisition into effect is *subject* to conditions, see
25 section 51ABL.

- 26 (2) The person contravenes this subsection if any of those conditions
27 are not complied with.

28 Note: For enforcement, see Part VI.

29 **Subdivision C—Acquisitions void if put into effect while stayed**

30 **45AZA Acquisitions void if put into effect while stayed**

- 31 (1) This section applies to an acquisition if, when the acquisition is put
32 into effect, the acquisition is stayed.

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1 Note: For when an acquisition is *stayed*, see section 51ABI.

- 2 (2) The acquisition, and any directly related restriction, is, and is taken
3 always to have been, void by force of this subsection.

4 Note: For when a restriction is *directly related*, see section 51ABO.

5 **Subdivision D—Miscellaneous**

6 **45AZB Providing false or misleading information**

- 7 (1) A person contravenes this subsection if:
8 (a) the person gives information to the Commission or the
9 Tribunal under an acquisition provision; and
10 (b) the person is negligent as to whether the information is false
11 or misleading in a material particular.

12 Note: For enforcement, see Part VI.

- 13 (2) For the purposes of subsection (1), proof that the person knew, or
14 was reckless as to whether, the information was false or misleading
15 in a material particular is taken to be proof that the person was
16 negligent as to whether the information was false or misleading in
17 a material particular.

18 **31 After subsection 45(4)**

19 Insert:

20 *Acquisitions*

- 21 (4A) For the purposes of subsection (1), and without limiting that
22 subsection, a provision of:
23 (a) a contract, arrangement or understanding; or
24 (b) a proposed contract, arrangement or understanding;
25 is taken to have the purpose of substantially lessening competition
26 if:
27 (c) the provision directly or indirectly provides for:
28 (i) an acquisition of shares in the capital of a body
29 corporate; or
30 (ii) an acquisition of any assets of a person; and
31 (d) the purpose of the acquisition is to substantially lessen
32 competition.

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1 (4B) For the purposes of subsection (1), and without limiting that
2 subsection, a concerted practice is taken to have the purpose of
3 substantially lessening competition if:

4 (a) the concerted practice directly relates to:

5 (i) an acquisition of shares in the capital of a body
6 corporate; or

7 (ii) an acquisition of any assets of a person; and

8 (b) the purpose of the acquisition is to substantially lessen
9 competition.

10 (4C) For the purposes of subsection (4A) or (4B), an acquisition is taken
11 to have a particular purpose if:

12 (a) the acquisition is put into effect for that purpose or for
13 purposes that included or include that purpose; and

14 (b) that purpose was or is a substantial purpose.

15 *Contracts etc. to which this section does not apply*

16 **32 At the end of subsection 45(7)**

17 Add “on or before 31 December 2025”.

18 **33 After subsection 45(7)**

19 Insert:

20 (7A) This section does not apply to or in relation to:

21 (a) a contract, arrangement or understanding to the extent that
22 the contract, arrangement or understanding directly or
23 indirectly provides for; or

24 (b) a proposed contract, arrangement or understanding to the
25 extent that the proposed contract, arrangement or
26 understanding would directly or indirectly provide for; or

27 (c) a concerted practice to the extent that the practice directly
28 involves;

29 a notified acquisition.

30 (7B) The making by a corporation of a contract is not a contravention of
31 subsection (1) to the extent that the contract directly or indirectly
32 provides for:

33 (a) an acquisition of shares in the capital of a body corporate; or

34 (b) an acquisition of any assets of a person;

35 if:

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- 1 (c) the contract is subject to a condition that the provision will
2 not come into force unless and until the acquisition becomes
3 a notified acquisition; and
4 (d) the acquisition becomes a notified acquisition within 30 days
5 after the contract is made;
6 but nothing in this subsection prevents the giving effect by a
7 corporation to such a provision from constituting a contravention
8 of subsection (1).

9 **34 Subsection 46A(6)**

10 Omit “subsection 45(8A)”, substitute “subsection 45(7A) or (8A)”.

11 **35 After subsection 50(5A)**

12 Insert:

13 (5B) This section does not apply to a notified acquisition.

14 **36 After subsection 50A(7)**

15 Insert:

16 (7A) Subsection (1) does not apply to a notified acquisition.

17 **37 Paragraph 51(2)(e)**

18 Before “to any provision”, insert “subject to subsection (2AAA)”.

19 **38 After subsection 51(2)**

20 Insert:

21 (2AAA) Paragraph (2)(e) does not apply to a provision of a contract to the
22 extent to which:

- 23 (a) the protection referred to in that paragraph is by means of a
24 restriction that is directly related to an acquisition; and
25 (b) the acquisition:
26 (i) is required to be notified under section 51ABG; or
27 (ii) is a notified acquisition;

28 if:

- 29 (c) subject to subsection (2AAB) of this section, the acquisition
30 is not a notified acquisition; or
31 (d) the acquisition is stayed; or
32 (e) the restriction is not specified in the latest notification of the
33 acquisition as mentioned in subsection 51ABR(4); or
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1 (f) the restriction is declared in a determination made under
2 subsection 51ABW(1) in respect of the latest notification of
3 the acquisition to be a restriction to which paragraph (2)(e) of
4 this section does not apply.

5 Note: For when a restriction is *directly related*, see section 51ABO.

6 (2AAB) Paragraph (2AAA)(c) does not apply if:

- 7 (a) the restriction is subject to a condition that the restriction will
8 not come into force unless and until the acquisition becomes
9 a notified acquisition; and
10 (b) the acquisition becomes a notified acquisition within 30 days
11 after the contract is made.

12 **39 After Part IV**

13 Insert:

14 **Part IVA—Notification of acquisitions**

15 **Division 1—Preliminary**

16 **Subdivision A—Simplified outline**

17 **51ABA Simplified outline of this Part**

18 Acquisitions of shares in the capital of a body corporate, or of any
19 assets of a person, are required to be notified to the Commission
20 before they are put into effect if they are determined under section
21 51ABG.

22 Division 2 provides for persons to notify proposals to put
23 acquisitions into effect to the Commission (including acquisitions
24 that are not required to be notified).

25 The Commission may determine that a notified acquisition may be
26 put into effect if the Commission believes it would not
27 substantially lessen competition (Division 3).

28 If the Commission does not make such a determination, the
29 notifying parties may ask the Commission to determine that the
30 proposed acquisition would be of substantial public benefit
31 (Division 4).

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Note: For the consequences of failing to notify the Commission of an acquisition, or for putting into effect an acquisition that the Commission has neither determined may be put into effect nor determined would be of substantial public benefit, see Division 1A of Part IV.

Subdivision B—Acquisitions to which acquisitions provisions apply

51ABB Acquisitions to which acquisitions provisions apply

Subject to this Subdivision, the acquisitions provisions apply to the following acquisitions:

- (a) a direct or indirect acquisition by a corporation of shares in the capital of a body corporate;
- (b) a direct or indirect acquisition by a corporation of any assets of a person;
- (c) a direct or indirect acquisition of shares in the capital of a corporation;
- (d) a direct or indirect acquisition of any assets of a corporation.

51ABC Acquisitions of shares to which acquisitions provisions do not apply

Acquisitions that do not give control

- (1) The acquisitions provisions do not apply to an acquisition by a person of shares in the capital of a body corporate (the *target*) if:
 - (a) immediately before the acquisition, the person (whether alone or, if the person is a body corporate, together with any related bodies corporate) controlled the target; or
 - (b) immediately after the acquisition, the person (whether alone or, if the person is a body corporate, together with any related bodies corporate) does not control the target.
- (2) For the purposes of subsection (1):
 - (a) if the person's voting power (within the meaning of the *Corporations Act 2001*) in the target is less than 20% at a particular time, the person is taken not to control the target at that time, unless the contrary is proved; and
 - (b) if the person's voting power in the target is 20% or more at a particular time, the person is taken to control the target at that time, unless the contrary is proved.

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- 1 (3) For the purposes of subsection (1), *control* of a body corporate is
2 the capacity to directly or indirectly determine the policy of the
3 body corporate in relation to one or more matters.
- 4 (4) In determining whether a person has the capacity mentioned in
5 subsection (3) in relation to a body corporate:
- 6 (a) the practical influence the person can exert (rather than the
7 rights it can enforce) is the issue to be considered; and
8 (b) any practice or pattern of behaviour affecting the policies of
9 the body corporate is to be taken into account (even if it
10 involves a breach of an agreement or a breach of trust).
- 11 (5) For the purposes of subsection (1), if a person:
- 12 (a) has the capacity to determine the policy of a body corporate;
13 and
14 (b) is under a legal obligation to exercise that capacity for the
15 benefit of someone other than the person's members;
16 the person is taken not to *control* the body corporate.
- 17 *Temporary holdings by financial institutions and authorised*
18 *insurance companies*
- 19 (6) The acquisitions provisions do not apply to an acquisition of shares
20 in the capital of a body corporate by a financial institution or
21 authorised insurance company (the *holder*), if:
- 22 (a) the holder holds the shares on a temporary basis with a view
23 to reselling them; and
24 (b) the ordinary course of business of the holder includes
25 transactions and dealings in securities (within the meaning of
26 subsection 92(1) of the *Corporations Act 2001*) for the
27 holder's own account or for the account of others; and
28 (c) subsection (7) of this section applies.
- 29 (7) This subsection applies if:
- 30 (a) the holder does not exercise voting rights in respect of the
31 shares; or
32 (b) the holder exercises such voting rights only with a view to
33 maintaining the value of the shares; or
34 (c) the holder exercises such voting rights only with a view to:
- 35 (i) preparing the disposal of all or part of the body
36 corporate or its assets; or
37 (ii) disposing of the shares;
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1 and any such disposal takes place within 12 months of the
2 acquisition.

3 **51ABD Acquisitions of assets to which acquisitions provisions do not**
4 **apply**

5 A reference in the acquisitions provisions to an acquisition of any
6 assets of a person does not include a reference to an acquisition of
7 a share in the capital of a body corporate.

8 **51ABE Internal restructures and reorganisations**

9 The acquisitions provisions do not apply to an acquisition that is,
10 or is part of, a restructure or reorganisation of a group of persons
11 who are related:

- 12 (a) in the ways referred to in section 4A (related bodies
13 corporate); or
14 (b) by means of trust or partnership.

15 **51ABF Other circumstances in which the acquisitions provisions do**
16 **not apply**

17 The acquisitions provisions do not apply to an acquisition:

- 18 (a) by a person in the person's capacity as an administrator,
19 receiver, receiver and manager or liquidator (all within the
20 meaning of section 9 of the *Corporations Act 2001*); or
21 (b) that takes place pursuant solely to a testamentary disposition,
22 intestacy or a right of survivorship under a joint tenancy.

23 **Subdivision C—Definitions relating to notification, and**
24 **Commission consideration, of acquisitions**

25 **51ABG When acquisitions are *required to be notified***

- 26 (1) An acquisition is *required to be notified* if it is determined:
27 (a) by the regulations for the purposes of this paragraph; or
28 (b) under section 51ABH.

29 Note 1: An acquisition is only *required to be notified* if it is an acquisition to
30 which this section applies. For the acquisitions to which this section
31 applies, see Subdivision B.

32 Note 2: For determination by class, see subsection 13(3) of the *Legislation Act*
33 *2003*.

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- 1 (2) To avoid doubt, and without limiting how an acquisition may be
2 determined for the purposes of paragraph (1)(a) or (b), an
3 acquisition may be determined for the purposes of that paragraph
4 wholly or partly by reference to:
5 (a) the value of an acquisition or of a contract, arrangement or
6 understanding; or
7 (b) a party, or a class of parties, to an acquisition or to a contract,
8 arrangement or understanding; or
9 (c) an asset or a class of assets; or
10 (d) a business or class of businesses; or
11 (e) the turnover of a person, a business or part of a business; or
12 (f) a market or a class of markets; or
13 (g) another acquisition, or a class of acquisitions.

14 **51ABH When acquisitions are *required to be notified*—ministerial** 15 **determinations**

- 16 (1) The Minister may, by legislative instrument, determine an
17 acquisition for the purposes of paragraph 51ABG(1)(b).
- 18 (2) In making a determination under subsection (1) of this section, the
19 Minister may consider any reports or advice of the Commission.
- 20 Note: For consultation requirements, see section 17 of the *Legislation Act*
21 *2003*.
- 22 (3) A determination made under subsection (1) must not be expressed
23 to commence earlier than the 30th day after the instrument is
24 registered under the *Legislation Act 2003*.
- 25 (4) This subsection repeals a determination made under subsection (1)
26 on the fifth anniversary of the registration of the determination
27 under the *Legislation Act 2003*, unless the determination is
28 repealed earlier.

29 **51ABI When acquisitions are *stayed***

- 30 (1) An acquisition to which any of the following subsections applies is
31 *stayed*.
- 32 (2) This subsection applies to an acquisition that:
33 (a) is required to be notified; but
34 (b) is not a notified acquisition.

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1 Note: For when an acquisition is *required to be notified*, see section
2 51ABG.

3 (3) This subsection applies to a notified acquisition if the most recent
4 notification of the acquisition has not been finally considered.

5 Note: For when a notification has not been *finally considered*, see section
6 51ABJ.

7 (4) This subsection applies to a notified acquisition if:

- 8 (a) the most recent determination under subsection 51ABW(1) in
9 respect of a notification of the acquisition is a determination
10 that the acquisition must not be put into effect; and
11 (b) since making that determination, the Commission has not
12 made a determination under paragraph 51ABZL(1)(a) or (b)
13 in respect of the notification.

14 (5) This subsection applies to a notified acquisition if the most recent
15 notification of the acquisition is stale.

16 Note: For when a notification is *stale*, see section 51ABK.

17 **51ABJ When notifications have not been *finally considered***

18 A notification of an acquisition has not been *finally considered* if:

- 19 (a) the notification does not have an effective notification date;
20 or
21 (b) the Commission has not made a determination under
22 subsection 51ABW(1) in respect of the notification
23 (including because the Commission has decided under
24 section 51ABV to cease considering the notification); or
25 (c) all of the following subparagraphs apply:
26 (i) the Commission has made a determination under
27 paragraph 51ABW(1)(b) in respect of the notification;
28 (ii) a substantial public benefit application has been made in
29 relation to the notification;
30 (iii) the Commission has neither made a determination under
31 subsection 51ABZL(1) in respect of the application nor
32 decided to cease considering the application under
33 section 51ABZK; or
34 (d) all of the following subparagraphs apply:
35 (i) the Commission has made a determination under
36 paragraph 51ABW(1)(c) in respect of the notification;
37 (ii) a substantial public benefit application has been made in
38 relation to the notification;

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- 1 (iii) the Commission has not made a determination under
2 subsection 51ABZL(1) in respect of the application
3 (including because the Commission has decided under
4 section 51ABZK to cease considering the application);
- 5 (e) all of the following subparagraphs apply:
- 6 (i) the Commission has made an acquisition determination
7 in respect of the notification;
- 8 (ii) an application has not been made under subsection
9 100C(1) for review of the determination in
10 circumstances to which subsection 100C(2) applies;
- 11 (iii) the period during which such an application could be
12 made under subsection 100C(1) has not ended; or
- 13 (f) all of the following subparagraphs apply:
- 14 (i) the Commission has made an acquisition determination
15 in respect of the notification;
- 16 (ii) an application has been made under subsection 100C(1)
17 for review of the determination in circumstances to
18 which subsection 100C(2) applies;
- 19 (iii) the application has not been withdrawn under
20 subsection 100E(1), or the application has been
21 withdrawn but has been reinstated under subsection
22 100E(3);
- 23 (iv) the Tribunal has not dismissed the application;
- 24 (v) the Tribunal has not made a determination on the review
25 under paragraph 100M(1)(a); or
- 26 (g) all of the following subparagraphs apply:
- 27 (i) the Commission has made an acquisition determination
28 in respect of the notification;
- 29 (ii) an application has been made under subsection 100C(1)
30 for review of the determination in circumstances to
31 which subsection 100C(2) applies;
- 32 (iii) the application has been withdrawn under subsection
33 100E(1);
- 34 (iv) the period during which a participant in the proceedings
35 for review could apply to the Tribunal for reinstatement
36 of the application under subsection 100E(2) has not
37 ended.
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1 51ABK When notifications become *stale*

2 A notification of an acquisition becomes *stale* 12 months after the
3 time (if any) at which the Commission:

- 4 (a) unless paragraph (b) of this section applies—makes a
5 determination under paragraph 51ABW(1)(a) or (b) in
6 respect of the notification; or
7 (b) if the Commission makes a determination under paragraph
8 51ABZL(1)(a) or (b) in respect of a substantial public benefit
9 application that relates to the notification—makes that
10 determination.

11 51ABL When notified acquisitions are *subject* to conditions

12 Putting a notified acquisition into effect is *subject* to a condition if:

- 13 (a) both:
14 (i) the most recent determination in respect of a notification
15 of the acquisition under subsection 51ABW(1) is a
16 determination that the acquisition may be put into effect
17 subject to that condition; and
18 (ii) since making that determination, the Commission has
19 not made a determination under paragraph
20 51ABZL(1)(a) or (b) in respect of the notification; or
21 (b) both:
22 (i) the most recent determination in respect of a notification
23 of the acquisition under subsection 51ABZL(1) is a
24 determination that the acquisition would be of
25 substantial public benefit subject to that condition; and
26 (ii) since making that determination, the Commission has
27 not made a determination under subsection 51ABW(1)
28 in respect of a notification of the acquisition.

29 Subdivision D—Other definitions

30 51ABM Parties to acquisitions

- 31 (1) Each of the following is a *party* to an acquisition of shares in the
32 capital of a body corporate, or an acquisition of any assets of a
33 person:
34 (a) the person (a *principal party* to the acquisition) who acquires
35 the shares or assets;

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1 (b) without limiting paragraph (a)—a person that is a party to a
2 contract, arrangement or understanding pursuant to which the
3 acquisition takes place.

4 (2) To avoid doubt, a reference to a *party* or *principal party* to an
5 acquisition that has not been put into effect is a reference to a
6 person that would be a party or principal party to the acquisition if
7 the acquisition were put into effect.

8 **51ABN Acquisition of assets**

9 (1) The acquisitions provisions, subparagraphs 45(4A)(c)(ii) and
10 (4B)(a)(ii) and paragraph 88(8)(e) apply in relation to any of the
11 following that is not an asset in the same way as they apply in
12 relation to an asset:

- 13 (a) any kind of property;
- 14 (b) a legal or equitable right that is not property;
- 15 (c) without limiting paragraphs (a) and (b) of this subsection:
 - 16 (i) part of, or an interest in, an asset referred to in
 - 17 paragraph (a) or (b); or
 - 18 (ii) goodwill or an interest in it; or
 - 19 (iii) an interest in an asset of a partnership; or
 - 20 (iv) an interest in a partnership that is not covered by
 - 21 subparagraph (iii).

22 (2) For the purposes of the acquisitions provisions,
23 subparagraphs 45(4A)(c)(ii) and (4B)(a)(ii) and
24 paragraph 88(8)(e), the reference in paragraph 4(4)(b) to an
25 acquisition of an asset in the ordinary course of business is taken
26 not to apply if the asset is:

- 27 (a) land, or an interest in land; or
- 28 (b) a patent, or an interest in a patent.

29 **51ABO When a restriction is *directly related* to an acquisition**

30 A restriction is *directly related* to an acquisition if the restriction:

- 31 (a) is a restriction, under a contract, arrangement or
32 understanding, on:
 - 33 (i) a party to the acquisition; or
 - 34 (ii) a subsidiary of a party to the acquisition; or
 - 35 (iii) an agent of a person to whom subparagraph (i) or (ii)
 - 36 applies; and

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(b) is directly related to, and necessary for, putting the acquisition into effect.

51ABP Meaning of *business day*

For the purposes of this Part, a *business day* is a day that is not:

- (a) a Saturday; or
- (b) a Sunday; or
- (c) a public holiday in the Australian Capital Territory; or
- (d) a day occurring between 23 December and 31 December in a year.

Division 2—Notification of acquisitions

Subdivision A—Notification of acquisitions

51ABQ Notifications of acquisitions

- (1) This section applies if the Commission is notified, in accordance with subsection 51ABR(1), of a proposal to put into effect an acquisition (whether or not the acquisition is required to be notified).

Note: For the acquisitions to which this section applies, see Subdivision B of Division 1.

- (2) The acquisition is a *notified acquisition*.
- (3) The principal party that makes the notification, or each of the principal parties that jointly make the notification, is a *notifying party* of the notification.
- (4) The *effective notification date* of the notification is the day the notification is made.
- (5) The Commission must give the notifying party, or at least one of the notifying parties, written notice:
- (a) that the Commission has received the notification; and
 - (b) of the effective notification date.

51ABR Requirements for notifications

- (1) A notification of an acquisition is made in accordance with this subsection if it:

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- 1 (a) is made in writing; and
2 (b) is accompanied by the fee (if any) prescribed by the
3 regulations for the purposes of this paragraph in relation to
4 the notification; and
5 (c) is made by:
6 (i) if there is only one principal party to the acquisition—
7 the principal party; or
8 (ii) otherwise—all of the principal parties jointly.

- 9 (2) To avoid doubt, the notification is taken not to be made before the
10 fee (if any) required by paragraph (1)(b) is paid.

11 *Notifications may cover multiple acquisitions*

- 12 (3) To avoid doubt, the proposal may be a proposal to put into effect 2
13 or more related acquisitions, in which case the acquisitions
14 provisions apply in relation to a notification of the proposal as if:
15 (a) those acquisitions together constituted a single acquisition;
16 and
17 (b) each party to those acquisitions were a party to that single
18 acquisition; and
19 (c) each principal party to those acquisitions were a principal
20 party to that single acquisition.

21 *Notifications may specify related restrictions*

- 22 (4) If the acquisition is an acquisition of a share in the capital of a
23 body corporate, the notification may state that the proposal to put
24 the acquisition into effect includes a restriction that:
25 (a) is a restriction, under a contract, arrangement or
26 understanding, on:
27 (i) a party to the acquisition; or
28 (ii) a subsidiary of a party to the acquisition; or
29 (iii) an agent of a person to whom subparagraph (i) or (ii)
30 applies; and
31 (b) is related to the acquisition.

- 32 Note: Paragraph 51(2)(e) does not apply to a restriction if the restriction:
33 (a) is directly related to the acquisition; but
34 (b) not specified in the notification.

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Multiple notifying parties

- 1
- 2 (5) If there is more than one notifying party of a notification of an
- 3 acquisition:
- 4 (a) a reference in this Part (other than this Subdivision) to giving
- 5 a notice to the notifying party of the notification of the
- 6 acquisition is taken to be a reference to giving a notice to any
- 7 of those notifying parties; and
- 8 (b) a reference in this Part (other than this Subdivision) to the
- 9 notifying party of the notification of the acquisition doing a
- 10 thing (such as giving additional information or documents or
- 11 making a request or application) is taken to be a reference to
- 12 all of those notifying parties doing that thing jointly.

13 **Subdivision B—Powers of the Commission in response to**

14 **incomplete and misleading notifications and changes**

15 **of fact**

16 **51ABS Notifications that are incomplete or misleading**

- 17 (1) The Commission may determine in writing that a notification of an
- 18 acquisition should be taken not to have an effective notification
- 19 date, if:
- 20 (a) the Commission has not made a determination in respect of
- 21 the notification under subsection 51ABW(1); and
- 22 (b) the Commission reasonably considers that subsection (2) of
- 23 this section applies to the notification.
- 24 (2) This subsection applies to the notification if it:
- 25 (a) is materially incomplete; or
- 26 (b) is materially misleading; or
- 27 (c) contains information that is false in a material particular.
- 28 (3) The determination must be made within a reasonable period after
- 29 the Commission begins to consider that subsection (2) applies to
- 30 the notification.
- 31 (4) In considering whether subsection (3) applies to the notification,
- 32 the Commission may have regard to:
- 33 (a) the extent to which the notification:
- 34 (i) is made in a form determined under paragraph (5)(a) for
- 35 the purposes of this subparagraph in relation to the
- 36 notification; and

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- 1 (ii) includes, or is accompanied by, any information or
2 document determined under paragraph (5)(b) for the
3 purposes of this subparagraph in relation to the
4 notification; or
5 (b) any additional information or documents given to the
6 Commission as mentioned in section 51ABT in response to
7 any previous determination under subsection (1) of this
8 section in relation to the notification; or
9 (c) any change of fact:
10 (i) of which the Commission becomes aware after the
11 notification is made; and
12 (ii) that is material to the Commission making a
13 determination under subsection 51ABW(1) in respect of
14 the notification.
- 15 (5) The Minister may, in writing, determine:
16 (a) a form for the purposes of subparagraph (4)(a)(i) in relation
17 to the notification; or
18 (b) information or documents for the purposes of
19 subparagraph (4)(a)(ii) in relation to the notification.
- 20 (6) A determination made under subsection (5) is a legislative
21 instrument, but section 42 (disallowance) of the *Legislation Act*
22 *2003* does not apply to the instrument.

Consequences of determination

- 23
- 24 (7) If the Commission makes a determination under subsection (1) of
25 this section:
26 (a) the notification is taken never to have had an *effective*
27 *notification date*; and
28 (b) the Commission must give to the notifying party of the
29 notification of the acquisition written notice of:
30 (i) the determination; and
31 (ii) the grounds on which the Commission considers that
32 subsection (2) applies to the notification.
- 33 Note: For review of the determination, see section 51ABZV.
- 34 (8) The Commission must not make a determination under subsection
35 51ABW(1) in respect of the notification if, because of a
36 determination made under subsection (1) of this section, the
37 notification does not have an effective notification date.

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51ABT Notifications that are incomplete or misleading—providing additional information and documents

- 1
2
- 3 (1) This section applies in relation to a notification of an acquisition if:
- 4 (a) because of a determination made under subsection
- 5 51ABS(1), the notification does not have an effective
- 6 notification date; and
- 7 (b) the notifying party of the notification gives the Commission
- 8 additional information or documents in response to the
- 9 determination in accordance with subsection (2) of this
- 10 section.
- 11 (2) The additional information or documents are given in accordance
- 12 with this subsection if:
- 13 (a) in the case of information—the information is given in
- 14 writing; and
- 15 (b) the information or documents are accompanied by the fee (if
- 16 any) prescribed by the regulations for the purposes of this
- 17 paragraph in relation to the information or documents and the
- 18 notification of the acquisition.
- 19 (3) To avoid doubt, the additional information or documents are taken
- 20 not to be given before the fee (if any) required by paragraph (2)(b)
- 21 is paid.
- 22 (4) The *effective notification date* of the notification of the acquisition
- 23 is the day the additional information or documents are given.
- 24 (5) The Commission must give the notifying party written notice of the
- 25 effective notification date.

51ABU Material changes of fact

- 26
- 27 (1) This section applies in relation to a notification of an acquisition if:
- 28 (a) the Commission has not made a determination in respect of
- 29 the notification under subsection 51ABW(1); and
- 30 (b) the Commission becomes aware of a change of fact.
- 31 (2) The Commission may, in writing, determine that the *effective*
- 32 *notification date* of the notification is the date on which the
- 33 Commission becomes aware of the change of fact, if the
- 34 Commission reasonably considers that the change of fact is
- 35 material to the Commission making a determination under
- 36 subsection 51ABW(1) in respect of the notification.

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1 (3) The determination must be made within a reasonable period after
2 the Commission becomes aware of the change of fact.

3 (4) If the Commission makes a determination under subsection (1), the
4 Commission must give written notice of the determination to the
5 notifying party of the notification.

6 Note: For review of the determination, see section 51ABZV.

7 **Subdivision C—When Commission may cease considering** 8 **notifications**

9 **51ABV When Commission may cease considering notifications**

10 (1) This section applies to a notification of an acquisition if the
11 Commission has not made a determination in respect of the
12 notification under subsection 51ABW(1).

13 (2) The Commission must decide, in writing, to cease considering the
14 notification if requested to do so, in writing, by the notifying party
15 of the notification.

16 (3) The Commission may also decide to cease considering the
17 notification if the Commission reasonably believes that the parties
18 to the acquisition no longer intend to put the acquisition into effect.

19 (4) Subsections (2) and (3) do not limit each other.

20 (5) If the Commission decides under subsection (2) or (3) to cease
21 considering the notification:

22 (a) the Commission must give written notice of the decision to
23 the notifying party of the notification; and

24 (b) Subdivision B and Division 3 do not apply to the notification.

25 Note 1: An effect of the decision is that the acquisition must not be put into
26 effect (see section 45AY, subsection 51ABI(3) and paragraph
27 51ABJ(b)).

28 (6) To avoid doubt, a decision under subsection (2) or (3) of this
29 section does not have the effect that the acquisition ceases to be a
30 *notified acquisition*.

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1 **Division 3—Commission consideration of acquisitions:** 2 **substantial lessening of competition**

3 **Subdivision A—Commission consideration of acquisitions**

4 **51ABW Commission consideration of acquisitions**

- 5 (1) If the Commission is notified of a proposal to put an acquisition
6 into effect in accordance with subsection 51ABR(1), the
7 Commission may, in writing, determine:
8 (a) that the acquisition may be put into effect; or
9 (b) that the acquisition may be put into effect subject to specified
10 conditions; or
11 (c) that the acquisition must not be put into effect.

12 **Example:** A condition that a specified person must give an undertaking to the
13 Commission for the purposes of section 87B and comply with the
14 undertaking.

- 15 (2) The Commission must not determine under paragraph (1)(b) that
16 the acquisition may be put into effect subject to conditions unless
17 the Commission reasonably believes that:
18 (a) there is a real, and not merely a remote, possibility that the
19 acquisition, if put into effect, would have the effect, or would
20 be likely to have the effect, of substantially lessening
21 competition in a market; and
22 (b) the conditions would comprehensively address that
23 possibility, including by addressing the adverse effects of
24 such a substantial lessening of competition.
- 25 (3) The Commission must not determine under paragraph (1)(c) that
26 the acquisition must not be put into effect unless:
27 (a) the notification is subject to phase 2 review; and
28 (b) the Commission has given a notice of competition concerns
29 in relation to the notification in accordance with section
30 51ABZE; and
31 (c) the Commission reasonably believes that the acquisition, if
32 put into effect, would have the effect, or be likely to have the
33 effect, of substantially lessening competition in any market.
- 34 (4) The Commission must give written notice of the determination
35 under subsection (1) to the notifying party of the notification of the
36 acquisition.

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1 Note 1: If the Commission determines that the acquisition must not be put into
2 effect or may be put into effect subject to conditions, the notifying
3 party may apply to the Commission under Division 4 for a
4 determination that the acquisition would be of substantial public
5 benefit.

6 Note 2: An interested person may apply to the Tribunal under Division 1B of
7 Part IX for review of a determination made under subsection (1).

8 **51ABX Relevant matters**

- 9 (1) This section sets out matters to which the Commission must or
10 may have regard in making a determination under subsection
11 51ABW(1) in respect of a notification of an acquisition.
- 12 (2) The Commission must have regard to:
13 (a) the object of this Act; and
14 (b) all relevant matters, including the interests of consumers.
- 15 (3) Without limiting subsection (2), the Commission may have regard
16 to the following matters:
17 (a) the need to maintain and develop effective competition in
18 markets;
19 (b) the effect of the acquisition on conditions for competition;
20 (c) the following matters relating to the parties to the acquisition:
21 (i) their market positions;
22 (ii) their economic and financial power;
23 (iii) their commercial relationships;
24 (d) the following matters relating to any market that could be
25 affected by the acquisition:
26 (i) the alternatives, to goods or services offered by the
27 parties to the acquisition, that are available to suppliers,
28 consumers and users of goods and services;
29 (ii) the access, of suppliers, users or consumers of goods or
30 services, to supplies, inputs (including data) or markets;
31 (iii) barriers to entry;
32 (iv) supply and demand trends for goods and services;
33 (e) technical innovations, economic developments and
34 productivity gains that could result from the acquisition,
35 including:
36 (i) the extent to which they would be to the advantage of
37 consumers; and

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-
- 1 (ii) the extent to which they would result in, or increase,
2 obstacles to competition.
- 3 (4) Without limiting paragraph (3)(a), a reference in that paragraph to
4 a need includes a reference to a need that results from any of the
5 following:
- 6 (a) the structure of the markets that could be affected by the
7 acquisition;
- 8 (b) actual or potential competition from persons carrying on
9 business in Australia, whether the persons are located in
10 Australia or elsewhere.
- 11 (5) Without limiting subsection (2), the Commission may have regard
12 to:
- 13 (a) the contract, arrangement or understanding, or proposed
14 contract etc., pursuant to which the acquisition is to take
15 place; and
- 16 (b) any restriction under a contract, arrangement or
17 understanding that is directly related to, and necessary for,
18 putting the acquisition into effect.

19 *Matters relating to conditions*

- 20 (6) Without limiting subsection (2), in making a determination under
21 paragraph 51ABW(1)(b) specifying conditions, the Commission
22 may have regard to:
- 23 (a) the effect on the interests of consumers that compliance with
24 the conditions would have, or be likely to have; or
- 25 (b) without limiting paragraph (a) of this subsection—any
26 consumer benefits that would result, or be likely to result
27 from compliance with the conditions.

28 **51ABY Commitments and undertakings**

- 29 In making a determination under subsection 51ABW(1) in respect
30 of a notification of an acquisition, the Commission must not have
31 regard to a commitment or undertaking offered by a party to the
32 acquisition:
- 33 (a) if paragraph (b) of this section does not apply—unless:
- 34 (i) the commitment or undertaking is offered no later than
35 20 business days after the effective notification date of
36 the notification; or

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- 1 (ii) subsection 51ABZT(3) applies to the commitment or
2 undertaking in relation to the phase 1 determination
3 period; or
4 (b) if the notification is subject to phase 2 review—unless:
5 (i) the commitment or undertaking is offered no later than
6 the 50th business day occurring on or after the start of
7 the phase 2 determination period; or
8 (ii) subsection 51ABZT(3) applies to the commitment or
9 undertaking in relation to the phase 2 determination
10 period.

11 **51ABZ Cumulative effect of acquisitions**

- 12 (1) For the purposes of making a determination under subsection
13 51ABW(1) in respect of a notification of an acquisition (the
14 ***current acquisition***), the current acquisition is taken to have the
15 effect, or be likely to have the effect, of substantially lessening
16 competition in any market if, were the current acquisition put into
17 effect, the combined effect of:
18 (a) the current acquisition; and
19 (b) any acquisitions of shares in the capital of a body corporate,
20 or acquisitions of any assets of a person:
21 (i) that are put into effect during the 3 years ending on the
22 effective notification date of the notification of the
23 current acquisition; and
24 (ii) the parties to which include any party to the current
25 acquisition or, if a party to the current acquisition is a
26 body corporate, include a body corporate that is related
27 to that party; and
28 (iii) that involve the same industry as the current acquisition;
29 would be, or would be likely to be, to substantially lessen
30 competition in any market.
31 (2) Subsection (1) does not limit the circumstances in which the
32 current acquisition would, if put in effect, have the effect, or be
33 likely to have the effect, of substantially lessening competition.

34 **51ABZA Related restrictions**

- 35 (1) If a notification of an acquisition of shares in the capital of a body
36 corporate specifies a restriction as mentioned in subsection
37 51ABR(4):

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- 1 (a) a reference in this Division to the effect of the acquisition is
2 taken to include a reference to the combined effect of the
3 acquisition and the restriction; and
4 (b) a determination under subsection 51ABW(1) in respect of the
5 notification may include a declaration that paragraph 51(2)(e)
6 does not apply to the restriction.

- 7 (2) The Commission must not include a declaration under
8 paragraph (1)(b) of this section in relation to the restriction unless
9 the Commission reasonably believes that the restriction:
10 (a) is not directly related to the acquisition; or
11 (b) is not solely for the protection of a principal party to the
12 acquisition in respect of the goodwill of a business:
13 (i) acquired as part of the acquisition; or
14 (ii) carried on by the body corporate; or
15 (c) is not necessary for the protection of a principal party in that
16 respect.

17 Note: For when the restriction is *directly related* to the acquisition, see
18 section 51ABO.

19 **Subdivision B—Process for considering acquisitions**

20 **51ABZB Time for making determinations**

21 *Earliest time for making determinations*

- 22 (1) The Commission must not make a determination under subsection
23 51ABW(1) in respect of a notification of an acquisition earlier than
24 15 business days after the effective notification date of the
25 notification.

26 *Commission deemed to make determination at end of* 27 *determination period*

- 28 (2) The Commission is taken to determine under paragraph
29 51ABW(1)(a), at the end of the determination period for a
30 notification of an acquisition, that the acquisition may be put into
31 effect, unless the Commission makes a determination under
32 subsection 51ABW(1) in respect of the notification before the end
33 of that period.

- 34 (3) The *determination period* for a notification of an acquisition is:

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- 1 (a) unless paragraph (b) applies—the phase 1 determination
2 period for the notification; or
3 (b) if the notification is subject to phase 2 review—the phase 2
4 determination period for the notification.
- 5 (4) Subsection (5) applies if:
6 (a) the Commission purports to make a determination in respect
7 of a notification of an acquisition under subsection
8 51ABW(1) before the end of the determination period; and
9 (b) the determination is invalid, or a court or the Tribunal:
10 (i) sets the determination aside; or
11 (ii) remits the decision to make the determination back to
12 the Commission to be remade.
- 13 (5) A reference in subsection (2) of this section to making a
14 determination before the end of the determination period includes a
15 reference to purportedly making a determination as mentioned in
16 paragraph (4)(a).
- 17 Note: The effect of subsection (5) is that the invalidity etc. does not result in
18 the Commission being taken to have made a determination under
19 subsection (2) at the end of the determination period.

20 **51ABZC Meaning of *phase 1 determination period***

21 The *phase 1 determination period* for a notification of an
22 acquisition that has an effective notification date:

- 23 (a) starts on the effective notification date; and
24 (b) subject to section 51ABZT (extensions of determination
25 periods), ends 30 business days after it starts.

26 **51ABZD Phase 2 review—when notifications are *subject to phase 2*** 27 ***review***

- 28 (1) During the phase 1 determination period for a notification of an
29 acquisition, the Commission may, in writing, decide that the
30 notification is to be subject to phase 2 review, if:
31 (a) the Commission reasonably suspects that the acquisition to
32 which the notification relates would, if put into effect, have
33 the effect, or be likely to have the effect, of substantially
34 lessening competition in any market; and
35 (b) the Commission does not, before the end of the phase 1
36 determination period, make a determination in respect of the
37 notification under paragraph 51ABW(1)(a) or (b).
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1 Note: Deciding that the notification is to be subject to phase 2 review
2 extends the time the Commission has to make a determination in
3 respect of the notification under subsection 51ABW(1): see sections
4 51ABZB and 51ABZF.

- 5 (2) If the Commission decides that the notification is to be subject to
6 phase 2 review:
- 7 (a) the notification is *subject to phase 2 review*; and
 - 8 (b) the Commission must give to the notifying party of the
9 notification written notice of:
 - 10 (i) the decision; and
 - 11 (ii) the day by which, under paragraph (d), the fee (if any)
12 mentioned in paragraph (c) must be paid; and
 - 13 (c) the Commission must not make a determination in respect of
14 the notification of the acquisition under subsection
15 51ABW(1) if the fee (if any) prescribed by the regulations
16 for the purposes of this paragraph in relation to the
17 notification has not been paid; and
 - 18 (d) if the fee (if any) mentioned in paragraph (c) is not paid on or
19 before the day prescribed by the regulations for the purposes
20 of this paragraph in relation to the notification—the
21 Commission is taken to decide under subsection 51ABV(2)
22 on that day to cease considering the notification (if the
23 Commission has not already made a decision under section
24 51ABV to cease considering the notification).

25 **51ABZE Phase 2 review—notice of competition concerns**

26 *Notice of competition concerns*

- 27 (1) If a notification of an acquisition is subject to phase 2 review, the
28 Commission may, in accordance with subsection (2) of this
29 section, give the notifying party of the notification a written notice
30 (a *notice of competition concerns*) that sets out:
- 31 (a) the Commission’s preliminary assessment of whether the
32 acquisition, if put into effect, would have the effect, or be
33 likely to have the effect, of substantially lessening
34 competition in any market; and
 - 35 (b) the grounds on which the Commission makes that
36 assessment, including the relevant material facts and the
37 material information and material evidence the Commission
38 relies on in making the assessment.
- 39 (2) The notice of competition concerns must be given:
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- 1 (a) no later than the 25th business day after the start of the phase
2 determination period for the notification of the acquisition;
3 or
4 (b) if it is not practicable to give the notice of competition
5 concerns by that day—as soon as practicable after that 25th
6 business day.

7 *Submissions*

- 8 (3) If the Commission gives the notifying party a notice of competition
9 concerns in relation to the notification, the Commission:
10 (a) must give the notifying party a reasonable opportunity to
11 make, during the period:
12 (i) starting on the day on which the Commission gives the
13 notice of competition concerns; and
14 (ii) ending on the 15th business day after that day;
15 oral or written submissions to the Commission in relation to
16 the matters set out in the notice of competition concerns; and
17 (b) subject to subsection (4) of this section, in making a
18 determination under subsection 51ABW(1) in respect of the
19 notification of the acquisition, must not take into account
20 submissions received, as mentioned in paragraph (a) of this
21 subsection, after that period.
- 22 (4) For the purposes of subsection (3):
23 (a) the notifying party may, in writing, before the end of the
24 period during which the notifying party may make
25 submissions to the Commission in relation to the notice of
26 competition concerns, request the Commission to extend the
27 period; and
28 (b) if the notifying party does so—the Commission may, by
29 written notice given to the notifying party, extend the period.
- 30 (5) To avoid doubt, the period may be extended more than once.

31 *Determinations that acquisition may be put into effect*

- 32 (6) This section does not limit the Commission's ability to make a
33 determination in respect of the notification of the determination
34 under paragraph 51ABW(1)(a) at any time occurring before the
35 end of the determination period for the notification.

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1 **51ABZF** *Meaning of phase 2 determination period*

2 If a notification of an acquisition is subject to phase 2 review, the
3 *phase 2 determination period* for the notification:

- 4 (a) starts immediately after the end of the phase 1 determination
5 period for the notification; and
6 (b) subject to subsections (2) and (3) of this section and section
7 51ABZT (extensions of determination periods), ends 90
8 business days after it starts.
- 9 (2) If the Commission does not give the notice of competition
10 concerns in relation to the notification of the application under
11 subsection 51ABZE(1) before the end of the 25th business day
12 after the start of the phase 2 determination period, the phase 2
13 determination period is extended by the number of days:
14 (a) occurring after that 25th business day; and
15 (b) on which the Commission has not given the notice of
16 competition concerns.
- 17 (3) If, under paragraph 51ABZE(4)(b), the Commission extends the
18 period for making submissions in relation to the notice of
19 competition concerns, the phase 2 determination period is extended
20 by the same number of days.

21 **Division 4—Commission consideration of acquisitions:** 22 **substantial public benefit**

23 **Subdivision A—Substantial public benefit applications**

24 **51ABZG** *Substantial public benefit applications*

- 25 (1) The notifying party of a notification of an acquisition may apply to
26 the Commission for a determination that the acquisition would be
27 of substantial public benefit, if the Commission has made a
28 determination under paragraph 51ABW(1)(b) or (c) in respect of
29 the notification.
- 30 (2) The application must be:
31 (a) made no later than 21 days after the Commission makes the
32 determination; and
33 (b) made in writing; and

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- 1 (c) made in the form determined under paragraph (3)(a) of this
2 section for the purposes of this paragraph in relation to the
3 application; and
- 4 (d) include, or be accompanied by, any information or document
5 determined under paragraph (3)(b) for the purposes of this
6 paragraph in relation to the application; and
- 7 (e) accompanied by the fee (if any) prescribed by the regulations
8 for the purposes of this paragraph in relation to the
9 application.
- 10 (3) The Minister may, in writing, determine:
- 11 (a) a form for the purposes of paragraph (2)(c) in relation to the
12 notification; or
- 13 (b) information or documents for the purposes of
14 paragraph (2)(d) in relation to the notification.
- 15 (4) A determination made under subsection (3) is a legislative
16 instrument, but section 42 (disallowance) of the *Legislation Act*
17 *2003* does not apply to the instrument.
- 18 (5) To avoid doubt, the application is taken not to be made before the
19 fee (if any) required by paragraph (2)(e) of this section is paid.
- 20 (6) The application is a *substantial public benefit application* in
21 relation to the notification.
- 22 (7) The *effective application date* of the application is the day the
23 application is made.
- 24 (8) The Commission must give the notifying party written notice:
- 25 (a) that the Commission has received the application; and
26 (b) of the effective application date.

27 **Subdivision B—Powers of the Commission in response to**
28 **incomplete or misleading substantial public benefit**
29 **applications and changes of fact**

30 **51ABZH Substantial public benefit applications that are incomplete**
31 **or misleading**

- 32 (1) The Commission may determine in writing that a substantial public
33 benefit application in relation to a notification of an acquisition
34 should be taken not to have an effective application date, if:

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- 1 (a) the Commission has not made a determination in respect of
2 the application under subsection 51ABZL(1); and
3 (b) the Commission reasonably considers that subsection (2) of
4 this section applies to the application.
- 5 (2) This subsection applies to the application if it:
6 (a) is materially incomplete; or
7 (b) is materially misleading; or
8 (c) contains information that is false in a material particular.
- 9 (3) The determination must be made within a reasonable period after
10 the Commission begins to consider that subsection (2) applies to
11 the application.
- 12 (4) In considering whether subsection (2) applies to the substantial
13 public benefit application, the Commission may have regard to:
14 (a) the extent to which the application includes, or is
15 accompanied by, any information or documents determined
16 under subsection (5) for the purposes of this paragraph in
17 relation to the application; and
18 (b) any additional information or documents given to the
19 Commission as mentioned in section 51ABZI in response to
20 any previous determination under subsection (1) of this
21 section in relation to the application; and
22 (c) any change of fact:
23 (i) of which the Commission becomes aware after the
24 notification is made; and
25 (ii) that is material to the Commission making a
26 determination under subsection 51ABZL(1) in respect
27 of the application.
- 28 (5) The Minister may, in writing, determine information or documents
29 for the purposes of paragraph (4)(a) of this section in relation to the
30 substantial public benefit application.
- 31 (6) A determination made under subsection (5) is a legislative
32 instrument, but section 42 (disallowance) of the *Legislation Act*
33 *2003* does not apply to the instrument.
- 34 *Consequences of determination*
- 35 (7) If the Commission makes a determination under subsection (1) of
36 this section:
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- 1 (a) the application is taken never to have had an *effective*
2 *application date*; and
3 (b) the Commission must give to the notifying party of the
4 notification of the acquisition written notice:
5 (i) of the determination; and
6 (ii) the grounds on which the Commission considers that
7 subsection (2) applies to the application.

8 Note: For review of the determination, see section 51ABZV.

- 9 (8) The Commission must not make a determination under subsection
10 51ABZL(1) in respect of the application if, because of a
11 determination made under subsection (1) of this section, the
12 application does not have an effective application date.

13 **51ABZI Substantial public benefit applications that are incomplete** 14 **or misleading—providing additional information and** 15 **documents**

- 16 (1) This section applies in relation to a substantial public benefit
17 application in relation to a notification of an acquisition if:
18 (a) because of a determination made under subsection
19 51ABZH(1), the application does not have an effective
20 application date; and
21 (b) the notifying party of the notification gives the Commission
22 additional information or documents in response to the
23 determination in accordance with subsection (2) of this
24 section.
- 25 (2) The additional information or documents are given in accordance
26 with this subsection if:
27 (a) in the case of information—the information is given in
28 writing; and
29 (b) the information or documents are accompanied by the fee (if
30 any) prescribed by the regulations for the purposes of this
31 paragraph in relation to the information or documents and the
32 application.
- 33 (3) To avoid doubt, the additional information or documents are taken
34 not to be given before the fee (if any) required by paragraph (2)(b)
35 is paid.

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- 1 (4) The *effective application date* of the substantial public benefit
2 application is the day the additional information or documents are
3 given.
- 4 (5) The Commission must give the notifying party written notice of the
5 effective application date.

6 **51ABZJ Material changes of fact**

- 7 (1) This section applies in relation to a substantial public benefit
8 application in respect of a notification of an acquisition if:
9 (a) the Commission has not made a determination in respect of
10 the application under subsection 51ABZL(1); and
11 (b) the Commission becomes aware of a change of fact.
- 12 (2) The Commission may, in writing, determine that the *effective*
13 *application date* of the application is the date on which the
14 Commission becomes aware of the change of fact, if the
15 Commission reasonably considers the change to be material to the
16 Commission making a determination under subsection 51ABZL(1)
17 in respect of the application.
- 18 (3) The determination must be made within a reasonable period after
19 the Commission becomes aware of the change of fact.
- 20 (4) If the Commission makes a determination under subsection (2), the
21 Commission must give written notice of the determination to the
22 notifying party of the notification.

23 Note: For review of the determination, see section 51ABZV.

24 **Subdivision C—When Commission may cease considering** 25 **substantial public benefit applications**

26 **51ABZK When Commission may cease considering substantial** 27 **public benefit applications**

- 28 (1) This section applies to a substantial public benefit application in
29 relation to a notification of an acquisition if the Commission has
30 not made a determination in respect of the application under
31 subsection 51ABZL(1).
- 32 (2) The Commission must decide, in writing, to cease considering the
33 application if requested to do so, in writing, by the notifying party
34 of the notification.

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- 1 (3) The Commission may also decide, in writing, to cease considering
2 the application if the Commission reasonably believes that the
3 parties to the acquisition no longer intend to put the acquisition
4 into effect.
- 5 (4) Subsections (2) and (3) do not limit each other.
- 6 (5) If the Commission decides under subsection (2) or (3) to cease
7 considering the application:
- 8 (a) the Commission must give written notice of its decision to
9 the notifying party of the notification; and
- 10 (b) Subdivisions B and D do not apply to the application.
- 11 Note 1: An effect of making the decision is that the acquisition might not be
12 able to be put into effect (see section 45AY, subsection 51ABI(3) and
13 paragraphs 51ABJ(c) and (d)).
- 14 Note 2: For review of a decision under subsection (3) of this section, see
15 section 51ABZV.

16 **Subdivision D—Commission consideration of substantial public** 17 **benefit applications**

18 **51ABZL Determinations on substantial public benefit applications**

- 19 (1) If a substantial public benefit application in relation to a
20 notification of an acquisition is made, the Commission may, in
21 writing, determine:
- 22 (a) that the acquisition would be of substantial public benefit; or
23 (b) that the acquisition would be of substantial public benefit if
24 specified conditions were complied with; or
25 (c) not to make the determination applied for.
- 26 Example: A condition that a specified person must give an undertaking to the
27 Commission for the purposes of section 87B and comply with the
28 undertaking.
- 29 (2) The Commission must not make a determination under
30 paragraph (1)(a) unless the Commission is satisfied on reasonable
31 grounds that, were the acquisition put into effect:
- 32 (a) the acquisition would result, or be likely to result, in a benefit
33 to the public; and
34 (b) the benefit would substantially outweigh any detriment to the
35 public that would result, or be likely to result, from the
36 acquisition.

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- 1 (3) The Commission must not make a determination under
2 paragraph (1)(b) unless the Commission is satisfied on reasonable
3 grounds that, were:
4 (a) the acquisition put into effect; and
5 (b) the specified conditions complied with;
6 both:
7 (c) the acquisition would result, or be likely to result, in a benefit
8 to the public; and
9 (d) the benefit would substantially outweigh any detriment to the
10 public that would result, or be likely to result, from the
11 acquisition.
- 12 (4) The Commission must give written notice of the determination
13 made under subsection (1) to the notifying party of the notification.
- 14 Note: An interested person may apply to the Tribunal under Division 1B of
15 Part IX for review of the determination.

16 **51ABZM Relevant matters**

- 17 (1) This section sets out matters to which the Commission must or
18 may have regard in making a determination under subsection
19 51ABZL(1) in respect of a substantial public benefit application in
20 relation to a notification of an acquisition.
- 21 (2) The Commission must have regard to:
22 (a) the object of this Act; and
23 (b) all relevant matters, including the interests of consumers.
- 24 (3) Without limiting subsection (2), the Commission may have regard
25 to:
26 (a) the contract, arrangement, understanding, or proposed
27 contract etc., pursuant to which the acquisition is to take
28 place; and
29 (b) any restriction under a contract, arrangement or
30 understanding that:
31 (i) is directly related to, and necessary for, putting the
32 acquisition into effect;
33 (ii) is not declared, under paragraph 51ABZA(1)(b), by the
34 determination made in respect of the notification under
35 subsection 51ABW(1), to be a restriction to which
36 paragraph 51(2)(e) does not apply.

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Matters relating to conditions

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- 2 (4) Without limiting subsection (2), in making a determination under
3 paragraph 51ABZL(1)(b) specifying conditions, the Commission
4 may have regard to:
- 5 (a) the effect on the interests of consumers that compliance with
6 the conditions would have, or be likely to have; or
- 7 (b) without limiting paragraph (a) of this subsection—any
8 consumer benefits that would result, or be likely to result
9 from compliance with the conditions.

10 **51ABZN Commitments and undertakings**

11 In making a determination under subsection 51ABZL(1) in respect
12 of a substantial public benefit application in relation to a
13 notification of an acquisition, the Commission must not have
14 regard to a commitment or undertaking offered by a party to the
15 acquisition unless subsection 51ABZT(3) applies to the
16 commitment or undertaking in relation to the determination period
17 for the substantial public benefit application.

18 **51ABZO Related restrictions**

19 If a notification of an acquisition of shares in the capital of a body
20 corporate specifies a restriction as mentioned in subsection
21 51ABR(4), a reference in this Subdivision or Subdivision E to
22 something that results from the acquisition is taken to include a
23 reference to something that results from the restriction.

24 **Subdivision E—Process for considering substantial public
25 benefit applications**

26 **51ABZP Time for making determinations in respect of substantial
27 public benefit applications**

28 *Earliest time for making determinations*

- 29 (1) The Commission must not make a determination under subsection
30 51ABZL(1) in respect of a substantial public benefit application
31 earlier than 15 business days after the effective application date of
32 the application.

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1 *Commission deemed to make determination at end of*
2 *determination period*

3 (2) The Commission is taken to determine under paragraph
4 51ABZL(1)(c), at the end of the determination period for a
5 substantial public benefit application, not to make the
6 determination applied for, unless the Commission makes a
7 determination in respect of the application under subsection
8 51ABZL(1) before the end of that period.

9 (3) Subsection (4) of this section applies if:

10 (a) the Commission purports to make a determination in respect
11 of a substantial public benefit application under subsection
12 51ABZL(1) before the end of the determination period; and

13 (b) the determination is invalid, or a court or the Tribunal:

14 (i) sets the determination aside; or

15 (ii) remits the decision to make the determination back to
16 the Commission to be remade.

17 (4) A reference in subsection (2) of this section to making a
18 determination before the end of the determination period includes a
19 reference to purportedly making the determination as mentioned in
20 paragraph (3)(a).

21 Note: The effect of subsection (4) is that the invalidity etc. does not result in
22 the Commission being taken to have made a determination under
23 subsection (2) at the end of the determination period.

24 **51ABZQ Substantial public benefit assessments**

25 *Substantial public benefit assessments*

26 (1) If a substantial public benefit application in relation to a
27 notification of an acquisition has an effective application date, the
28 Commission must, in accordance with subsection (2), give the
29 notifying party of the notification of the acquisition a written notice
30 (a *substantial public benefit assessment*) that sets out:

31 (a) the Commission's preliminary assessment of the benefits and
32 detriments to the public that the Commission has identified
33 could result, or be likely to result, from the acquisition,
34 including an assessment of the significance of those benefits
35 and detriments; and

36 (b) the grounds on which the Commission makes that
37 assessment, including the relevant material facts and the

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1 material information and material evidence the Commission
2 relies on in making the assessment.

3 (2) The Commission must give the substantial public benefit
4 assessment:

5 (a) no later than the 20th business day after the effective
6 application date of the application; or

7 (b) if it is not practicable to give the substantial public benefit
8 assessment by that day—as soon as practicable after that 20th
9 business day.

10 *Submissions*

11 (3) The Commission:

12 (a) must give the notifying party a reasonable opportunity to
13 make, during the period:

14 (i) starting on the day the Commission gives the substantial
15 public benefit assessment; and

16 (ii) ending on the 15th business day after that day;

17 oral or written submissions to the Commission in relation to
18 the matters set out in the substantial public benefit
19 assessment; and

20 (b) subject to subsection (4) of this section, in making a
21 determination under subsection 51ABZL(1) in respect of the
22 application, must not take into account submissions received,
23 as mentioned in paragraph (a) of this subsection, after that
24 period.

25 (4) For the purposes of subsection (3):

26 (a) the notifying party may, in writing, before the end of the
27 period during which the notifying party may make
28 submissions to the Commission in relation to the substantial
29 public benefit assessment, request the Commission to extend
30 the period; and

31 (b) if the notifying party does so—the Commission may, by
32 written notice given to the notifying party, extend the period.

33 (5) To avoid doubt, the period may be extended more than once.

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1 **51ABZR Meaning of *determination period***

- 2 (1) If a substantial public benefit application in relation to a
3 notification of an acquisition has an effective application date, the
4 ***determination period*** for the application:
- 5 (a) starts on the effective application date; and
6 (b) subject to subsections (2) and (3) of this section and section
7 51ABZT (extensions of determination periods), ends 50
8 business days after it starts.
- 9 (2) If the Commission does not give the substantial public benefit
10 assessment in relation to the application under subsection
11 51ABZQ(1) before the end of the 20th business day after the start
12 of the determination period, the determination period is extended
13 by the number of days:
- 14 (a) occurring after that 20th business day; and
15 (b) on which the Commission has not given the substantial
16 public benefit assessment.
- 17 (3) If, under paragraph 51ABZQ(4)(b), the Commission extends the
18 period for making submissions in relation to the substantial public
19 benefit assessment, the determination period is extended by the
20 same number of days.

21 **Division 5—Miscellaneous**

22 **Subdivision A—Miscellaneous matters relating to Commission** 23 **consideration of notifications**

24 **51ABZS Information gathering**

- 25 (1) This section applies in relation to the Commission making an
26 acquisition determination in respect of a notification of an
27 acquisition.
- 28 (2) Before making the acquisition determination, the Commission may
29 do any of the following:
- 30 (a) give any persons who appear to the Commission to be
31 interested a written notice inviting written submissions, to be
32 made to the Commission within a specified period, in respect
33 of the proposal to put the acquisition into effect;
- 34 (b) give any party to the acquisition a written notice requesting
35 the party to give the Commission (orally or in writing),

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- 1 within a specified period, additional information relevant to
2 making the determination;
- 3 (c) give a person a written notice requesting the person to give
4 the Commission (orally or in writing), within a specified
5 period, particular information relevant to making the
6 determination;
- 7 (d) consult with such persons as the Commission considers
8 reasonable and appropriate for the purposes of making the
9 determination.
- 10 (3) In making the acquisition determination, the Commission:
- 11 (a) must take into account any submissions or information
12 received under paragraph (2)(a), (b) or (c) within the period
13 specified in the notice mentioned in that paragraph; and
- 14 (b) subject to subsection (4) may, but need not, take into account
15 any submissions or information received after the end of
16 those periods; and
- 17 (c) subject to subsection (4), must take into any information
18 obtained from consultations under paragraph (2)(d).
- 19 (4) The Commission must not take into account submissions or
20 information received or obtained later than 10 business days before
21 the end of:
- 22 (a) if the determination is made under subsection 51ABW(1) and
23 the notification is subject to phase 2 review—the phase 2
24 determination period for the notification; or
- 25 (b) if the determination is made under subsection 51ABZL(1) in
26 respect of a substantial public benefit application—the
27 determination period in relation to the application.
- 28 Note: This subsection does not apply during the phase 1 determination
29 period.
- 30 (5) Subsections (3) and (4) of this section do not limit:
- 31 (a) subsections 51ABZE(3) to (5) (submissions in response to
32 notice of competition concerns); or
- 33 (b) subsections 51ABZQ(3) to (5) (submissions in response to
34 substantial public benefit assessment).

51ABZT Extensions of determination periods

- 35
- 36 (1) For the purposes of making an acquisition determination in respect
37 of a notification of an acquisition, this section applies to any of the
38 following periods (the *determination period*):
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- (a) if the determination is a determination under subsection 51ABW(1):
 - (i) the phase 1 determination period for the notification; or
 - (ii) the phase 2 determination period for the notification;
 - (b) if the determination is a determination under subsection 51ABZL(1)—the determination period for a substantial public benefit application in respect of the notification.
- (2) The Commission may, during the determination period, give the notifying party of the notification of the acquisition a written notice extending the determination period for a specified period, if any of the following paragraphs apply:
- (a) all of the following subparagraphs apply:
 - (i) a party to the acquisition offers, in writing, to make a commitment or undertaking (including giving an undertaking for the purposes of section 87B) in connection with the making of the acquisition determination;
 - (ii) subsection (3) of this section applies to the commitment or undertaking;
 - (iii) the extension is of no more than 15 business days;
 - (b) all of the following subparagraphs apply:
 - (i) the Commission, before the end of the determination period, requests the notifying party, in writing, to give to the Commission, by a specified day, additional information relevant to making the acquisition determination;
 - (ii) the notifying party does not give the additional information to the Commission by the specified day;
 - (iii) the extension is of no more than the number of days occurring after the specified day on which the notifying party has not given the additional information to the Commission;
 - (c) both:
 - (i) before the end of the determination period, a party to the acquisition is served a notice under subsection 155(1) requiring the party to furnish information, produce documents or appear before the Commission relating to the making of the acquisition determination; and
 - (ii) the extension is of the number of days in the period commencing on the day on which the notice is served and ending on the day on which the party furnishes the
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- 1 information, produces the documents or appears before
2 the Commission;
- 3 (d) both:
- 4 (i) before the end of the determination period, the notifying
5 party requests the Commission, in writing, to extend the
6 period by a specified number of days; and
7 (ii) the extension is of no more than that number of days.
- 8 (3) This subsection applies to a commitment or undertaking that is
9 offered during the following period:
- 10 (a) if subparagraph (1)(a)(i) applies—the period:
- 11 (i) starting at the start of the determination period; and
12 (ii) ending 20 business days after it starts;
- 13 (b) if subparagraph (1)(a)(ii) applies—the period:
- 14 (i) starting on the 40th business day occurring on or after
15 the start of the determination period; and
16 (ii) ending on the 50th business day occurring on or after
17 the start of the determination period;
- 18 (c) if paragraph (1)(b) applies—the period:
- 19 (i) starting at the start of the determination period; and
20 (ii) ending 35 business days after it starts.
- 21 (4) However, if the determination period is extended under
22 paragraph (2)(b), (c) or (d) by a number of days, subsection (3)
23 applies, in relation to a commitment or undertaking offered after
24 that extension, as if the period mentioned in subsection (3) were
25 extended by the same number of days.

26 **51ABZU Consequences of setting aside etc. acquisition** 27 **determinations**

- 28 (1) This section applies if:
- 29 (a) a court or the Tribunal sets aside:
- 30 (i) a determination in respect of a notification of an
31 acquisition made under subsection 51ABW(1); or
32 (ii) a determination in respect of a substantial public benefit
33 application made under subsection 51ABZL(1); or
34 (b) a court remits a decision to make such a determination back
35 to the Commission to be made again.
- 36 (2) Division 3 or 4 applies in relation to the notification or application
37 with the following modifications:
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EXPOSURE DRAFT

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- 1 (a) paragraphs 51ABW(3)(a) and (b) and sections 51ABZD and
2 51ABZE do not apply;
3 (b) the phase 1 determination period for the notification, or the
4 determination period for the application, is taken to start on
5 the day the court or the Tribunal sets aside the determination
6 or remits the decision as mentioned in subsection (1) of this
7 section.

8 **51ABZV Internal review of decisions**

- 9 (1) This section applies to any of the following decisions (a *reviewable*
10 *decision*):
11 (a) a determination under subsection 51ABS(1) or 51ABU(2) in
12 respect of a notification of an acquisition;
13 (b) a decision under subsection 51ABV(3) in respect of a
14 notification of an acquisition;
15 (c) a determination under subsection 51ABZH(1) or 51ABZJ(2)
16 in respect of a substantial public benefit application in
17 relation to a notification of an acquisition;
18 (d) a decision under subsection 51ABZK(3) in respect of a
19 substantial public benefit application in relation to a
20 notification of an acquisition.

21 *Applications for internal review*

- 22 (2) The notifying party of the notification may apply in writing to the
23 Commission for review (an *internal review*) of the reviewable
24 decision, if the decision was made by a delegate of the
25 Commission.
26 (3) An application for an internal review must be made within 28 days
27 after the day on which the decision was made.

28 *Reconsideration by Commission*

- 29 (4) Within 90 days after receiving an application under subsection (3)
30 for internal review, the Commission must:
31 (a) review the decision; and
32 (b) affirm, vary or revoke the decision; and
33 (c) if the Commission revokes the decision—make such other
34 decision (if any) that the Commission thinks appropriate.

EXPOSURE DRAFT

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- 1 (5) The Commission must, as soon as practicable after making a
2 decision under subsection (4), give the notifying party a written
3 statement of the Commission's reasons for the decision.
- 4 (6) If the Commission's functions under subsections (4) and (5) are
5 performed by a delegate of the Commission, the delegate who
6 makes the decision under subsection (4):
- 7 (a) must not have been involved in making the original
8 reviewable decision; and
- 9 (b) must hold a position or perform duties of a higher level than
10 the delegate who made the original reviewable decision.

11 *Review by the Tribunal*

- 12 (7) The notifying party may apply under Division 1A of Part IX to the
13 Tribunal for review of the following decisions relating to the
14 notification of the acquisition:
- 15 (a) a reviewable decision made by the Commission itself;
- 16 (b) an internal review decision made under subsection (4).

17 **51ABZW Consequences of setting aside etc. determinations about** 18 **effective notification and application dates**

- 19 (1) This section applies if a court or the Tribunal sets aside, or the
20 Commission revokes under subsection 51ABZV(4):
- 21 (a) a determination in respect of a notification of an acquisition
22 made under subsection 51ABS(1) or 51ABU(2); or
- 23 (b) a decision in relation to a notification of an acquisition made
24 under subsection 51ABV(3); or
- 25 (c) a determination in respect of a substantial public benefit
26 application made under subsection 51ABZH(1) or
27 51ABZJ(2); or
- 28 (d) a decision in relation to a substantial public benefit
29 application made under subsection 51ABZK(3).
- 30 (2) The *effective notification date* of the notification, or the *effective*
31 *application date* of the application, (whichever is relevant) is the
32 day the court or the Tribunal sets aside the determination or the
33 Commission revokes the determination.

EXPOSURE DRAFT

1 Subdivision B—Acquisitions register

2 51ABZX Acquisitions register

- 3 (1) The Commission must keep a register of notified acquisitions.
- 4 (2) The acquisitions register must include, for each notified
5 acquisition:
- 6 (a) a copy of each acquisition determination (if any) made in
7 respect of the notification, and a statement of the
8 Commission’s reasons for making the determination; and
- 9 (b) a copy of the decision (if any) under subsection 51ABZD(1)
10 that the notification is to be subject to phase 2 review; and
- 11 (c) any other information or documents prescribed by the
12 regulations for the purposes of this paragraph in relation to
13 the acquisition.
- 14 (3) Information or documents to which paragraph (2)(a) or (b) applies
15 must be included on the acquisitions register on the day the
16 relevant determination or decision is made.
- 17 (4) Information or documents to which paragraph (2)(c) applies must
18 be included on the acquisitions register by the time prescribed by
19 the regulations for the purposes of this subsection in relation to the
20 information or documents.
- 21 (5) Without limiting subsection (4), regulations made for the purposes
22 of that subsection:
- 23 (a) may prescribe a time by reference to a decision of the
24 Commission in relation to the information or documents; and
- 25 (b) may provide for review of such a decision.
- 26 (6) The acquisitions register must be made available for public
27 inspection on the internet.
- 28 (7) The Commission may correct or update information or documents
29 on the acquisitions register.

30 Subdivision C—Partnerships and trusts

31 51ABZY Treatment of partnerships

- 32 (1) The acquisition provisions apply to a partnership as if it were a
33 person, but with the changes set out in this section.

EXPOSURE DRAFT

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- 1 (2) An obligation that would otherwise be imposed on the partnership
2 by the acquisitions provisions is imposed on each partner instead,
3 but may be discharged by any of the partners.
- 4 (3) An offence against the acquisitions provisions that would
5 otherwise have been committed by the partnership is taken to have
6 been committed by each partner in the partnership, at the time the
7 offence was committed, who:
8 (a) did the relevant act or made the relevant omission; or
9 (b) aided, abetted, counselled or procured the relevant act or
10 omission; or
11 (c) was in any way knowingly concerned in, or party to, the
12 relevant act or omission (whether directly or indirectly and
13 whether by any act or omission of the partner).
- 14 (4) This section applies to a contravention of a civil penalty provision
15 in a corresponding way to the way in which it applies to an
16 offence.
- 17 (5) A reference in the acquisitions provisions to a corporation is taken
18 to include a reference to the partnership if all of the partners are
19 corporations.
- 20 (6) For the purposes of the acquisitions provisions, a change in the
21 composition of a partnership does not affect the continuity of the
22 partnership.

23 **51ABZZ Treatment of unit trusts**

- 24 (1) The acquisitions provisions apply to a unit trust as if it were a
25 person, but with the changes set out in this section.
- 26 *Trusts with a single trustee*
- 27 (2) If the unit trust has a single trustee:
28 (a) an obligation that would otherwise be imposed on the trust by
29 the acquisitions provisions is imposed on the trustee instead;
30 and
31 (b) an offence against the acquisitions provisions that would
32 otherwise have been committed by the trust is taken to have
33 been committed by the trustee; and
34 (c) a reference in the acquisitions provisions to a corporation is
35 taken to include a reference to the trust if the trustee is a
36 corporation.
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EXPOSURE DRAFT

Trusts with multiple trustees

- 1
- 2 (3) If the unit trust has 2 or more trustees:
- 3 (a) an obligation that would otherwise be imposed on the trust by
- 4 the acquisitions provisions is imposed on each trustee
- 5 instead, but may be discharged by any of the trustees; and
- 6 (b) an offence against the acquisitions provisions that would
- 7 otherwise have been committed by the trust is taken to have
- 8 been committed by each trustee of the trust, at the time the
- 9 contravention was committed, who:
- 10 (i) did the relevant act or made the relevant omission; or
- 11 (ii) aided, abetted, counselled or procured the relevant act or
- 12 omission; or
- 13 (iii) was in any way knowingly concerned in, or party to, the
- 14 relevant act or omission (whether directly or indirectly
- 15 and whether by any act or omission of the trustee); and
- 16 (c) a reference in the acquisitions provisions to a corporation is
- 17 taken to include a reference to the unit trust if all of the
- 18 trustees are corporations.

Contraventions of civil penalty provisions

- 19
- 20 (4) This section applies to a contravention of a civil penalty provision
- 21 in a corresponding way to the way in which it applies to an
- 22 offence.

Subdivision D—Miscellaneous

51ABZZA Delegation by Commission

- 23
- 24
- 25 (1) The Commission may, in writing, delegate any or all of the
- 26 Commission's functions or powers under an acquisitions provision
- 27 to a member of the staff of the Commission who is an SES
- 28 employee or an acting SES employee.
- 29 (2) The Commission may delegate a function or power to a person
- 30 under subsection (1) only if the Commission is satisfied that the
- 31 person has appropriate qualifications, training or experience to
- 32 perform the function or exercise the power.
- 33 (3) In performing a delegated function or exercising a delegated
- 34 power, the delegate must comply with any written directions of the
- 35 Commission.

EXPOSURE DRAFT

51ABZZB Delegation by Minister

- (1) The Minister may, in writing, delegate any or all of the Minister's functions or powers under an acquisitions provision to an SES employee or acting SES employee in the Department, other than the Minister's power under subsection 51ABH(1).
- (2) The Minister may delegate a function or power to a person under subsection (1) only if the Minister is satisfied that the person has appropriate qualifications, training or experience to perform the function or exercise the power.
- (3) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Minister.

51ABZZC Review of the operation of this Part etc.

- (1) The Minister must cause a review to be conducted of the operation of:
 - (a) Division 1A of Part IV; and
 - (b) this Part; and
 - (c) Division 1B of Part IX.
- (2) The persons who conduct the review must:
 - (a) commence it no earlier than 1 December 2028; and
 - (b) complete it, and give the Minister a written report of the review, no later than 31 December 2029.
- (3) The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

Chapter 4—Provisions relating to particular industries, payment surcharges etc.

40 Before Part VI

Insert:

Chapter 5—Enforcement and remedies

41 Before section 75B

Insert:

EXPOSURE DRAFT

1 **Division 1—Preliminary**

2 **42 After section 75B**

3 Insert:

4 **Division 2—Pecuniary penalties**

5 **43 After subsection 76(4)**

6 Insert:

7 (4AA) Subsection (3) does not apply to conduct to the extent it constitutes
8 a contravention of both:

9 (a) section 45AW; and

10 (b) section 45AY.

11 **44 After section 77C**

12 Insert:

13 **Division 3—Orders relating to acquisitions**

14 **77D Orders relating to failures to notify Commission of acquisitions**

15 If, on application of the Commission, the Federal Court is satisfied
16 that:

17 (a) a person has contravened section 45AW in relation to an
18 acquisition; and

19 (b) the acquisition is not void under subsection 45AZA(2)
20 (including because of an order made under section 77E);

21 the Court may order the principal party, or the principal parties, to
22 the acquisition to notify the Commission of the acquisition in
23 accordance with subsection 51ABR(1).

24 **77E Orders relating to void acquisitions**

25 (1) This section applies if an acquisition, or a directly related
26 restriction:

27 (a) is void to any extent by force of subsection 45AZA(2); or

28 (b) would be void to any extent by force of that subsection apart
29 from this section.

EXPOSURE DRAFT

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- 1 (2) The Federal Court may, on the application of the Commission or
2 any other person, make any of the following orders that the Court
3 considers appropriate:
4 (a) an order that subsection 45AZA(2) is to be taken not to
5 apply, and never to have applied, to the acquisition or the
6 restriction;
7 (b) such other order as the Court considers appropriate:
8 (i) to give effect to the voiding; or
9 (ii) to deal with the consequences of the voiding.
- 10 (3) The application must be made no later than 6 years after the
11 acquisition was put into effect or purportedly put into effect.
- 12 (4) Before making an order under paragraph (2)(a), the Court must
13 have regard to the seriousness of the related contravention of
14 section 45AY, including the effect of the contravention on persons
15 who are not parties to the acquisition.

16 **Division 4—Offences**

17 **45 After section 79**

18 Insert:

19 **Division 5—Other provisions**

20 **46 Subsection 80(1A)**

21 After “a contravention of,” insert “Subdivision B of Division 1A of
22 Part IV or”.

23 **47 After section 80AC**

24 Insert:

25 **80AD Injunctions if acquisition determinations made on the basis of** 26 **false or misleading information**

- 27 (1) If, on the application of the Commission, the Federal Court is
28 satisfied that:
29 (a) a person is proposing to put an acquisition into effect; and
30 (b) the Commission made an acquisition determination under
31 paragraph 51ABW(1)(a) or (b) or 51ABZL(1)(a) or (b) in
32 respect of a notification of the acquisition on the basis of

EXPOSURE DRAFT

-
- 1 information that was false or misleading in a material
2 particular; and
- 3 (c) that information was given by:
- 4 (i) the person; or
- 5 (ii) if the person is a body corporate—a body corporate that
6 was related to the person; and
- 7 (d) if that information had not been given, the determination
8 would not have been made; and
- 9 (e) apart from the determination, putting the acquisition into
10 effect would contravene Subdivision B of Division 1A of
11 Part IV;
- 12 then the Court may grant an injunction in such terms as the Court
13 determines to be appropriate.
- 14 (2) If, on the application of the Commission, the Federal Court is
15 satisfied that:
- 16 (a) a person has engaged, or is proposing to engage, in conduct
17 that did not or does not constitute any of the following:
- 18 (i) a contravention of a provision of Part IV;
- 19 (ii) attempting to contravene such a provision;
- 20 (iii) aiding, abetting, counselling or procuring a person to
21 contravene such a provision;
- 22 (iv) inducing, or attempting to induce, whether by threats,
23 promises or otherwise, a person to contravene such a
24 provision;
- 25 (v) being in any way, directly or indirectly, knowingly
26 concerned in, or party to, the contravention by a person
27 of such a provision;
- 28 (vi) conspiring with others to contravene such a provision;
29 and
- 30 (b) the Commission made a determination under subsection
31 51ABW(1) on the basis of information that was false or
32 misleading in a material particular; and
- 33 (c) that information was given by:
- 34 (i) the person; or
- 35 (ii) if the person is a body corporate—a body corporate that
36 was related to the person; and
- 37 (d) if that information had not been given, the determination
38 would have declared under paragraph 51ABZA(1)(b) that
39 paragraph 51(2)(e) does not apply to a restriction; and
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1 (e) had the determination included that declaration, the conduct
2 would constitute, or would have constituted, any of the things
3 mentioned in subparagraphs (a)(i) to (vi) of this subsection;
4 then the Court may grant an injunction in such terms as the Court
5 determines to be appropriate.

6 **48 After section 81A**

7 Insert:

8 **81B Divestiture etc. if acquisition determinations made on false etc.** 9 **information or conditions not complied with**

10 (1) This section applies in relation to a notification of an acquisition if
11 the Federal Court is satisfied that:

12 (a) as part of putting the acquisition into effect, a notifying party
13 of the notification, or a related body corporate, acquired a
14 thing (including a share in the capital of body corporate or
15 any assets of a person); and

16 (b) the Commission made an acquisition determination in respect
17 of the notification; and

18 (c) apart from the determination, putting the acquisition into
19 effect would have contravened Subdivision B of Division 1A
20 of Part IV; and

21 (d) subsection (2) or (3) applies.

22 (2) This subsection applies if:

23 (a) the Commission made the determination on the basis of
24 information that was false or misleading in a material
25 particular; and

26 (b) the information was given by:

27 (i) the notifying party of the notification; or

28 (ii) a related body corporate; and

29 (c) the Court or another court has found that the person who
30 gave the information contravened section 45AZB of this Act
31 or Part 7.4 of the *Criminal Code* by giving that information;
32 and

33 (d) if that information had not been given, the determination
34 would not have been made.

35 (3) This subsection applies if:

36 (a) putting the acquisition into effect is subject to a condition;
37 and

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(b) the condition is not complied with.

Divestiture

(4) The Federal Court may, on the application of the Commission, by order, give directions for the purpose of securing the disposal of anything acquired as mentioned in paragraph (1)(a).

Declaration that acquisition void

(5) The Federal Court may, on the application of the Commission, by order, declare that the acquisition mentioned in paragraph (1)(a) is void as from the day on which it occurred.

(6) However, the Court may make an order under subsection (5) only if, in addition to the Court being satisfied of the matters in subsection (1), the Court, or another court, has found that the person (the **vendor**) from whom the thing was acquired was involved in:

- (a) the contravention mentioned in paragraph (2)(c); or
- (b) the non-compliance mentioned in paragraph (3)(b).

(7) If the Court makes an order under subsection (5) in relation to an acquisition of a thing, then:

- (a) the thing is taken not to have been disposed of by the vendor; and
- (b) the vendor must refund to the acquirer any amount paid to the vendor for acquiring the thing.

Alternative to orders under subsections (4) and (5)

(8) If an application is made to the Court for an order under subsection (4) or (5) against a person, the Court may, instead of making an order of the kind mentioned in that subsection, accept, upon such conditions (if any) as the Court thinks fit, an undertaking by the person to dispose of any other thing owned by the person.

When application for orders under this section must be made

(9) An application under subsection (4) or (5) may be made at any time within 3 years after the day on which the acquisition was put into effect.

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Court may make orders even if not satisfied of all matters

- 1
- 2 (10) If an application for an order under subsection (4) or (5) is made,
3 the Court may, if the Court determines it to be appropriate, make
4 an order by consent of all the parties to the proceedings, whether or
5 not the Court is satisfied of:
- 6 (a) for an order under subsection (4)—the matters in
7 subsection (1); and
8 (b) for an order under subsection (5)—the matters in
9 subsections (1) and (6).

10 **49 Subsections 88(1) and (2)**

11 Before “Part IV”, insert “Division 1 or 2 of”.

12 **50 At the end of section 88**

13 Add:

14 *Acquisitions*

- 15 (8) This section does not apply in relation to section 45 to the extent
16 that section 45 applies to, or in relation to:
- 17 (a) a contract, arrangement or understanding to the extent that
18 the contract, arrangement or understanding directly or
19 indirectly provides for; or
20 (b) a proposed contract, arrangement or understanding to the
21 extent that the proposed contract, arrangement or
22 understanding would directly or indirectly provide for; or
23 (c) a concerted practice to the extent that the practice directly
24 involves;
25 an acquisition:
26 (d) of shares in the capital of a body corporate; or
27 (e) of any assets of a person;
28 to which the acquisitions provisions apply.

29 Note: For the acquisitions to which the acquisitions provisions apply, see
30 Subdivision B of Division 1 of Part IVA.

31 **51 Before Part VII**

32 Insert:

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Chapter 6—Other provisions

52 Subsections 95AA(1) and (5)

Before “Part IV”, insert “Division 1 or 2 of”.

53 Part IX (heading)

Omit “**Determinations**”, substitute “**decisions**”.

54 Before Division 1 of Part IX

Insert:

Division 1A—Applications for review: general

100A Applications for review

- (1) This section applies if a provision of this Act provides that a person may apply under this Division for review of a decision of the Commission.
- (2) The person may, as prescribed and within the time allowed by or under the regulations, apply to the Tribunal for a review of the decision.
- (3) The Tribunal must review the decision.
- (4) For the purposes of the review, this Act applies in relation to the Tribunal in like manner as it applies in relation to the Commission.

100B Functions and powers of Tribunal

- (1) On a review under section 100A, the Tribunal:
 - (a) may make a decision affirming, setting aside or varying the decision of the Commission; and
 - (b) for the purposes of the review, may perform all the functions and exercise all the powers of the Commission.
- (2) A decision of the Tribunal affirming, setting aside or varying a decision of the Commission is, for the purposes of this Act other than this Part, to be taken to be a decision of the Commission.
- (3) For the purposes of a review by the Tribunal under this Division, the member of the Tribunal presiding at the review may require the Commission to give such information, make such reports and

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1 provide such other assistance to the Tribunal as the member
2 specifies.

3 (4) For the purposes of a review under this Division, the Tribunal may
4 have regard to any information given, documents produced or
5 evidence given to the Commission in connection with the making
6 of the decision by the Commission to which the review relates.

7 (5) Subsection (4) does not apply to information, documents or
8 evidence to which the Commission was not be permitted to have
9 regard in making the determination.

10 **Division 1B—Applications for review: acquisition** 11 **determinations**

12 **Subdivision A—Review**

13 **100C Applications for review**

14 (1) A person dissatisfied with an acquisition determination in respect
15 of a notification of an acquisition may:
16 (a) as prescribed; and
17 (b) within the period of 14 days after the day the determination is
18 made;
19 apply to the Tribunal for a review of the determination.

20 (2) If:
21 (a) the applicant was the notifying party of the notification; or
22 (b) the Tribunal is satisfied that the applicant has a sufficient
23 interest;
24 the Tribunal must review the acquisition determination.

25 (3) Subject to subsection (4) of this section, subsection 51ABW(2),
26 paragraph 51ABW(3)(c) and subsections 51ABW(4) and
27 51ABZL(2) and (3) apply in relation to the Tribunal in like manner
28 as they apply in relation to the Commission.

29 (4) The Tribunal may, if the Tribunal determines it to be appropriate,
30 make a determination by consent of:
31 (a) the applicant; and
32 (b) if the applicant is not the notifying party—the notifying
33 party; and

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1 (c) all persons (if any) who have been permitted under
2 subsection 109(2) to intervene in the proceedings for review;
3 even if the Tribunal does have the belief or satisfaction referred to
4 in subsection 51ABW(2), paragraph 51ABW(3)(c) or subsection
5 51ABZL(2) or (3) (whichever is relevant).

6 **100D Meaning of *fast track review***

7 A review of an acquisition determination under this Division is a
8 *fast track review* if:

- 9 (a) the application for the review is made within 7 days after the
10 day the determination is made; and
11 (b) at the end of those 7 days, all of the following consent to the
12 review being a fast track review:
13 (i) if paragraph 100C(2)(a) applies—the applicant;
14 (ii) if the relevant notifying party is not the applicant, but is
15 participating in the proceedings for review as mentioned
16 in subsection 109(1AA)—the notifying party;
17 (iii) each person (if any) who, during those 7 days, was
18 permitted under subsection 109(2) to intervene in the
19 proceedings for review.

20 **100E Applicants may withdraw applications**

- 21 (1) The applicant may, at any time, by giving written notice to the
22 Tribunal, withdraw an application for review made to the Tribunal
23 under subsection 100C(1).
24 (2) If the application is withdrawn, a participant in the proceedings for
25 review (other than the applicant) may apply to the Tribunal for
26 reinstatement of the application within 7 days after the person
27 receives notice that the application is dismissed (or such longer
28 period as the Tribunal, in special circumstances, allows).
29 (3) If:
30 (a) a participant applies under subsection (2); and
31 (b) the Tribunal considers it appropriate to reinstate the
32 application for review;
33 the Tribunal may reinstate the application and make such orders as
34 appear to the Tribunal to be appropriate in the circumstances.

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100F Tribunal may dismiss applications if parties consent

The Tribunal may, at any time, dismiss an application for review made to the Tribunal under subsection 100C(1) if the Tribunal has the consent of the participants in the proceedings for review.

100G Tribunal may dismiss applications if fees not paid

The Tribunal may dismiss an application made to the Tribunal under subsection 100C(1) if a fee payable by the applicant to the Tribunal in respect of the application is not paid by the time prescribed by regulations made for the purposes of this section.

100H Tribunal may dismiss applications if applicants fail to comply with order etc.

The Tribunal may dismiss an application for review made to the Tribunal under subsection 100C(1) if the applicant fails to do either of the following within a reasonable time:

- (a) proceed with the application;
- (b) comply with this Act or an order of the Tribunal in relation to the proceedings for review.

100J Tribunal may dismiss frivolous or vexatious applications

The Tribunal may dismiss an application made to the Tribunal under subsection 100C(1) if the Tribunal is satisfied that the application is frivolous or vexatious.

Note: See also section 111.

100K Certain participants may seek to withdraw from being participants

General rule

- (1) The Tribunal may order that a participant in a proceeding before the Tribunal under this Division ceases to be a participant in the proceeding if the participant gives written notice to the Tribunal that the participant wishes to cease being a participant in the proceeding.

Exception

- (2) However, subsection (1) does not apply in relation to the applicant.

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Note: The applicant may withdraw the application (see section 100E).

100L Notice of withdrawals and dismissals

If, under this Subdivision:

- (a) an applicant withdraws an application for review; or
 - (b) the Tribunal dismisses an application;
- the Tribunal must give each participant in the proceedings for review notice of the withdrawal or dismissal.

Subdivision B—Functions and powers

100M Functions and powers of Tribunal

- (1) On a review of a determination under this Division in relation to an acquisition determination, the Tribunal:
 - (a) may make a determination affirming, setting aside or varying the acquisition determination; and
 - (b) for the purposes of the review, may perform all the functions and exercise all the powers of the Commission.

Time within which Tribunal must make determination on review

- (2) The Tribunal must make its determination on the review within the period:
 - (a) starting on the day after the latter of:
 - (i) the last day on which an application for review of the acquisition determination could have been made under subsection 100C(1); and
 - (ii) if regulations made for the purposes of this subparagraph require the applicant to give to the Tribunal additional information or documents in relation to the application—the day the applicant gives the additional information or documents to the Tribunal; and
 - (b) ending:
 - (i) if the review is a fast track review—60 days after it starts; or
 - (ii) otherwise—at the time specified by subsection (3).
- (3) For the purposes of subparagraph (2)(b)(ii), the period ends:
 - (a) if paragraphs (b) and (c) of this subsection do not apply—90 days after it starts; or

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- 1 (b) if the Tribunal allows new information, documents or
2 evidence under subsection 100N(5), and paragraph (c) of this
3 subsection does not apply—180 days after it starts; or
4 (c) if an extended period is determined under subsection (4) or
5 (6)—at the end of the extended period.

- 6 (4) Before the end of the period (the *initial period*) otherwise applying
7 under subsection (3), the Tribunal may determine, in writing, that:
8 (a) the matter cannot be dealt with properly before the end of the
9 initial period:
10 (i) because of the matter’s complexity; or
11 (ii) because of other special circumstances; and
12 (b) an extended period applies for the review, which consists of
13 the initial period and a further specified period of not more
14 than 90 days.

15 The Tribunal must, before the end of the initial period, give the
16 parties to the proceedings for review written notice of any
17 determination under this subsection.

- 18 (5) The Tribunal must not make a determination under subsection (4)
19 in relation to the review more than once.

- 20 (6) Before the end of the period (the *initial period*) otherwise applying
21 under subsection (3), the Tribunal may determine, in writing, that:
22 (a) the matter cannot be dealt with properly before the end of the
23 initial period because of the volume of information,
24 documents and evidence before the Tribunal in relation to the
25 matter; and
26 (b) an extended period applies for the review, which consists of
27 the initial period and a further specified period of not more
28 than 60 days.

29 The Tribunal must, before the end of the initial period, give the
30 parties to the proceedings for review written notice of any
31 determination made under this subsection.

- 32 (7) The Tribunal must not make a determination under subsection (6)
33 in relation to the review more than once.

34 *Consequences of not giving Tribunal additional information or*
35 *documents*

- 36 (8) If:

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- 1 (a) regulations made for the purposes of subparagraph (2)(a)(ii)
2 require the applicant to give to the Tribunal additional
3 information or documents in relation to the application; and
4 (b) the applicant does not give the information or documents to
5 the Tribunal by the end of the period starting on the day
6 mentioned in subparagraph (2)(a)(i) and ending:
7 (i) if the review is a fast track review—14 days later; or
8 (ii) otherwise—30 days later;
9 the applicant is taken to withdraw the application under subsection
10 100E(1) at the end of that period.

11 *Determinations of Tribunal taken to be determinations of*
12 *Commission*

- 13 (9) A determination of the Tribunal affirming, setting aside or varying
14 an acquisition determination is, for the purposes of this Act other
15 than this Part, to be taken to be a determination of the Commission.

16 **100N Functions and powers of Tribunal—reviews other than fast** 17 **track reviews**

- 18 (1) For the purposes of a standard review, the Tribunal:
19 (a) may consult, in such a manner as it sees fit, any consumer
20 associations or consumer interest groups; and
21 (b) may have regard to any information furnished, documents
22 produced or evidence given to the Commission in connection
23 with such consultation.
- 24 (2) For the purposes of a standard review, the member of the Tribunal
25 presiding at the review may require the Commission to give such
26 information, make such reports and provide such other assistance
27 to the Tribunal as the member specifies.
- 28 (3) For the purposes of a standard review, the Tribunal may have
29 regard to any information furnished, documents produced or
30 evidence given to the Commission in connection with the making
31 of the determination to which the review relates.
- 32 (4) Subsection (3) does not apply to information, documents or
33 evidence to which the Commission was not permitted to have
34 regard in making the determination.
- 35 (5) For the purposes of a standard review, the Tribunal may allow a
36 person to provide new information, documents or evidence that the

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1 Tribunal is satisfied was not in existence at the time the
2 Commission made the determination to which the review relates.

- 3 (6) Despite subsection 100M(1), the Tribunal must not, for the
4 purposes of a standard review, have regard to any information,
5 documents or evidence other than:
- 6 (a) information that was referred to in the Commission's reasons
7 for making the determination to which the review relates; and
 - 8 (b) the information or documents referred to in subparagraph
9 100M(2)(a)(ii); and
 - 10 (c) the information, documents or evidence referred to in
11 paragraph (1)(b) of this section; and
 - 12 (d) any information or report given to the Tribunal under
13 subsection (2); and
 - 14 (e) the information, documents or evidence referred to in
15 subsection (3); and
 - 16 (f) information given to the Tribunal as a result of the Tribunal
17 seeking such relevant information, and consulting with such
18 persons, as it considers reasonable and appropriate for the
19 sole purpose of clarifying the information, documents or
20 evidence referred to in subsection (5); and
 - 21 (g) any information, documents or evidence referred to in
22 subsection (5).

23 **100P Functions and powers of Tribunal—fast track reviews**

- 24 (1) Despite subsection 100M(1), the Tribunal must not, for the
25 purposes of a fast track review, have regard to any information,
26 documents or evidence other than:
- 27 (a) information that was referred to in the Commission's reasons
28 for making the determination to which the review relates; or
 - 29 (b) the information or documents referred to in subparagraph
30 100M(2)(a)(ii).
- 31 (2) Despite subsection 100M(1), the Tribunal must not, for the
32 purposes of a fast track review, make a finding of fact that is
33 inconsistent with a finding of fact made by the Commission in
34 making the determination to which the review relates.

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1 Subdivision C—Miscellaneous

2 100R Financial assistance to consumer associations etc.

- 3 (1) The Minister may authorise the grant of financial assistance by the
4 Commonwealth to a consumer association or a consumer interest
5 group if:
- 6 (a) the association or group is a participant in proceedings for
7 review under this Division, or has been permitted under
8 subsection 109(2) to intervene in such proceedings; and
 - 9 (b) the financial assistance would assist the association or group
10 to participate in the proceedings, or continue to participate in
11 the proceedings; and
 - 12 (c) the association or group would not be able to participate in
13 the proceedings, or continue to participate in the proceedings,
14 without the financial assistance.

- 15 (2) The grant may be subject to conditions.

16 55 Division 1 of Part IX (at the end of the heading)

17 Add “: determinations by the Commission under Part VII”.

18 56 Subsection 101(2)

19 Repeal the subsection.

20 57 Before section 103

21 Insert:

22 102A Reviews are re-hearings

23 A review by the Tribunal under this Part is a re-hearing of the
24 matter, unless it is a review of:

- 25 (a) a determination by the Commission:
 - 26 (i) in relation to an application for a merger authorisation
27 or a minor variation of a merger authorisation; or
 - 28 (ii) in relation to the revocation of a merger authorisation,
29 or the revocation of a merger authorisation and the
30 substitution of another merger authorisation; or
- 31 (b) an acquisition determination.

32 58 Before subsection 109(1A)

33 Insert:

EXPOSURE DRAFT

1 (1AA) A notifying party of a notification of an acquisition is entitled to
2 participate in any proceedings before the Tribunal under
3 Division 1B instituted by another person in relation to an
4 acquisition determination in respect of the notification.

5 **59 At the end of Division 2 of Part IX**

6 Add:

7 **111 Tribunal may order costs be awarded**

- 8 (1) If the Tribunal is satisfied that it is appropriate to do so, the
9 Tribunal may order that a participant in proceedings for review
10 under Division 1A or 1B pay all or a specified part of the costs of
11 another participant in the proceedings.
- 12 (2) If the Tribunal makes an order under subsection (1), it may make
13 further orders that it considers appropriate in relation to the
14 assessment or taxation of the costs.
- 15 (3) The regulations may make provision for and in relation to fees
16 payable for the assessment or taxation of costs ordered by the
17 Tribunal to be paid.
- 18 (4) If a participant (the *first participant*) is ordered to pay some or all
19 of the costs of another participant under subsection (1), the amount
20 of the costs may be recovered in the Federal Court as a debt due by
21 the first participant to the other participant.

22 **112 Tribunal may charge fees**

- 23 (1) For the purposes of Division 1A or 1B, the Tribunal may, on behalf
24 of the Commonwealth, charge fees prescribed by regulations for
25 the purposes of this subsection.
- 26 (2) Regulations made for the purposes of subsection (1) may provide
27 for fees to be payable in respect of the following:
28 (a) applications to the Tribunal under Division 1A or 1B;
29 (b) proceedings in the Tribunal under Division 1A or 1B;
30 (c) taxation of costs by the Tribunal in relation to such
31 proceedings.
- 32 (3) Without limiting the scope of regulations that may be made for the
33 purposes of subsection (1), those regulations may prescribe, or
34 prescribe matters relating to, any or all of the following:

EXPOSURE DRAFT

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- 1 (a) the circumstances in which a fee is to be paid;
2 (b) who must pay;
3 (c) the time when payment is required;
4 (d) remittal, refund and waiver of fees.
- 5 (4) Regulations made for the purposes of subsection (1) may do any or
6 all of the following:
- 7 (a) prescribe fees in respect of a particular class or classes of
8 applications, costs or proceedings;
9 (b) prescribe different fees in respect of different classes of
10 applications, costs or proceedings;
11 (c) prescribe the amount of, or a method for working out the
12 amount of, a fee;
13 (d) make provision in relation to the whole or a part of a fee;
14 (e) provide for the Tribunal to make orders relating to the
15 payment of a fee in relation to a proceeding.
- 16 (5) A fee must not be such as to amount to taxation.
- 17 (6) A fee charged under subsection (1):
- 18 (a) is a debt due to the Tribunal, on behalf of the
19 Commonwealth; and
20 (b) is recoverable by the Tribunal, on behalf of the
21 Commonwealth, in a court of competent jurisdiction.

60 At the end of subsections 10.49A(2), 10.60(2) and 10.65(2)

22 Add “(but not of Division 1A of Part IV)”.

61 Subsection 150C(2)

25 Omit “particular, references to corporations are to include references to
26 persons who are not corporations.”, substitute:

27 particular:

- 28 (a) references to corporations are to include references to
29 persons who are not corporations; and
30 (b) paragraphs 51ABB(c) and (d) are to be omitted.

62 Section 150J

32 After “notification”, insert “, determination”.

63 Before Part XIB

34 Insert:

EXPOSURE DRAFT

Chapter 7—Further provisions relating to particular industries etc.

64 Section 151AI (heading)

After “IV”, insert “, IVA”.

65 Section 151AI

After “IV”, insert “, IVA”.

66 Section 152AK (heading)

After “IV”, insert “, IVA”.

67 Section 152AK

After “IV”, insert “, IVA”.

68 Before Part XID

Insert:

Chapter 8—Miscellaneous

69 After subparagraph 155(2)(b)(ii)

Insert:

(iia) the making of an acquisition determination by the Commission; or

70 Subsection 155AAA(21) (paragraph (a) of the definition of *core statutory provision*)

After “IV,”, insert “IVA,”.

71 Paragraph 157(1)(c)

After “80AC,”, insert “80AD,”.

72 Paragraph 157(1)(c)

Omit “or 81A”, substitute “, 81A or 81B”.

73 At the end of Part XIII

Add:

EXPOSURE DRAFT

Division 6—Application of amendments made by the Treasury Laws Amendment Bill 2024

188 Application of amendments

*Contracts, arrangements or understandings that restrict dealings
or affect competition*

- (1) Subsections 45(4A) to (4C) apply to an acquisition that is put into effect on or after 1 January 2026.

Acquisitions not required to be notified before 1 January 2026

- (2) Section 51ABG applies in relation to an acquisition that is put into effect on or after 1 January 2026.

Notifications may be made on or after 1 December 2025

- (3) Division 2 of Part IVA applies in relation to a notification made on or after 1 December 2025.

Applications for authorisations

- (4) Subsection 88(8) applies in relation to an acquisition that is put into effect on or after 1 January 2026.

189 Acquisition of property

- (1) The amendments made by Schedule 1 to the *Treasury Laws Amendment Bill 2024* do not apply in relation to an acquisition if:

- (a) apart from this section, the operation of the amendments in relation to the acquisition would result in an acquisition of property from a person otherwise than on just terms; and
(b) the acquisition of property would be invalid because of paragraph 51(xxxi) of the Constitution.

- (2) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

EXPOSURE DRAFT

74 After section 45AM of Schedule 1

Insert:

45AMA Acquisition subject to notification

- (1) Sections 45AF and 45AJ do not apply in relation to the making of a contract that contains a cartel provision, in so far as the cartel provision provides directly or indirectly for:
- (a) an acquisition of shares in the capital of a body corporate; or
 - (b) an acquisition of any assets of a person;
- if:
- (c) the contract is subject to a condition that the provision will not come into force unless and until the acquisition becomes a notified acquisition; and
 - (d) the acquisition becomes a notified acquisition within 30 days after the contract is made.
- (2) A person who wishes to rely on subsection (1) bears an evidential burden in relation to that matter.

75 At the end of section 45AT of Schedule 1

Add:

- (3) Sections 45AF, 45AG, 45AJ and 45AK do not apply in relation to a contract, arrangement or understanding containing a cartel provision, in so far as the cartel provision provides directly or indirectly for an acquisition, if the acquisition is a notified acquisition.
- (4) A person who wishes to rely on subsection (3) bears an evidential burden in relation to that matter.

76 After Division 1 of Part 1 of Schedule 1

Insert:

EXPOSURE DRAFT

1 Division 1A—Acquisitions

2 Subdivision A—Preliminary

3 45AV Purportedly putting acquisitions into effect

- 4 (1) A reference in this Division to putting an acquisition into effect
5 includes a reference to purportedly putting the acquisition into
6 effect.
- 7 (2) A person *purportedly puts into effect* an acquisition if the person
8 engages in conduct that, apart from this Division, would constitute
9 putting the acquisition into effect.

10 Subdivision B—Obligations

11 45AW Commission must be notified of acquisitions

12 A person contravenes this section if:

- 13 (a) the person is a principal party to an acquisition; and
14 (b) the acquisition is required to be notified; and
15 (c) the acquisition is put into effect; and
16 (d) when the acquisition is put into effect:
17 (i) the acquisition is not a notified acquisition; or
18 (ii) no notification of the acquisition has an effective
19 notification date (see section 51ABS); or
20 (iii) the latest notification of the acquisition that has an
21 effective notification date is stale.

22 Note 1: For when an acquisition is *required to be notified*, see section
23 51ABG.

24 Note 2: For when an acquisition is *stale*, see section 51ABK.

25 Note 3: For enforcement, see Part VI.

26 45AX Commission must be notified of material changes of fact in 27 relation to notified acquisitions

- 28 (1) This section applies if:
29 (a) a person is the notifying party of a notification of an
30 acquisition; and
31 (b) a change of fact occurs;
32 (c) the person becomes aware of the change of fact at a time:

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- 1 (i) occurring on or after the time specified in
2 subsection (2); and
- 3 (ii) at which the Commission has not decided to cease
4 considering the notification under section 51ABV; and
- 5 (iii) at which the Commission has not made a determination
6 in respect of the notification under subsection
7 51ABW(1); and
- 8 (d) the change of fact is material to the Commission making a
9 determination under subsection 51ABW(1) in respect of the
10 notification.
- 11 (2) For the purposes of subparagraph (1)(c)(i) of this section, the time
12 is:
- 13 (a) if the acquisition is required to be notified under section
14 51ABG—the time at which the notification is made; or
- 15 (b) otherwise—the later of:
- 16 (i) the time at which the notification is made; and
- 17 (ii) the start of the effective notification date of the
18 notification.
- 19 (3) This section also applies if:
- 20 (a) a person is the notifying party of a notification of an
21 acquisition; and
- 22 (b) a change of fact occurs;
- 23 (c) the person becomes aware of the change of fact at a time at
24 which:
- 25 (i) the Commission has made a determination in respect of
26 the notification under subsection 51ABW(1); and
- 27 (ii) the notifying party has not made a substantial public
28 benefit application in respect of the notification; and
- 29 (iii) the period during which the notifying party could make
30 a substantial public benefit application in respect of the
31 notification under section 51ABZG has not ended; and
- 32 (d) were the notifying party to make a substantial public benefit
33 application in respect of the notification, the change of fact
34 would be material to the Commission making a
35 determination under subsection 51ABZL(1) in respect of the
36 application.
- 37 (4) The person contravenes this subsection if the Commission is not
38 notified of the change of fact, as soon as practicable after the
39 person becomes aware of the change, by:
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- 1 (a) if the person is the only notifying party of the notification of
2 the acquisition—the person; or
3 (b) otherwise—all of the notifying parties jointly.

4 Note: For enforcement, see Part VI.

- 5 (5) For the purposes of this section, a person who ought reasonably to
6 be aware of a change is taken to be aware of the change.

7 **45AY Stayed acquisitions must not be put into effect**

8 A person contravenes this section if:

- 9 (a) the person puts an acquisition into effect; and
10 (b) the acquisition is stayed.

11 Note 1: For when an acquisition is *stayed*, see section 51ABI.

12 Note 2: For enforcement, see Part VI.

13 **45AZ Conditions must be complied with**

- 14 (1) This section applies to a person who puts a notified acquisition into
15 effect, if putting the acquisition into effect is subject to conditions.

16 Note: For when putting an acquisition into effect is *subject* to conditions, see
17 section 51ABL.

- 18 (2) The person contravenes this subsection if any of those conditions
19 are not complied with.

20 Note: For enforcement, see Part VI.

21 **Subdivision C—Acquisitions void if put into effect while stayed**

22 **45AZA Acquisitions void if put into effect while stayed**

- 23 (1) This section applies to an acquisition if, when the acquisition is put
24 into effect, the acquisition is stayed.

25 Note: For when an acquisition is *stayed*, see section 51ABI.

- 26 (2) The acquisition, and any directly related restriction, is, and is taken
27 always to have been, void by force of this subsection.

28 Note: For when a restriction is *directly related*, see section 51ABO.

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1 Subdivision D—Miscellaneous

2 45AZB Providing false or misleading information

- 3 (1) A person contravenes this subsection if:
- 4 (a) the person gives information to the Commission or the
- 5 Tribunal under an acquisition provision; and
- 6 (b) the person is negligent as to whether the information is false
- 7 or misleading in a material particular.

8 Note: For enforcement, see Part VI.

- 9 (2) For the purposes of subsection (1), proof that the person knew, or
- 10 was reckless as to whether, the information was false or misleading
- 11 in a material particular is taken to be proof that the person was
- 12 negligent as to whether the information was false or misleading in
- 13 a material particular.

14 77 After subsection 45(4) of Schedule 1

15 Insert:

16 *Acquisitions*

- 17 (4A) For the purposes of subsection (1), and without limiting that
- 18 subsection, a provision of:
- 19 (a) a contract, arrangement or understanding; or
- 20 (b) a proposed contract, arrangement or understanding;
- 21 is taken to have the purpose of substantially lessening competition
- 22 if:
- 23 (c) the provision directly or indirectly provides for:
- 24 (i) an acquisition of shares in the capital of a body
- 25 corporate; or
- 26 (ii) an acquisition of any assets of a person; and
- 27 (d) the purpose of the acquisition is to substantially lessen
- 28 competition.
- 29 (4B) For the purposes of subsection (1), and without limiting that
- 30 subsection, a concerted practice is taken to have the purpose of
- 31 substantially lessening competition if:
- 32 (a) the concerted practice directly relates to:
- 33 (i) an acquisition of shares in the capital of a body
- 34 corporate; or
- 35 (ii) an acquisition of any assets of a person; and

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1 (b) the purpose of the acquisition is to substantially lessen
2 competition.

3 (4C) For the purposes of subsection (4A) or (4B), an acquisition is taken
4 to have a particular purpose if:

5 (a) the acquisition is put into effect for that purpose or for
6 purposes that included or include that purpose; and

7 (b) that purpose was or is a substantial purpose.

8 *Contracts etc. to which this section does not apply*

9 **78 At the end of subsection 45(7) of Schedule 1**

10 Add “on or before 31 December 2025”.

11 **79 After subsection 45(7) of Schedule 1**

12 Insert:

13 (7A) This section does not apply to or in relation to:

14 (a) a contract, arrangement or understanding to the extent that
15 the contract, arrangement or understanding directly or
16 indirectly provides for; or

17 (b) a proposed contract, arrangement or understanding to the
18 extent that the proposed contract, arrangement or
19 understanding would directly or indirectly provide for; or

20 (c) a concerted practice to the extent that the practice directly
21 involves;

22 a notified acquisition.

23 (7B) The making by a person of a contract is not a contravention of
24 subsection (1) to the extent that the contract directly or indirectly
25 provides for:

26 (a) an acquisition of shares in the capital of a body corporate; or

27 (b) an acquisition of any assets of a person;

28 if:

29 (c) the contract is subject to a condition that the provision will
30 not come into force unless and until the acquisition becomes
31 a notified acquisition; and

32 (d) the acquisition becomes a notified acquisition within 30 days
33 after the contract is made;

34 but nothing in this subsection prevents the giving effect by a
35 person to such a provision from constituting a contravention of
36 subsection (1).

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80 After subsection 50(5A) of Schedule 1

Insert:

(5B) This section does not apply to a notified acquisition.

81 Paragraph 51(2)(e) of Schedule 1

Before “to any provision”, insert “subject to subsection (2AAA),”.

82 After subsection 51(2) of Schedule 1

Insert:

(2AAA) Paragraph (2)(e) does not apply to a provision of a contract to the extent to which:

- (a) the protection referred to in that paragraph is by means of a restriction that is directly related to an acquisition; and
- (b) the acquisition:
 - (i) is required to be notified under section 51ABG; or
 - (ii) is a notified acquisition;

if:

- (c) subject to subsection (2AAB) of this section, the acquisition is not a notified acquisition; or
- (d) the acquisition is stayed; or
- (e) the restriction is not specified in the latest notification of the acquisition as mentioned in subsection 51ABR(4); or
- (f) the restriction is declared in a determination made under subsection 51ABW(1) in respect of the latest notification of the acquisition to be a restriction to which paragraph (2)(e) of this section does not apply.

Note: For when a restriction is *directly related*, see section 51ABO.

(2AAB) Paragraph (2AAA)(c) does not apply if:

- (a) the restriction is subject to a condition that the restriction will not come into force unless and until the acquisition becomes a notified acquisition; and
- (b) the acquisition becomes a notified acquisition within 30 days after the contract is made.

EXPOSURE DRAFT

1 **Part 3—Amendments commencing 1 January 2026**

2 **Division 1—Main amendments**

3 ***Competition and Consumer Act 2010***

4 **83 Subsection 4(1)**

5 Repeal the following definitions:

- 6 (a) definition of *merger authorisation*;
- 7 (b) definition of *overseas merger authorisation*.

8 **84 Paragraph 6(2)(h)**

9 Omit “50, 50A,”.

10 **85 Paragraph 6(2)(h)**

11 Omit “81,”.

12 **86 Subsection 46A(6)**

13 Omit “, 49 and 50”, substitute “and 49”.

14 **87 Sections 50 and 50A**

15 Repeal the sections.

16 **88 Paragraph 51(1C)(b)**

17 Repeal the paragraph.

18 **89 Paragraph 56ET(5)(c)**

19 Omit “section 50A,”.

20 **90 Subsection 75B(1)**

21 Omit “, 60K or 92”, substitute “or 60K”.

22 **91 Subparagraph 76(1)(a)(iii)**

23 Repeal the subparagraph.

24 **92 Subsection 76(1A) (table item 12)**

25 Repeal the item.

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1 **93 Section 76A**

2 Repeal the section.

3 **94 Subsections 76B(2), (3) and (4)**

4 Omit “or 92”.

5 **95 Paragraph 76B(5)(a)**

6 Omit “or 92”.

7 **96 Subsection 80(1)**

8 Omit “subsections (1A), (1AAA) and (1B)”, substitute
9 “subsection (1A)”.

10 **97 Subsection 80(1A)**

11 Omit “50,”.

12 **98 Subsections 80(1AAA) and (1B)**

13 Repeal the subsections.

14 **99 Sections 80AC, 81 and 81A**

15 Repeal the sections.

16 **100 Subparagraph 83(1)(a)(i)**

17 Omit “81,”.

18 **101 Subsection 86C(4) (paragraph (a) of the definition of**
19 ***contravening conduct*)**

20 Omit “, 60K or 92”, substitute “or 60K”.

21 **102 Subsections 87B(1A), 88(4) and 89(1AA)**

22 Repeal the subsections.

23 **103 Subsection 90(5)**

24 Omit “other than a merger authorisation”.

25 **104 Subsection 90(6A) (note)**

26 Omit “Unless the application is for a merger authorisation, the”,
27 substitute “The”.

EXPOSURE DRAFT

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- 1 **105 Subsection 90(9A)**
2 Omit “or for a merger authorisation”.
- 3 **106 Subsection 90(10)**
4 Omit “(other than an application for a merger authorisation)”.
- 5 **107 Subsections 90(10B) to (13)**
6 Repeal the subsections.
- 7 **108 Subsections 90(15) and 90A(1)**
8 Omit “(other than an application for a merger authorisation)”.
- 9 **109 Subsection 91(1A)**
10 Omit “or (11)” (wherever occurring).
- 11 **110 Subsections 91A(5) and 91B(5A)**
12 Repeal the subsections.
- 13 **111 Subsection 91C(5)**
14 Omit “other than a merger authorisation”.
- 15 **112 Paragraph 91C(6)(a)**
16 Omit “(other than an application for a merger authorisation)”.
- 17 **113 Paragraph 91C(6)(a)**
18 Omit “(other than a merger authorisation)”.
- 19 **114 Subsection 91C(7A)**
20 Repeal the subsection.
- 21 **115 Section 92**
22 Repeal the section.
- 23 **116 Subsection 101(1)**
24 Omit “or under subsection (1B), as the case may be”.
- 25 **117 Subsections 101(1B) and (1C)**
26 Repeal the subsections.
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1 **118 Subsection 102(1) (note)**

2 Repeal the note.

3 **119 Subsections 102(1AA) to (1C) and (8) to (10)**

4 Repeal the subsections.

5 **120 Section 102A**

6 Repeal the section, substitute:

7 **102A Reviews are re-hearings**

8 A review by the Tribunal under this Part is a re-hearing of the
9 matter, unless it is a review of an acquisition determination.

10 **121 Subparagraph 155(2)(b)(iii)**

11 Repeal the subparagraph.

12 **122 Paragraph 157(1)(c)**

13 Omit “, 80, 80AC, 81 or 81A”, substitute “or 80”.

14 **123 Paragraph 165(2)(a)**

15 Omit “a declaration under section 50A or”.

16 **124 Subsection 165(6)**

17 Omit “a declaration under section 50A or”.

18 **125 Paragraph 170(3)(b)**

19 Repeal the paragraph, substitute:

20 (b) a reference to a proceeding before the Tribunal is a reference
21 to an application for a review of a determination, or of the
22 giving of a notice, by the Commission.

23 **126 Subsection 172(2B)**

24 Repeal the subsection.

25 **127 Section 173**

26 Repeal the section.

27 **128 Section 50 of Schedule 1**

28 Repeal the section.

EXPOSURE DRAFT

1 **129 Paragraph 51(1C)(b) of Schedule 1**

2 Repeal the paragraph.

3 ***Financial Sector (Transfer and Restructure) Act 1999***

4 **130 Subsection 43(9)**

5 Omit “section 50 and related provisions of the *Competition and*
6 *Consumer Act 2010*”, substitute “the acquisitions provisions (within the
7 meaning of the *Competition and Consumer Act 2010*)”.

8 **Division 2—Application of amendments**

9 ***Competition and Consumer Act 2010***

10 **131 At the end of section 188**

11 Add:

12 *Repeal of sections 50 and 50A*

13 (5) The amendments made by Division 1 of Part 3 of Schedule 1 to the
14 *Treasury Laws Amendment Bill 2024* apply in relation to an
15 acquisition that occurs on or after 1 January 2026.

EXPOSURE DRAFT

Schedule 2—Other amendments

Part 1—Penalty for false or misleading information

Competition and Consumer Act 2010

1 After subparagraph 76(1)(a)(iiib)

Insert:

(iiic) paragraph 155(5)(b);

2 Subsection 76(1A) (after table item 13A)

Insert:

| | | | |
|-----|---------------------|---------------------|-------------------|
| 13B | paragraph 155(5)(b) | 1,000 penalty units | 200 penalty units |
|-----|---------------------|---------------------|-------------------|

3 At the end of subsection 155(5)

Add:

Note: Under section 76, the Court may order a person who contravenes paragraph (b) to pay a pecuniary penalty.

4 Application of amendments

The amendments made by this Part apply in relation to a contravention of paragraph 155(5)(b) of the *Competition and Consumer Act 2010* that occurs on or after the commencement of this item, whether the relevant notice under section 155 was given before, on or after that commencement.

EXPOSURE DRAFT

1 **Part 2—Duties imposed by Competition Code**

2 *Competition and Consumer Act 2010*

3 **5 After subsection 150FA(5)**

4 Insert:

5 (5A) To avoid doubt, neither this Act (nor any other law of the
6 Commonwealth) imposes a duty on the Commonwealth entity to
7 the extent to which imposing such a duty would:

8 (a) contravene any constitutional doctrine restricting the duties
9 that may be imposed on a Commonwealth entity; or

10 (b) otherwise exceed the legislative power of the
11 Commonwealth.

12 **6 After section 150FA**

13 Insert:

14 **150FAA Imposing a duty under State or Territory law**

15 (1) This section:

16 (a) applies only for the purposes of the application of the
17 provisions of the Competition Code or another law of the
18 Commonwealth (with or without modification) as a law of a
19 participating State or participating Territory by a provision of
20 an application law; and

21 (b) does not apply for those purposes if the application law
22 otherwise provides.

23 (2) If the application law purports to impose a duty on a
24 Commonwealth entity to do a particular thing, the duty is taken to
25 be imposed by the application law to the extent to which imposing
26 the duty:

27 (a) is within the legislative powers of the State or Territory; and

28 (b) is consistent with the constitutional doctrines restricting the
29 duties that may be imposed on a Commonwealth entity.

30 (3) To avoid doubt, the application law does not impose the duty on
31 the Commonwealth entity to the extent to which imposing the duty
32 would:

EXPOSURE DRAFT

-
- 1 (a) contravene any constitutional doctrine restricting the duties
2 that may be imposed on a Commonwealth entity; or
3 (b) otherwise exceed the legislative powers of the State or
4 Territory.
- 5 (4) If imposing on the Commonwealth entity the duty to do that thing
6 would:
7 (a) contravene any constitutional doctrine restricting the duties
8 that may be imposed on a Commonwealth entity; or
9 (b) otherwise exceed the legislative powers of both the State or
10 Territory and the Commonwealth;
11 the application law is taken instead to confer on the
12 Commonwealth entity a power to do that thing at the discretion of
13 the Commonwealth entity.

EXPOSURE DRAFT

1 **Part 3—Divisions of the Commission**

2 *Competition and Consumer Act 2010*

3 **7 Subsection 19(1)**

4 Omit “the Chairperson and such other”, substitute “such”.

5 **8 Subsection 19(4)**

6 Repeal the subsection.

7 **9 Transitional provision**

8 (1) This item applies to a direction that:

9 (a) was given under subsection 19(1) of the *Competition and*
10 *Consumer Act 2010*; and

11 (b) was in force immediately before the commencement of this
12 item.

13 (2) The direction has effect, on and after that commencement, as if it
14 specified the Chairperson as one of the members of the relevant
15 Division.

16 (3) Subitem (2) of this item does not limit the Chairperson’s powers under
17 subsection 19(2A) of the *Competition and Consumer Act 2010*.

EXPOSURE DRAFT

1 Part 4—Delegation

2 *Competition and Consumer Act 2010*

3 **10 Subsections 155(8B) and (8C)**

4 Repeal the subsections.

5 **11 After section 155**

6 Insert:

7 **155AAA Power to obtain information, documents and evidence—** 8 **delegation**

- 9 (1) This section applies in relation to a function or power of any of the
10 following (the *delegator*) under section 155:
- 11 (a) the Commission;
 - 12 (b) the Chairperson;
 - 13 (c) a Deputy Chairperson;
 - 14 (d) a member of the Commission.
- 15 (2) The delegator may, in writing, delegate any or all of the delegator's
16 functions or powers under section 155 to a member of the staff of
17 the Commission who is an SES employee or an acting SES
18 employee.
- 19 (3) The delegator may delegate a function or power to a person under
20 subsection (2) only if the delegator is satisfied that the person has
21 appropriate qualifications, training or experience to perform the
22 function or exercise the power.
- 23 (4) In performing a delegated function or exercising a delegated
24 power, the delegate must comply with any written directions of the
25 delegator.

26 **12 Transitional provision**

- 27 (1) Subitem (2) applies to a delegation that:
- 28 (a) was given under subsection 155(8B) of the *Competition and*
29 *Consumer Act 2010*; and
 - 30 (b) was in force immediately before the commencement of this
31 item.

EXPOSURE DRAFT

-
- 1 (2) The delegation has effect, on and after that commencement, as if it had
2 been given under subsection 155AAAA(2) of the *Competition and*
3 *Consumer Act 2010*, as amended by this Part.
- 4 (3) Subitem (4) applies to a direction that:
5 (a) was given under subsection 155(8C) of the *Competition and*
6 *Consumer Act 2010*; and
7 (b) was in force immediately before the commencement of this
8 item.
- 9 (4) The direction has effect, on and after that commencement, as if it had
10 been given under subsection 155AAAA(4) of the *Competition and*
11 *Consumer Act 2010*, as amended by this Part.