

EXPOSURE DRAFT



EXPOSURE DRAFT

Competition and Consumer Amendment (Competition Policy Review) Regulations 2017

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2017

Peter Cosgrove
Governor-General

By His Excellency's Command

Scott Morrison [**DRAFT ONLY—NOT FOR SIGNATURE**]
Treasurer

EXPOSURE DRAFT

EXPOSURE DRAFT

Contents

1	Name.....	1
2	Commencement	1
3	Authority.....	1
4	Schedules.....	1
	Schedule 1—Amendments	2
	<i>Competition and Consumer Regulations 2010</i>	<i>2</i>

EXPOSURE DRAFT

1 Name

This instrument is the *Competition and Consumer Amendment (Competition Policy Review) Regulations 2017*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day this instrument is registered.	
2. Schedule 1	Immediately after Schedule 1 to the <i>Competition and Consumer Amendment (Competition Policy Review) Act 2017</i> commences.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Competition and Consumer Act 2010*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

EXPOSURE DRAFT

Schedule 1—Amendments

Competition and Consumer Regulations 2010

1 Paragraphs 6A(f) to (k)

Repeal the paragraphs, substitute:

- (f) the applicant’s reasons for believing that all of the declaration criteria for the service are satisfied;

2 After regulation 6B

Insert:

6BA Application to the Council for a recommendation to revoke a decision that a regime is an effective access regime

An application to the Council under subsection 44NBA(3) of the Act for a recommendation in respect of a regime for access to a particular service must include the following information:

- (a) the applicant’s name and, if the applicant is the responsible Minister or an organisation, the name and contact details of a contact officer for the Minister or organisation;
- (b) the applicant’s address for the delivery of documents (which may be an electronic address), including the notification of any decision of the responsible Minister or the Council, relating to the recommendation;
- (c) a description of the access regime;
- (d) grounds in support of the application.

Note: For the application to be successful, the grounds in support of the application would need to satisfy the Council of the matters in subsection 44NBA(5) of the Act.

3 Regulation 9

Repeal the regulation, substitute:

9 Period after which notice of resale price maintenance comes into force

For the purposes of paragraph 93(7A)(a) of the Act, the prescribed period is as follows:

- (a) for a notice given to the Commissioner during the 12-month period starting at the commencement of Schedule 1 to the *Competition and Consumer Amendment (Competition Policy Review) Act 2017*—28 days;
- (b) otherwise—14 days.

4 Regulation 13

Omit “or 3”.

5 Subregulations 20(2) and (3)

Repeal the subregulations, substitute:

- (2) An application under section 101A or 101B of the Act for a review of the giving of a notice by the Commission must be made:
 - (a) in accordance with Form J; and
 - (b) within a period of 21 days after the date of the notice.
- (3) An applicant for the purposes of subregulation (1) or (2) must cause a copy of the application to be served on:
 - (a) the Commission; and
 - (b) the person (if any) who is not the applicant and who was:
 - (i) for an application referred to in subregulation (1) for a review of a determination—the person who applied for the authorisation to which the determination relates; or
 - (ii) for an application referred to in subregulation (2) for a review of the giving of a notice—the person to whom the notice was given.

6 After subregulation 20A(2)

Insert:

- (2A) An application to the Tribunal under subsection 44O(1A) of the Act for review of a decision of the Commonwealth Minister under section 44NBC of the Act must be in accordance with Form JBA.

7 Subregulation 22(2)

Repeal the subregulation, substitute:

- (2) The powers of the Tribunal to give directions under subregulation (1):
 - (a) may be exercised by the Tribunal constituted by a presidential member; and
 - (b) are subject to subsections 102(8) to (10) of the Act.

8 At the end of regulation 22A

Add:

- (4) Subregulation (1) has effect subject to subsections 102(8) to (10) of the Act.

9 Subregulation 24(1)

Omit “or the Tribunal”.

10 Subregulation 24(1) (table items 3 and 4)

Repeal the items.

11 Subregulation 24(5)

Omit “paragraph 22(1)(b) or under”.

12 Subregulations 24(6) and (7)

Repeal the subregulations.

13 Paragraph 26(2)(ab)

Repeal the paragraph.

EXPOSURE DRAFT

Schedule 1 Amendments

14 Paragraph 26(2)(b)

Repeal the paragraph, substitute:

- (b) a requirement that an applicant or person giving a notice must state an address in Australia at which documents under the Act or these Regulations may be served, in any form:
 - (i) approved by the Commission; or
 - (ii) prescribed by these Regulations;for the purposes of the Act or these Regulations.

15 Subregulation 28(5)

Omit “or Tribunal”.

16 Subregulation 28(6A)

Repeal the subregulation, substitute:

- (6A) A concessional fee is payable to the Commission for an additional notice mentioned in paragraph (c) of the definition of *additional notice* in subregulation (7), if:
 - (a) the Commission reasonably believes that the first notice and the additional notice relate to conduct in the same market (or closely related markets); and
 - (b) the additional notice is lodged with the Commission within 14 days after the day the first notice was lodged with the Commission; and
 - (c) the additional notice is endorsed by the Commission with reference to the first notice.

17 Subregulation 28(7) (subparagraph (a)(i) of the definition of *additional notice*)

Repeal the subparagraph.

18 Subregulation 28(7) (at the end of paragraph (a) of the definition of *additional notice*)

Add:

- (v) section 48 of the Act; or

19 Subregulation 28(7) (subparagraph (b)(i) of the definition of *additional notice*)

Repeal the subparagraph.

20 Subregulation 28(7) (at the end of paragraph (b) of the definition of *additional notice*)

Add:

- (v) section 48 of the Act; or

21 Subregulation 28(7) (definition of *first application*)

Omit “subsection 88(1A), (1), (5), (7), (7A), (8) or (8A)”, substitute “section 88”.

22 Part 4

Repeal the Part.

23 Regulations 70 and 71

Repeal the regulations.

24 Regulations 72, 73 and 74

Repeal the regulations.

25 Regulation 83 (note)

Repeal the note.

26 After Part 7

Insert:

Part 8—Other transitional and application provisions

Division 1—Application of amendments made by the Competition and Consumer Amendment (Competition Policy Review) Regulations 2017

96 Meaning of *amending Schedule*

In this Division:

amending Schedule means Schedule 1 to the *Competition and Consumer Amendment (Competition Policy Review) Regulations 2017*.

97 Application of amendments

- (1) The amendment of regulation 6A made by the amending Schedule applies in relation to applications made on or after the day that Schedule commences.
- (2) Despite the amendment made by the amending Schedule, regulation 13 continues to apply, in relation to applications made before the day that Schedule commences, as if that amendment had not been made.

27 Form AA of Part 1 of Schedule 1

Omit “19”, substitute “20”.

28 Parts 2 and 3 of Schedule 1

Repeal the Parts.

29 Form I of Part 4 of Schedule 1

Omit “19” (first occurring), substitute “20”.

30 Form I of Part 4 of Schedule 1

Omit:

EXPOSURE DRAFT

Schedule 1 Amendments

5. Particulars of the facts and contentions upon which I intend to rely in support of the application for review, and a statement of the issues as I see them, are attached.

substitute:

5. Particulars of the facts and contentions upon which I intend to rely in support of the application for review, and a statement of the issues as I see them, are attached.

(Note that if review is being sought of a determination relating to a merger authorisation or an application for one, the review will not be a re-hearing. Unless the Tribunal otherwise allows, the review will be confined to the information, documents and evidence before the Commission when it made the determination (see subsections 101(2) and 102(8) to (10) of the Act).)

31 Form I of Part 4 of Schedule 1

Omit “19” (last occurring), substitute “20”.

32 Form J of Part 4 of Schedule 1

Repeal the Form, substitute:

Form J Application to tribunal for review

(subregulation 20(2))

Application to tribunal for review

(Title of matter)

PLEASE FOLLOW THE DIRECTIONS ON THE BACK OF THIS FORM

1. I (*insert name and address of applicant—if the applicant is a corporation, the corporation’s name should be inserted here, not the name of an officer of the corporation*) apply to the Australian Competition Tribunal under section 101A or 101B of the *Competition and Consumer Act 2010* for a review of the giving of notice under subsection 93(3) / 93(3A) / 93(3B) / 93AAA(1) / 93AC(1) / 93AC(2) / 93AC(2A) / 93ACA(1) / 93AD(5) / 93AG(7) / section 95AB (*delete any of the above that are not applicable*) of that Act to (*state name of corporation to which, or person to whom, the notice was given*) by the Australian Competition and Consumer Commission on the day of 20
(Commission file no.).
2. (a) That notice was/was not (*delete whichever is not applicable*) given to the person making this application.
(b) (*To be completed if applicant for review was not corporation to which, or person to whom, that notice was given*). My interest in the determination is as follows:
(*set out particulars of the matters by reason of which the applicant will seek to satisfy the Tribunal that, for the purposes of section 101A or 101B of the Act, he or she has a sufficient interest*).
3. I am dissatisfied with the giving of the notice by the Commission because:
4. Particulars of the facts and contentions upon which I intend to rely in support of the application for review, and a statement of the issues as I see them, are attached.
5. My address for service for the purpose of regulation 21 of the *Competition and Consumer Regulations 2010* is (*insert address in Australia at which documents may be served for the purpose of proceedings*).

EXPOSURE DRAFT

Schedule 1 Amendments

for the Council to make a recommendation relating to that decision in force under section 44N of the Act.

3. Brief description of the regime and the service:
4. Facts and contentions on which I intend to rely:
5. Issues as I see them:
6. Address for service of documents:

(An address for service must comply with regulation 21 of the Competition and Consumer Regulations 2010—an address in Australia must be provided and, in addition, an electronic address may be provided).

Dated: 20 Signed by/on behalf of the applicant

(Signature)

.....
(Full Name)

.....
(If applicant is a corporation, state position occupied in corporation by person signing. If signed by a solicitor for applicant this fact should be stated).

**Delete if not applicable.*

DIRECTIONS

1. If an address is to be provided in this form, an electronic address may be provided in addition to the address required.

35 Forms JC, K and L of Part 4 of Schedule 1

Omit “19” (wherever occurring), substitute “20”.

36 Part 5 of Schedule 1

Repeal the Part.

37 Schedule 1B

Repeal the Schedule, substitute:

Schedule 1B—Fees payable to Commission for applications and notices

Note: See subregulation 28(5).

Item	Application or notice	Fee	Concessional fee
1	Application for an authorisation under section 88 of the Act (other than a merger authorisation)	\$7,500	No concessional fee
2	Application for a merger authorisation	\$25,000	No concessional fee
3	Application for revocation of a merger authorisation, and substitution of a new merger authorisation, under section 91C of the Act	\$25,000	No concessional fee
4	Application for revocation of an authorisation under section 88 (other than a merger authorisation) and substitution of a new authorisation under section 91C	\$2,500	No concessional fee

EXPOSURE DRAFT

Amendments **Schedule 1**

Item	Application or notice	Fee	Concessional fee
	of the Act		
5	A notice under subsection 93(1) of the Act about conduct of a kind referred to in section 47 of the Act	\$2,500	\$500
6	A notice under subsection 93(1) of the Act about conduct of a kind referred to in section 48 of the Act	\$1,000	\$0
7	Notice of collective bargaining under section 93AB of the Act	\$1,000	\$0

Note: Item 4 does not apply to a revocation and substitution of a non-merger authorisation initiated by the Commission under section 91C.

EXPOSURE DRAFT