

Part II—The Australian Competition and Consumer Commission

6A Establishment of Commission

- (1) The Australian Competition and Consumer Commission is established by this section.
- (2) The Commission:
 - (a) is a body corporate, with perpetual succession;
 - (b) shall have an official seal;
 - (c) may acquire, hold and dispose of real and personal property; and
 - (d) may sue or be sued in its corporate name.
- (3) Any real or personal property held by the Commission is held for and on behalf of the Commonwealth.
- (4) Any money received by the Commission is received for and on behalf of the Commonwealth.
- (5) To avoid doubt, a right to sue is taken not to be personal property for the purposes of subsection (3).

7 Constitution of Commission

(1) The Commission shall consist of a Chairperson and such number of other members as are from time to time appointed in accordance with this Act.

(2) The members of the Commission shall be appointed by the Governor-General and shall be so appointed as full-time members.

Note: A member of the Commission who is also appointed as an AER member remains a full-time member of the Commission: see section 44AN.

(3) Before the Governor-General appoints a person as a member of the Commission or as Chairperson, the Minister must:

(a) be satisfied that the person qualifies for the appointment because of the person's knowledge of, or experience in, industry, commerce, economics, law, public administration or consumer protection; and

(b) consider whether the person has knowledge of, or experience in, small business matters; and

(c) if there is at least one fully-participating jurisdiction—be satisfied that a majority of such jurisdictions support the appointment.

(4) At least one of the members of the Commission must be a person who has knowledge of, or experience in, consumer protection.

8 Terms and conditions of appointment

(1) Subject to this Part, a member of the Commission holds office for such period, not exceeding 5 years, as is specified in the instrument of his or her appointment and on such terms and conditions as the Governor-General determines, but is eligible for re-appointment.

8A Associate members

(1) The Minister may appoint persons to be associate members of the Commission.

(1A) If there is at least one fully-participating jurisdiction, the Minister must not appoint a person as an associate member unless the Minister is satisfied that a majority of such jurisdictions support the appointment.

(2) An associate member of the Commission shall be appointed for such period not exceeding 5 years as is specified in the instrument of his or her appointment, but is eligible for re-appointment.

(3) Subject to this Part, an associate member of the Commission holds office on such terms and conditions as the Minister determines.

(4) The Chairperson may, by writing signed by him or her, direct that, for the purposes of the exercise of the powers of the Commission under this Act in relation to a specified matter, not being an exercise of those powers by a Division of the Commission, a specified associate member of the Commission or specified associate members of the Commission shall be deemed to be a member or members of the Commission and, in that case, unless the contrary intention appears, a reference in this Act to a member of the Commission shall, for the purposes only of the exercise of the powers of the Commission in relation to that matter, be construed as including a reference to that associate member of the Commission or each of those associate members of the Commission, as the case may be.

(5) Associate members of the Commission shall be deemed to be members of the Commission for the purposes of section 19.

(6) For the purpose of the determination by the Commission of an application for an authorization or a clearance, or the making by the Commission of any decision for the purposes of subsection 93(3) or (3A) or 93AC(1) or (2), the Chairperson shall consider:

(a) whether he or she should give a direction under subsection (4) of this section; or

(b) in the case of a matter in relation to which the Chairperson proposes to give a direction under subsection 19(1), whether he or she should direct that the Division concerned is to include an associate member of the Commission or associate members of the Commission.

(7) Nothing in subsection (4) or (5) deems an associate member of the Commission to be a member of the Commission for any purpose related to the preparation of a report by the Commission under section 171.

8AB State/Territory AER members taken to be associate members

(1) A State/Territory AER member is taken to be an associate member of the Commission during the period for which he or she is an AER member.

Note: A State/Territory AER member who is taken to be an associate member of the Commission can still be appointed as an associate member under section 8A.

(2) However, a State/Territory AER member who is taken to be an associate member under subsection (1), is not taken to be an associate member for the purposes of sections 8A, 9, 14, 15 and 17.

(3) As an associate member, the State/Territory AER member holds office on such terms and conditions as are specified in the instrument of his or her appointment under section 44AP.

9 Remuneration

(1) A member of the Commission shall be paid such remuneration as is determined by the Remuneration Tribunal, but, until that remuneration is so determined, he or she shall be paid such remuneration as is prescribed.

(2) Subject to the Remuneration Tribunal Act 1973, a member of the Commission shall be paid such allowances as are prescribed.

(3) In this section, member of the Commission includes an associate member of the Commission.

10 Deputy Chairpersons

(1) The Governor-General may appoint a person who is, or is to be, a member of the Commission to be a Deputy Chairperson of the Commission.

(1A) If there is at least one fully-participating jurisdiction, the Governor-General must not appoint a person as a Deputy Chairperson unless the Governor-General is satisfied that a majority of such jurisdictions support the appointment.

(1B) Before the Governor-General appoints a person as a Deputy Chairperson, the Minister must be satisfied that, immediately after the appointment, there will be at least one Deputy Chairperson who has knowledge of, or experience in, small business matters.

(2) A person appointed under this section holds office as Deputy Chairperson until the expiration of his or her period of appointment as a member of the Commission or until he or she sooner ceases to be a member of the Commission.

(3) Where a member of the Commission appointed as Deputy Chairperson is, upon ceasing to be a Deputy Chairperson by virtue of the expiration of the period of his or her appointment as a member, re-appointed as a member, he or she is eligible for re-appointment as Deputy Chairperson.

(4) A Deputy Chairperson may resign his or her office of Deputy Chairperson by writing signed by him or her and delivered to the Governor-General.

(5) Not more than 2 persons may hold office as Deputy Chairperson at any one time.

11 Acting Chairperson

(1) Where there is, or is expected to be, a vacancy in the office of Chairperson, the Governor-General may appoint a person to act as Chairperson until the filling of the vacancy.

Note: For rules that apply to acting appointments, see section 33A of the Acts Interpretation Act 1901.

(2) Where the Chairperson is absent from duty or from Australia:

(a) if there are 2 Deputy Chairpersons available to act as Chairperson, the Minister may appoint 1 of them to act as Chairperson during the absence of the Chairperson; or

(b) if there is only 1 Deputy Chairperson available to act as Chairperson, that Deputy Chairperson is to act as Chairperson during the absence of the Chairperson; or

(c) if there are no Deputy Chairpersons or none of the Deputy Chairpersons are available to act as Chairperson, the Minister may appoint a member of the Commission to act as Chairperson during the absence of the Chairperson, but any such appointment ceases to have effect if a person is appointed as a Deputy Chairperson or a Deputy Chairperson becomes available to act as Chairperson.

Note: For rules that apply to persons acting as the Chairperson, see section 33A of the Acts Interpretation Act 1901.

(3) A person acting as Chairperson shall act in that capacity on such terms and conditions as the Governor-General determines and has all the powers and duties, and shall perform all the functions, conferred on the Chairperson by this Act.

12 Leave of absence

(1) A member of the Commission has such recreation leave entitlements as are determined by the Remuneration Tribunal.

(2) The Minister may grant a member of the Commission leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

13 Termination of appointment of members of the Commission

(1) The Governor-General may terminate the appointment of a member of the Commission for misbehaviour or physical or mental incapacity.

(2) If a member of the Commission:

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;

(b) fails to comply with his or her obligations under section 17;

(c) without the consent of the Minister engages in any paid employment outside the duties of his or her office; or

(d) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months;

the Governor-General shall terminate the appointment of that member of the Commission.

14 Termination of appointment of associate members of the Commission

(1) The Minister may terminate the appointment of an associate member of the Commission for misbehaviour or physical or mental incapacity.

(2) If an associate member of the Commission:

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

(b) fails to comply with his or her obligations under section 17;

the Minister shall terminate the appointment of that associate member of the Commission.

15 Resignation

(1) A member of the Commission may resign his or her office by writing signed by him or her and delivered to the Governor-General.

(2) An associate member of the Commission may resign his or her office by writing signed by him or her and delivered to the Minister.

16 Arrangement of business

The Chairperson may give directions as to the arrangement of the business of the Commission.

17 Disclosure of interests by members

(1) Where a member of the Commission other than the Chairperson is taking part, or is to take part, in the determination of a matter before the Commission and the member has or acquires any pecuniary interest that could conflict with the proper performance of his or her functions in relation to the determination of the matter:

(a) the member shall disclose the interest to the Chairperson; and

(b) the member shall not take part, or continue to take part, in the determination of the matter if:

(i) the Chairperson gives a direction under paragraph (2)(a) in relation to the matter; or

(ii) all of the persons concerned in the matter do not consent to the member taking part in the determination of the matter.

(2) Where the Chairperson becomes aware that a member of the Commission is taking part, or is to take part, in the determination of a matter and that the member has in relation to the determination of the matter such an interest:

(a) if the Chairperson considers that the member should not take part, or should not continue to take part, in the determination of the matter—the Chairperson shall give a direction to the member accordingly; or

(b) in any other case—the Chairperson shall cause the interest of the member to be disclosed to the persons concerned in the matter.

(3) The Chairperson shall give written notice to the Minister of all pecuniary interests that the Chairperson has or acquires in any business carried on in Australia or in any body corporate carrying on any such business.

(4) In this section, member of the Commission includes an associate member of the Commission.

18 Meetings of Commission

(1) Subject to this section, the Chairperson shall convene such meetings of the Commission as he or she thinks necessary for the efficient performance of the functions of the Commission.

(2) Meetings of the Commission shall be held at such places as the Chairperson determines.

(3) The Chairperson shall preside at all meetings of the Commission at which he or she is present.

(4) In the absence of the Chairperson from a meeting of the Commission:

(a) if there are 2 Deputy Chairpersons available to preside at the meeting—the Chairperson may nominate 1 of them to preside at the meeting; or

(b) if there is only 1 Deputy Chairperson available to preside at the meeting—that Deputy Chairperson is to preside at the meeting.

(5) Subject to this Act and the regulations, the member presiding at a meeting of the Commission may give directions regarding the procedure to be followed at or in connexion with the meeting.

(6) At a meeting of the Commission:

(a) three members (including the Chairperson or a Deputy Chairperson) form a quorum;

(b) all questions shall be decided by a majority of votes of the members present and voting; and

(c) the member presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(7) If the Commission so determines, a member or members may participate in, and form part of a quorum at, a meeting of the Commission or a Division of the Commission by means of any of the following methods of communication:

- (a) telephone;
- (b) closed circuit television;
- (c) another method of communication determined by the Commission.

(8) A determination made by the Commission under subsection (7) may be made in respect of a particular meeting or meetings of the Commission or a Division of the Commission or in respect of all meetings of the Commission or a Division of the Commission.

19 Chairperson may direct Commission to sit in Divisions

(1) The Chairperson may, by writing signed by him or her, direct that the powers of the Commission under this Act in relation to a matter shall be exercised by a Division of the Commission constituted by the Chairperson and such other members (not being less than two in number) as are specified in the direction.

(2) Where the Chairperson has given a direction under subsection (1), he or she may, by writing signed by him or her, at any time before the Division of the Commission specified in the direction has made a determination in relation to the matter, revoke the direction or amend the direction in relation to the membership of the Division or in any other respect, and where the membership of a Division of the Commission is changed, the Division as constituted after the change may complete the determination of the matter.

(3) For the purposes of the determination of a matter specified in a direction given under subsection (1), the Commission shall be deemed to consist of the Division of the Commission specified in the direction.

(4) The Chairperson is not required to attend a meeting of a Division of the Commission if he or she does not think fit to do so.

(5) At a meeting of a Division of the Commission at which neither the Chairperson nor a Deputy Chairperson is presiding, a member of the Commission nominated for the purpose by the Chairperson shall preside.

(6) Notwithstanding section 18, at a meeting of a Division of the Commission, two members form a quorum.

(7) A Division of the Commission may exercise powers of the Commission under this Act notwithstanding that another Division of the Commission is exercising powers of the Commission at the same time.

25 Delegation by Commission

(1) The Commission may, by resolution, delegate to a member of the Commission, either generally or otherwise as provided by the instrument of delegation, any of its powers under this Act (other than Part VIIA or section 152ELA), Procedural Rules under Part XIC, the Telecommunications Act 1997, the Telecommunications (Consumer Protection and Service Standards) Act 1999, the Water Act 2007, Rules of Conduct under Part 20 of the Telecommunications Act 1997, the National Broadband Network Companies Act 2011, regulations under the National Broadband Network

Companies Act 2011, or the Australian Postal Corporation Act 1989, other than this power of delegation and its powers to grant, revoke or vary an authorization or a clearance.

Note: Section 95ZD allows the Commission to delegate certain powers under Part VIIA to a member of the Commission.

(2) A power so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation.

(3) A delegation under this section is revocable at will and does not prevent the exercise of a power by the Commission.

26 Delegation by Commission of certain functions and powers

(1) The Commission may, by resolution, delegate:

- (a) any of its functions and powers under or in relation to Parts VI and XI and the Australian Consumer Law; and
- (b) any of its powers under Part XII that relate to those Parts or the Australian Consumer Law;

to a staff member of the Australian Securities and Investments Commission within the meaning of section 5 of the Australian Securities and Investments Commission Act 2001.

(2) The Commission must not delegate a function or power under subsection (1) unless the Chairperson of the Australian Securities and Investments Commission has agreed to the delegation in writing.

27 Staff of Commission

(1) The staff necessary to assist the Commission shall be persons engaged under the Public Service Act 1999.

(2) For the purposes of the Public Service Act 1999:

- (a) the Chairperson of the Commission and the APS employees assisting the Chairperson together constitute a Statutory Agency; and
- (b) the Chairperson is the Head of that Statutory Agency.

27A Consultants

(1) On behalf of the Commonwealth, the Commission may engage persons to give advice to, and perform services for, the Commission.

(2) The terms and conditions of engagement are as determined by the Commission.

28 Functions of Commission in relation to dissemination of information, law reform and research

(1) In addition to any other functions conferred on the Commission, the Commission has the following functions:

(a) to make available to persons engaged in trade or commerce and other interested persons general information for their guidance with respect to the carrying out of the functions, or the exercise of the powers, of the Commission under this Act;

(b) to examine critically, and report to the Minister on, the laws in force in Australia relating to the protection of consumers in respect of matters referred to the Commission by the Minister, being matters with respect to which the Parliament has power to make laws;

(c) to conduct research in relation to matters affecting the interests of consumers, being matters with respect to which the Parliament has power to make laws;

(ca) to conduct research and undertake studies on matters that are referred to the Commission by the Council and that relate to the Commission's other functions;

(d) to make available to the public general information in relation to matters affecting the interests of consumers, being matters with respect to which the Parliament has power to make laws;

(e) to make known for the guidance of consumers the rights and obligations of persons under provisions of laws in force in Australia that are designed to protect the interests of consumers.

(2) Where a matter of a kind mentioned in paragraph (1)(b) is referred by the Minister to the Commission for examination and report:

(a) the Commission shall cause to be published in the Gazette and in such newspapers and other journals as the Commission considers appropriate a notice:

(i) stating that the reference has been made and specifying the matter to which the reference relates; and

(ii) inviting interested persons to furnish to the Commission their views on that matter and specifying the time and manner within which those views are to be furnished;

(b) the Commission shall not furnish its report to the Minister until a reasonable opportunity has been given to interested persons to furnish to the Commission their views on the matter to which the reference relates; and

(c) the Commission shall include in its report to the Minister any recommendations that it considers desirable with respect to the reform of the law relating to the matter to which the reference relates, whether those recommendations relate to the amendment of existing laws or the making of new laws.

(3) The Minister shall cause a copy of each report furnished to him or her by the Commission in relation to a matter referred to the Commission under paragraph (1)(b) to be laid before each House of the Parliament as soon as practicable after the report is received by him or her.

29 Commission to comply with directions of Minister and requirements of the Parliament

(1) The Minister may give the Commission directions connected with the performance of its functions or the exercise of its powers under this Act.

(1A) The Minister must not give directions under subsection (1) relating to:

(a) Part IIIA, IV, VII, VIIA, X, XIB or XIC; or

(b) Division 3 of Part XI in relation to individual cases.

(1B) The Commission must comply with a direction.

(2) Any direction given to the Commission under subsection (1) shall be in writing and the Minister shall cause a copy of the direction to be published in the Gazette as soon as practicable after the direction is given.

(3) If either House of the Parliament or a Committee of either House, or of both Houses, of the Parliament requires the Commission to furnish to that House or Committee any information concerning the performance of the functions of the Commission under this Act, the Commission shall comply with the requirement.

Part 3-3—Safety of consumer goods and product related services

Division 1—Safety standards

104 Making safety standards for consumer goods and product related services

(1) The Commonwealth Minister may, by written notice published on the internet, make a safety standard for one or both of the following:

- (a) consumer goods of a particular kind;
- (b) product related services of a particular kind.

(2) A safety standard for consumer goods of a particular kind may consist of such requirements about the following matters as are reasonably necessary to prevent or reduce risk of injury to any person:

- (a) the performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of consumer goods of that kind;
- (b) the testing of consumer goods of that kind during, or after the completion of, manufacture or processing;
- (c) the form and content of markings, warnings or instructions to accompany consumer goods of that kind.

(3) A safety standard for product related services of a particular kind may consist of such requirements about the following matters as are reasonably necessary to prevent or reduce risk of injury to any person:

- (a) the manner in which services of that kind are supplied (including, but not limited to, the method of supply);
- (b) the skills or qualifications of persons who supply such services;
- (c) the materials used in supplying such services;
- (d) the testing of such services;
- (e) the form and content of warnings, instructions or other information about such services.

105 Declaring safety standards for consumer goods and product related services

(1) The Commonwealth Minister may, by written notice published on the internet, declare that the following is a safety standard for consumer goods, or product related services, of a kind specified in the instrument:

- (a) a particular standard, or a particular part of a standard, prepared or approved by Standards Australia or by an association prescribed by the regulations;
- (b) such a standard, or such a part of a standard, with additions or variations specified in the notice.

(2) The Commonwealth Minister must not declare under subsection (1) that a standard, or a part of a standard, referred to in that subsection is a safety standard for:

- (a) consumer goods of a particular kind; or
- (b) product related services of a particular kind;

if that standard or part is inconsistent with a safety standard for those goods or services that is in force and that was made under section 104(1).

106 Supplying etc. consumer goods that do not comply with safety standards

- (1) A person must not, in trade or commerce, supply consumer goods of a particular kind if:
- (a) a safety standard for consumer goods of that kind is in force; and
 - (b) those goods do not comply with the standard.

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

(2) A person must not, in trade or commerce, offer for supply (other than for export) consumer goods the supply of which is prohibited by subsection (1).

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

(3) A person must not, in or for the purposes of trade or commerce, manufacture, possess or have control of consumer goods the supply of which is prohibited by subsection (1).

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

(4) In a proceeding under Part 5-2 in relation to a contravention of subsection (3), it is a defence if the defendant proves that the defendant's manufacture, possession or control of the goods was not for the purpose of supplying the goods (other than for export).

(5) A person must not, in trade or commerce, export consumer goods the supply of which is prohibited by subsection (1) unless:

- (a) the person applies, in writing, to the Commonwealth Minister for an approval to export those goods; and
- (b) the Commonwealth Minister gives such an approval by written notice given to the person.

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

(6) If the Commonwealth Minister gives an approval under subsection (5), he or she must cause a statement setting out particulars of the approval to be tabled in each House of the Parliament of the Commonwealth within 7 sitting days of that House after the approval is given.

(7) If:

- (a) a person supplies consumer goods in contravention of this section; and
 - (b) another person suffers loss or damage:
 - (i) because of a defect in, or a dangerous characteristic of, the goods; or
 - (ii) because of a reasonably foreseeable use (including a misuse) of the goods; or
 - (iii) because, contrary to the safety standard, he or she was not provided with particular information in relation to the goods; and
 - (c) the other person would not have suffered the loss or damage if the goods had complied with the safety standard;
- the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of that supply.

107 Supplying etc. product related services that do not comply with safety standards

(1) A person must not, in trade or commerce, supply product related services of particular kind if:

- (a) a safety standard for services of that kind is in force; and
- (b) those services do not comply with the standard.

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

(2) A person must not, in trade or commerce, offer for supply product related services the supply of which is prohibited by subsection (1).

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

(3) If:

(a) a person supplies product related services in contravention of this section; and

(b) another person suffers loss or damage:

(i) because of defect in, or a dangerous characteristic of, consumer goods that results from the services being supplied; or

(ii) because of a reasonably foreseeable use (including a misuse) of consumer goods that results from the services being supplied; or

(iii) because, contrary to the safety standard, he or she was not provided with particular information in relation to the services; and

(c) the other person would not have suffered the loss or damage if the services had complied with the safety standard;

the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of that supply.

Division 2—Bans on consumer goods and product related services

Subdivision A—Interim bans

109 Interim bans on consumer goods or product related services that will or may cause injury to any person etc.

(1) A responsible Minister may, by written notice published on the internet, impose an interim ban on consumer goods of a particular kind if:

(a) it appears to the responsible Minister that:

(i) consumer goods of that kind will or may cause injury to any person; or

(ii) a reasonably foreseeable use (including a misuse) of consumer goods of that kind will or may cause injury to any person; or

(b) another responsible Minister has imposed, under paragraph (a), an interim ban:

(i) on consumer goods of the same kind; or

(ii) on consumer goods of a kind that includes those goods;

and that ban is still in force.

(2) A responsible Minister may, by written notice published on the internet, impose an interim ban on product related services of a particular kind if:

(a) it appears to the responsible Minister that:

(i) as a result of services of that kind being supplied, consumer goods of a particular kind will or may cause injury to any person; or

(ii) a reasonably foreseeable use (including a misuse) of consumer goods of a particular kind, to which such services relate, will or may cause injury to any person as a result of such services being supplied; or

(b) another responsible Minister has imposed, under paragraph (a), an interim ban:

(i) on product related services of the same kind; or

(ii) on product related services that include those services;

and that ban is still in force.

110 Places in which interim bans apply

(1) An interim ban imposed by the Commonwealth Minister applies in all States and Territories.

(2) An interim ban imposed by a responsible Minister who is Minister of a State applies in the State.

(3) An interim ban imposed by a responsible Minister who is a Minister of a Territory applies in the Territory.

111 Ban period for interim bans

(1) An interim ban imposed by a responsible Minister is in force during the period (the ban period) that:

(a) starts on the day (the start day) specified in the notice imposing the ban; and

(b) subject to this Subdivision, ends at the end of 60 days after the start day.

(2) Before the ban period for the interim ban ends, the responsible Minister may, by written notice published on the internet, extend the ban period for the ban by a period of up to 30 days.

(3) If:

- (a) the ban period for the interim ban is extended under subsection (2); and
- (b) the extended ban period for the ban has not ended; and
- (c) the interim ban was not imposed by the Commonwealth Minister;

the responsible Minister may, in writing, request the Commonwealth Minister to extend the extended ban period for the ban.

(4) If a request is made under subsection (3), the Commonwealth Minister may, by written notice published on the internet, extend the extended ban period for the interim ban by a further period of up to 30 days.

(5) If:

- (a) a request is made under subsection (3); and
- (b) the Commonwealth Minister has not made a decision on the request immediately before the extended ban period for the interim ban is to end;

the Commonwealth Minister is taken to have decided to extend the extended ban period for the ban by a further period of 30 days.

(6) If:

- (a) the ban period for the interim ban is extended under subsection (2); and
- (b) the extended ban period for the ban has not ended; and
- (c) the interim ban was imposed by the Commonwealth Minister;

the Commonwealth Minister may, by written notice published on the internet, extend the extended ban period for the interim ban by a further period of up to 30 days.

112 Interaction of multiple interim bans

(1) If:

(a) an interim ban (the original ban) on consumer goods of a particular kind (the banned goods) is imposed by a responsible Minister other than the Commonwealth Minister; and

(b) while the original ban is in force, the Commonwealth Minister imposes an interim ban (the Commonwealth ban):

- (i) on the banned goods; or
- (ii) on consumer goods of a kind that includes the banned goods;

the original ban, to the extent that it is a ban on the banned goods, ceases to be in force immediately before the Commonwealth ban comes into force.

(2) If:

(a) an interim ban (the original ban) on product related services of a particular kind (the banned services) is imposed by a responsible Minister other than the Commonwealth Minister; and

(b) while the original ban is in force, the Commonwealth Minister imposes an interim ban (the Commonwealth ban):

- (i) on the banned services; or
- (ii) on product related services of a kind that includes the banned services;

the original ban, to the extent that it is a ban on the banned services, ceases to be in force immediately before the Commonwealth ban comes into force.

113 Revocation of interim bans

If a responsible Minister imposes an interim ban:

- (a) the responsible Minister may, by written notice published on the internet, revoke the ban at any time; and
- (b) the ban ceases to be in force on the day specified by the responsible Minister in the notice.

Subdivision B—Permanent bans

114 Permanent bans on consumer goods or product related services

(1) The Commonwealth Minister may, by written notice published on the internet, impose a permanent ban on consumer goods of a particular kind if:

- (a) one or more interim bans on consumer goods of that kind (the banned goods), or on consumer goods of a kind that include the banned goods, are in force; or
- (b) it appears to the Commonwealth Minister that:
 - (i) consumer goods of that kind will or may cause injury to any person; or
 - (ii) a reasonably foreseeable use (including a misuse) of consumer goods of that kind will or may cause injury to any person.

(2) The Commonwealth Minister may, by written notice published on the internet, impose a permanent ban on product related services of a particular kind if:

- (a) one or more interim bans on product related services of that kind (the banned services), or on product related services of a kind that include the banned services, are in force; or
- (b) it appears to the Commonwealth Minister that:
 - (i) as a result of services of that kind being supplied, consumer goods of a particular kind will or may cause injury to any person; or
 - (ii) a reasonably foreseeable use (including a misuse) of consumer goods of a particular kind, to which such services relate, will or may cause injury to any person as a result of such services being supplied.

115 Places in which permanent bans apply

A permanent ban applies in all States and Territories.

116 When permanent bans come into force

A permanent ban comes into force on the day specified by the Commonwealth Minister in the instrument imposing the ban.

117 Revocation of permanent bans

If the Commonwealth Minister imposes a permanent ban:

- (a) the Commonwealth Minister may, by written notice published on the internet, revoke the ban at any time; and
- (b) the ban ceases to be in force on the day specified by the Commonwealth Minister in the notice.

Subdivision C—Compliance with interim bans and permanent bans

118 Supplying etc. consumer goods covered by a ban

(1) A person must not, in trade or commerce, supply consumer goods of a particular kind if:

(a) an interim ban on consumer goods of that kind is in force in the place where the supply occurs; or

(b) a permanent ban on consumer goods of that kind is in force.

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

(2) A person must not, in trade or commerce, offer for supply (other than for export) consumer goods the supply of which is prohibited by subsection (1).

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

(3) A person must not, in or for the purposes of trade or commerce, manufacture, possess or have control of consumer goods the supply of which is prohibited by subsection (1).

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

(4) In a proceeding under Part 5-2 in relation to a contravention of subsection (3), it is a defence if the defendant proves that the defendant's manufacture, possession or control of the goods was not for the purpose of supplying the goods (other than for export).

(5) A person must not, in trade or commerce, export consumer goods the supply of which is prohibited by subsection (1) unless:

(a) the person applies, in writing, to the Commonwealth Minister for an approval to export those goods; and

(b) the Commonwealth Minister gives such an approval by written notice given to the person.

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

(6) If the Commonwealth Minister gives an approval under subsection (5), he or she must cause a statement setting out particulars of the approval to be tabled in each House of the Parliament of the Commonwealth within 7 sitting days of that House after the approval is given.

(7) If:

(a) a person supplies consumer goods in contravention of subsection (1); and

(b) another person suffers loss or damage:

(i) because of a defect in, or a dangerous characteristic of, the goods; or

(ii) because of a reasonably foreseeable use (including a misuse) of the goods;

the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of that supply.

119 Supplying etc. product related services covered by a ban

(1) A person must not, in trade or commerce, supply product related services of a particular kind if:

(a) an interim ban on services of that kind is in force in the place where the supply occurs; or

(b) a permanent ban on services of that kind is in force.

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

(2) A person must not, in trade or commerce, offer for supply product related services the supply of which is prohibited by subsection (1).

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

(3) If:

(a) a person supplies product related services in contravention of subsection (1); and

(b) another person suffers loss or damage:

(i) because of a defect in, or a dangerous characteristic of, consumer goods that results from the services being supplied; or

(ii) because of a reasonably foreseeable use (including a misuse) of consumer goods that results from the services being supplied;

the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of that supply.

Division 3—Recall of consumer goods

Subdivision A—Compulsory recall of consumer goods

122 Compulsory recall of consumer goods

(1) A responsible Minister may, by written notice published on the internet, issue a recall notice for consumer goods of a particular kind if:

- (a) a person, in trade or commerce, supplies consumer goods of that kind; and
- (b) any of the following applies:

(i) it appears to the responsible Minister that such goods will or may cause injury to any person;

(ii) it appears to the responsible Minister that a reasonably foreseeable use (including a misuse) of such goods will or may cause injury to any person;

(iii) a safety standard for such goods is in force and the goods do not comply with the standard;

(iv) an interim ban, or a permanent ban, on such goods is in force; and

(c) it appears to the responsible Minister that one or more suppliers of such goods have not taken satisfactory action to prevent those goods causing injury to any person.

(2) It is not necessary for the purposes of subsection (1)(c) for the responsible Minister to know the identities of any of the suppliers of the consumer goods of that kind.

(3) A recall notice for consumer goods may be issued under subsection (1) even if the consumer goods have become fixtures since the time they were supplied.

123 Contents of a recall notice

(1) A recall notice for the consumer goods may require one or more suppliers of the goods, or (if no such supplier is known to the responsible Minister who issued the notice) the regulator, to take one or more of the following actions:

(a) recall the goods;

(b) disclose to the public, or to a class of persons specified in the notice, one or more of the following:

(i) the nature of a defect in, or a dangerous characteristic of, the goods as identified in the notice;

(ii) the circumstances as identified in the notice in which a reasonably foreseeable use or misuse of the goods is dangerous;

(iii) procedures as specified in the notice for disposing of the goods;

(c) if the identities of any of those suppliers are known to the responsible Minister—inform the public, or a class of persons specified in the notice, that the supplier undertakes to do whichever of the following the supplier thinks is appropriate:

(i) unless the notice identifies a dangerous characteristic of the goods—repair the goods;

(ii) replace the goods;

(iii) refund to a person to whom the goods were supplied (whether by the supplier or by another person) the price of the goods.

(2) The recall notice may specify:

(a) the manner in which the action required to be taken by the notice must be taken;
and

(b) the period within which the action must be taken.

(3) If the recall notice requires the regulator to take action to recall the consumer goods, the responsible Minister may specify in the notice that the regulator must retain, destroy or otherwise dispose of the goods.

(4) If the recall notice requires a supplier of the consumer goods to take action of a kind referred to in subsection (1)(c), the responsible Minister may specify in the notice that, if:

(a) the supplier undertakes to refund the price of the goods; and

(b) a period of more than 12 months has elapsed since a person (whether or not the person to whom the refund is to be made) acquired the goods from the supplier;
the amount of a refund may be reduced by the supplier by an amount calculated in a manner specified in the notice that is attributable to the use which a person has had of the goods.

124 Obligations of a supplier in relation to a recall notice

(1) This section applies if a recall notice for consumer goods requires a supplier to take action of a kind referred to in section 123(1)(c).

(2) If the supplier undertakes to repair the consumer goods, the supplier must cause the goods to be repaired so that:

(a) any defect in the goods identified in the recall notice is remedied; and

(b) if a safety standard for the goods is in force—the goods comply with that standard.

(3) If the supplier undertakes to replace the consumer goods, the supplier must replace the goods with similar consumer goods which:

(a) if a defect in, or a dangerous characteristic of, the goods to be replaced was identified in the recall notice—do not contain that defect or have that characteristic; and

(b) if a safety standard for the goods to be replaced is in force—comply with that standard.

(4) If the supplier undertakes:

(a) to repair the consumer goods; or

(b) to replace the consumer goods;

the cost of the repair or replacement, including any necessary transportation costs, must be paid by the supplier.

125 Notification by persons who supply consumer goods outside Australia if there is compulsory recall

(1) If consumer goods of a particular kind are recalled as required by a recall notice, a person who has supplied or supplies those consumer goods to a person outside Australia must give the person outside Australia a written notice that complies with subsection (2).

(2) The notice given under subsection (1) must:

(a) state that the consumer goods are subject to recall; and

(b) if the consumer goods contain a defect or have a dangerous characteristic—set out the nature of that defect or characteristic; and

(c) if a reasonably foreseeable use or misuse of the consumer goods is dangerous—set out the circumstances of that use or misuse; and

(d) if the consumer goods do not comply with a safety standard for such goods that is in force—set out the nature of the non-compliance; and

(e) if an interim ban, or a permanent ban, on the consumer goods is in force—state that fact.

(3) The notice under subsection (1) must be given as soon as practicable after the supply of the consumer goods to the person outside Australia.

(4) A person who is required to give a notice under subsection (1) must, within 10 days after giving the notice, give a copy of the notice to the responsible Minister who issued the recall notice.

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

126 Interaction of multiple recall notices

If:

(a) a recall notice (the original recall notice) for consumer goods of a particular kind (the recalled goods) is issued by a responsible Minister other than the Commonwealth Minister; and

(b) while the original recall notice is in force, the Commonwealth Minister issues a recall notice (the Commonwealth recall notice):

(i) for the recalled goods; or

(ii) for consumer goods of a kind that includes the recalled goods;

the original recall notice, to the extent that it relates to the recalled goods, ceases to be in force immediately before the Commonwealth recall notice is issued.

127 Compliance with recall notices

(1) If:

(a) a recall notice for consumer goods is in force; and

(b) the notice requires a person (other than the regulator) to do one or more things;

the person must comply with the notice.

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

(2) If a recall notice for consumer goods is in force, a person must not, in trade or commerce:

(a) if the notice identifies a defect in, or a dangerous characteristic of, the consumer goods—supply consumer goods of the kind to which the notice relates which contain that defect or have that characteristic; or

(b) in any other case—supply consumer goods of the kind to which the notice relates.

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

(3) If:

(a) a person contravenes subsection (1) or (2) in relation to consumer goods; and

(b) another person suffers loss or damage:

(i) because of a defect in, or a dangerous characteristic of, the goods; or

(ii) because of a reasonably foreseeable use (including a misuse) of the goods; or

(iii) because, contrary to the recall notice, the other person was not provided with

particular information in relation to the goods;

the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of the contravention.

Subdivision B—Voluntary recall of consumer goods

128 Notification requirements for a voluntary recall of consumer goods

(1) This section applies if a person voluntarily takes action to recall consumer goods of a particular kind (including consumer goods that have become fixtures since being supplied) because:

- (a) the consumer goods will or may cause injury to any other person; or
- (b) a reasonably foreseeable use (including a misuse) of the consumer goods will or may cause injury to any other person; or
- (c) a safety standard for the consumer goods is in force and they do not, or it is likely that they do not, comply with the standard; or
- (d) an interim ban, or a permanent ban, on the consumer goods is in force.

(2) The person must, within 2 days after taking the action, give the Commonwealth Minister a written notice that complies with subsection (7).

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

(3) The Commonwealth Minister may publish a copy of the notice on the internet.

(4) A person who has supplied or supplies consumer goods of that kind to another person outside Australia must give the other person a written notice that complies with subsection (7).

(5) The notice under subsection (4) must be given as soon as practicable after the supply of the consumer goods to the person outside Australia.

(6) A person who is required to give a notice under subsection (4) must, within 10 days after giving the notice, give a copy of the notice to the Commonwealth Minister.

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

(7) A notice given under subsection (2) or (4) must:

- (a) state that the consumer goods are subject to recall; and
- (b) if the consumer goods contain a defect or have a dangerous characteristic—set out the nature of that defect or characteristic; and
- (c) if a reasonably foreseeable use or misuse of the consumer goods is dangerous—set out the circumstances of that use or misuse; and
- (d) if the consumer goods do not, or it is likely that they do not, comply with a safety standard for the goods that is in force—set out the nature of the non-compliance or likely non-compliance; and
- (e) if an interim ban, or a permanent ban, on the consumer goods is in force—state that fact.

Part 4-3—Offences relating to safety of consumer goods and product related services

Division 1—Safety standards

194 Supplying etc. consumer goods that do not comply with safety standards

(1) A person commits an offence if:

- (a) the person, in trade or commerce, supplies consumer goods of a particular kind; and
- (b) a safety standard for consumer goods of that kind is in force; and
- (c) those goods do not comply with the standard.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

(2) A person commits an offence if:

- (a) the person, in trade or commerce, offers for supply (other than for export) consumer goods of a particular kind; and
- (b) a safety standard for consumer goods of that kind is in force; and
- (c) those goods do not comply with the standard.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

(3) A person commits an offence if:

- (a) the person, in or for the purposes of trade or commerce, manufactures, possesses or has control of consumer goods of a particular kind; and
- (b) a safety standard for consumer goods of that kind is in force; and
- (c) those goods do not comply with the standard.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

(4) Subsection (3) does not apply if the person does not manufacture, possess or control the goods for the purpose of supplying the goods (other than for export).

(5) A person commits an offence if:

- (a) the person, in trade or commerce, exports consumer goods of a particular kind; and
- (b) a safety standard for consumer goods of that kind is in force; and
- (c) those goods do not comply with the standard.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

(6) Subsection (5) does not apply if the Commonwealth Minister has, by written notice given to the person, approved the export of the goods under section 106(5).

(7) Subsections (1), (2), (3) and (5) are offences of strict liability.

195 Supplying etc. product related services that do not comply with safety standards

(1) A person commits an offence if:

- (a) the person, in trade or commerce, supplies product related services of a particular kind; and

- (b) a safety standard for services of that kind is in force; and
- (c) those services do not comply with the standard.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
- (2) A person commits an offence if:
- (a) the person, in trade or commerce, offers for supply product related services of a particular kind; and
 - (b) a safety standard for services of that kind is in force; and
 - (c) those services do not comply with the standard.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
- (3) Subsections (1) and (2) are offences of strict liability.

196 Requirement to nominate a safety standard

(1) A person commits an offence if the person refuses or fails to comply with a request given to the person under section 108.

Penalty:

- (a) if the person is a body corporate—\$22,000; or
 - (b) if the person is not a body corporate—\$4,400.
- (2) Subsection (1) is an offence of strict liability.

Division 2—Bans on consumer goods and product related services

197 Supplying etc. consumer goods covered by a ban

- (1) A person commits an offence if:
- (a) the person, in trade or commerce, supplies consumer goods of a particular kind; and
 - (b) either:
 - (i) an interim ban on goods of that kind is in force in the place where the supply occurs; or
 - (ii) a permanent ban on goods of that kind is in force.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
- (2) A person commits an offence if:
- (a) the person, in trade or commerce, offers for supply (other than for export) consumer goods of a particular kind; and
 - (b) the supply would be prohibited by subsection (1).

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
- (3) A person commits an offence if:
- (a) the person, in or for the purposes of trade or commerce, manufactures, possesses or has control of consumer goods of a particular kind; and

(b) supply of the goods would be prohibited by subsection (1).

Penalty:

(a) if the person is a body corporate—\$1,100,000; or

(b) if the person is not a body corporate—\$220,000.

(4) Subsection (3) does not apply if the person does not manufacture, possess or control the goods for the purpose of supplying the goods (other than for export).

(5) A person commits an offence if:

(a) the person exports consumer goods of a particular kind; and

(b) supply of the goods would be prohibited by subsection (1).

Penalty:

(a) if the person is a body corporate—\$1,100,000; or

(b) if the person is not a body corporate—\$220,000.

(6) Subsection (5) does not apply if the Commonwealth Minister has, by written notice given to the person, approved the export of the goods under section 118(5).

(7) Subsections (1), (2), (3) and (5) are offences of strict liability.

198 Supplying etc. product related services covered by a ban

(1) A person commits an offence if:

(a) the person, in trade or commerce, supplies product related services of a particular kind; and

(b) either:

(i) an interim ban on services of that kind is in force in the place where the supply occurs; or

(ii) a permanent ban on services of that kind is in force.

Penalty:

(a) if the person is a body corporate—\$1,100,000; or

(b) if the person is not a body corporate—\$220,000.

(2) A person commits an offence if:

(a) the person, in trade or commerce, offers for supply product related services of a particular kind; and

(b) the supply would be prohibited by subsection (1).

Penalty:

(a) if the person is a body corporate—\$1,100,000; or

(b) if the person is not a body corporate—\$220,000.

(3) Subsections (1) and (2) are offences of strict liability.

Division 3—Recall of consumer goods

199 Compliance with recall orders

(1) A person commits an offence if:

(a) a recall notice for consumer goods is in force; and

(b) the notice requires the person (other than the regulator) to do one or more things; and

(c) the person refuses or fails to comply with the notice.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

(2) A person commits an offence if:

- (a) a recall notice for consumer goods is in force; and
- (b) the person, in trade or commerce:

(i) if the notice identifies a defect in, or a dangerous characteristic of, the consumer goods—supplies consumer goods of the kind to which the notice relates which contain that defect or have that characteristic; or

(ii) in any other case—supplies consumer goods of the kind to which the notice relates.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
- (3) Subsections (1) and (2) are offences of strict liability.

200 Notification by persons who supply consumer goods outside Australia if there is compulsory recall

(1) A person commits an offence if:

- (a) the person is required by section 125(4) to give a copy of a notice to a responsible Minister; and
- (b) the person refuses or fails to give the copy as required by that section.

Penalty:

- (a) if the person is a body corporate—\$16,650; or
 - (b) if the person is not a body corporate—\$3,330.
- (2) Subsection (1) is an offence of strict liability.

201 Notification requirements for a voluntary recall of consumer goods

(1) A person commits an offence if:

- (a) the person is required by section 128(2) to give a notice to the Commonwealth Minister; and
- (b) the person refuses or fails to give the notice as required by that section.

Penalty:

- (a) if the person is a body corporate—\$16,650; or
 - (b) if the person is not a body corporate—\$3,330.
- (2) A person commits an offence if:
- (a) the person is required by section 128(6) to give a copy of a notice to the Commonwealth Minister; and
 - (b) the person refuses or fails to give the copy as required by that section.

Penalty:

- (a) if the person is a body corporate—\$16,650; or
 - (b) if the person is not a body corporate—\$3,330.
- (3) Subsections (1) and (2) are offences of strict liability.