

EXPOSURE DRAFT

2013-2014

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Competition and Consumer Amendment Bill 2014

No. , 2014

(Treasury)

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

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

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Competition and Consumer Amendment Act 2014*.

2 Commencement

This Act commences on 1 January 2015.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1 Amendments

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Schedule 1—Amendments

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Competition and Consumer Act 2010

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1 Section 51AD

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Renumber as section 51ACB.

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2 After Division 2 of Part IVB

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Insert:

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Division 2A—Infringement notices

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51ACC Purpose and effect of this Division

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(1) The purpose of this Division is to provide for the issue of an infringement notice to a person for an alleged contravention of a civil penalty provision of an industry code as an alternative to proceedings for an order under section 76 for the payment of a pecuniary penalty.

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(2) This Division does not:

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(a) require an infringement notice to be issued to a person for an alleged contravention of a civil penalty provision of an industry code; or

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(b) affect the liability of a person to proceedings under section 76 in relation to an alleged contravention of a civil penalty provision of an industry code if:

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(i) an infringement notice is not issued to the person for the contravention; or

(ii) an infringement notice issued to the person for the contravention is withdrawn under section 51ACF; or

(c) prevent a court from imposing a higher penalty than the penalty specified in the infringement notice if the person does not comply with the notice.

1 **51ACD Issuing an infringement notice**

- 2 (1) If the Commission has reasonable grounds to believe that a person
3 has contravened a civil penalty provision of an industry code, the
4 Commission may issue an infringement notice to the person.
- 5 (2) The Commission must not issue more than one infringement notice
6 to the person for the same alleged contravention of the civil penalty
7 provision of the industry code.
- 8 (3) The infringement notice does not have any effect if the notice:
9 (a) is issued more than 12 months after the day that the
10 contravention of the civil penalty provision of the industry
11 code is alleged to have occurred; or
12 (b) relates to more than one alleged contravention of a civil
13 penalty provision of the industry code by the person.

14 **51ACE Matters to be included in an infringement notice**

- 15 (1) An infringement notice must:
16 (a) be identified by a unique number; and
17 (b) state the day on which it is issued; and
18 (c) state the name and address of the person to whom it is issued;
19 and
20 (d) identify the Commission and state how it may be contacted;
21 and
22 (e) give details of the alleged contravention, including:
23 (i) the day of the alleged contravention; and
24 (ii) the civil penalty provision of the industry code that was
25 allegedly contravened; and
26 (f) state the maximum penalty that the court could order the
27 person to pay under section 76 for the alleged contravention;
28 and
29 (g) specify the penalty that is payable in relation to the alleged
30 contravention; and
31 (h) state that the penalty is payable within the infringement
32 notice compliance period for the notice; and
33 (i) state that the penalty is payable to the Commission on behalf
34 of the Commonwealth; and

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Schedule 1 Amendments

- 1 (j) explain how payment of the penalty is to be made; and
2 (k) explain the effect of sections 51ACG, 51ACH, 51ACI and
3 51ACJ

4 **51ACF Amount of penalty**

5 The penalty to be specified in an infringement notice that is to be
6 issued to a person, in relation to an alleged contravention of a civil
7 penalty provision of an industry code, must be a penalty equal to
8 the following amount:

- 9 (a) in the case of a body corporate—50 penalty units;
10 (b) in any other case—10 penalty units.

11 **51ACG Effect of compliance with an infringement notice**

- 12 (1) This section applies if:
13 (a) an infringement notice for an alleged contravention of a civil
14 penalty provision of an industry code is issued to a person;
15 and
16 (b) the person pays the penalty specified in the infringement
17 notice within the infringement notice compliance period and
18 in accordance with the notice; and
19 (c) the infringement notice is not withdrawn under
20 section 51ACJ.
- 21 (2) The person is not, merely because of the payment, regarded as
22 having contravened the civil penalty provision of the industry code.
- 23 (3) No proceedings (whether criminal or civil) may be started or
24 continued against the person, by or on behalf of the
25 Commonwealth, in relation to the alleged contravention of the civil
26 penalty provision of the industry code.

27 **51ACH Effect of failure to comply with an infringement notice**

- 28 If:
29 (a) an infringement notice for an alleged contravention of a civil
30 penalty provision of an industry code is issued to a person;
31 and
-

- 1 (b) the person fails to pay the penalty specified in the
2 infringement notice within the infringement notice
3 compliance period and in accordance with the notice; and
4 (c) the infringement notice is not withdrawn under
5 section 51ACJ;
6 the person is liable to proceedings under section 76 in relation to
7 the alleged contravention of the civil penalty provision of the
8 industry code.

9 **51ACI Infringement notice compliance period for infringement** 10 **notice**

- 11 (1) Subject to this section, the infringement notice compliance period
12 for an infringement notice is the period of 28 days beginning on the
13 day after the day that the infringement notice is issued by the
14 Commission.
- 15 (2) The Commission may extend, by notice in writing, the
16 infringement notice compliance period for the infringement notice
17 if the Commission is satisfied that it is appropriate to do so.
- 18 (3) Only one extension may be given and the extension must not be for
19 longer than 28 days.
- 20 (4) Notice of the extension must be given to the person who was
21 issued the infringement notice.
- 22 (5) A failure to comply with subsection (4) does not affect the validity
23 of the extension.
- 24 (6) If the Commission extends the infringement notice compliance
25 period for an infringement notice, a reference in this Division to
26 the infringement notice compliance period for an infringement
27 notice is taken to be a reference to the infringement notice
28 compliance period as so extended.

29 **51ACJ Withdrawal of an infringement notice**

30 *Representations to the Commission*

- 31 (1) A person to whom an infringement notice has been issued for an
32 alleged contravention of a civil penalty provision of an industry
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Schedule 1 Amendments

1 code may make written representations to the Commission seeking
2 the withdrawal of the infringement notice.

3 (2) Evidence or information that the person, or a representative of the
4 person, gives to the Commission in the course of making
5 representations under subsection (1) is not admissible in evidence
6 against the person or representative in any proceedings (other than
7 proceedings for an offence based on the evidence or information
8 given being false or misleading).

9 *Withdrawal by the Commission*

10 (3) The Commission may, by written notice (the ***withdrawal notice***)
11 given to the person to whom an infringement notice was issued,
12 withdraw the infringement notice if the Commission is satisfied
13 that it is appropriate to do so.

14 (4) Subsection (3) applies whether or not the person has made
15 representations seeking the withdrawal.

16 *Content of withdrawal notices*

17 (5) The withdrawal notice must state:
18 (a) the name and address of the person; and
19 (b) the day on which the infringement notice was issued to the
20 person; and
21 (c) that the infringement notice is withdrawn; and
22 (d) that proceedings under section 76 may be started or
23 continued against the person in relation to the alleged
24 contravention of the civil penalty provision of the industry
25 code.

26 *Time limit for giving withdrawal notices*

27 (6) To be effective, the withdrawal notice must be given to the person
28 within the infringement notice compliance period for the
29 infringement notice.

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Refunds

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- (7) If the infringement notice is withdrawn after the person has paid the penalty specified in the infringement notice, the Commission must refund to the person an amount equal to the amount paid.

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3 Section 51AE

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Before “The”, insert “(1)”.

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4 At the end of section 51AE

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Add:

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- (2) The regulations may also prescribe pecuniary penalties not exceeding 300 penalty units for civil penalty provisions of an industry code.

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5 Subparagraph 76(1)(a)(iii)

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Repeal the subparagraph, substitute:

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(ii) section 95AZN;

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(iii) a civil penalty provision of an industry code; or

16

6 After paragraph 76(1A)(c)

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Insert:

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- (ca) for each act or omission to which this section applies that relates to a civil penalty provision of an industry code—the amount set out in the civil penalty provision of the industry code; and

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7 After paragraph 76(1B)(a)

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Insert:

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- (aaa) for each act or omission to which this section applies that relates to a civil penalty provision of an industry code—the amount set out in the civil penalty provision of the industry code; and