



# Competition Policy Reform (Queensland) Act 1996

Current as at 1 January 2011—revised version

## Reprint note

The attachment, which contained a copy of Commonwealth legislation, has been omitted from this version of this reprint. The attachment did not form part of the Act.

For an up-to-date version of the Commonwealth legislation, see the Federal Register of Legislation (ComLaw) website.

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Queensland

# Competition Policy Reform (Queensland) Act 1996

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# Competition Policy Reform (Queensland) Act 1996

**An Act to apply certain laws of the Commonwealth relating to competition policy as laws of Queensland, and for other purposes**

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Competition Policy Reform (Queensland) Act 1996*.

### 2 Commencement

- (1) This part, section 39 and parts 7 and 8 commence on the date of assent.
- (2) The remaining provisions of this Act commence on 21 July 1996, but, if the commencement of those provisions is postponed under subsection (3), they commence on the day to which their commencement has been postponed (or the later or latest of those days).
- (3) The commencement of the provisions referred to in subsection (2) may be postponed from time to time by regulation made by the Governor in Council, but any such postponement can not be effected after the provisions have commenced.

### 3 Definitions

- (1) In this Act—

***application law*** means—

- (a) a law of a participating jurisdiction that applies the Competition Code, either with or without modifications, as a law of the participating jurisdiction; or
- (b) any regulations or other legislative instrument made under a law described in paragraph (a); or
- (c) the Competition Code, applying as a law of the participating jurisdiction, either with or without modifications.

***Code***, for part 7, see section 40.

***Commission*** means the Australian Competition and Consumer Commission established by section 6A of the Competition and Consumer Act, and includes a member of the commission or a division of the commission performing functions of the commission.

***Commonwealth administrative laws***, for part 5, division 5, see section 29.

***Competition and Consumer Act*** means the *Competition and Consumer Act 2010* (Cwlth).

***Competition Code*** means (according to the context)—

- (a) the Competition Code text; or
- (b) the Competition Code text, applying as a law of a participating jurisdiction, either with or without modifications.

***Competition Code text*** means the text described in section 4.

***Conduct Code Agreement*** means the Conduct Code Agreement made on 11 April 1995 between the Commonwealth, the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania, the Australian Capital Territory and the Northern Territory of Australia, as in force for the time being.

***Council*** means the National Competition Council established by section 29A of the Competition and Consumer Act.



**cut-off date**, for part 7, see section 40.

**existing contract**, for part 7, see section 40.

**instrument** means any document whatever, including—

- (a) an Act or an instrument made under an Act; or
- (b) a law of this jurisdiction or an instrument made under such a law; or
- (c) an award or other industrial determination or order, or an industrial agreement; or
- (d) any other order (whether executive, judicial or otherwise); or
- (e) a notice, certificate or licence; or
- (f) an agreement; or
- (g) an application made, information or complaint laid, affidavit sworn, or warrant issued, for any purpose; or
- (h) an indictment, presentment, summons or writ; or
- (i) any other pleading in, or process issued in connection with, a legal or other proceeding.

**jurisdiction** means a State.

**law**, in relation to a Territory, means a law of, or in force in, that Territory.

**modifications** includes additions, omissions and substitutions.

**month** means a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of the next month.

**notification**, for a regulation, see the *Statutory Instruments Act 1992*, section 47.

**officer**, in relation to the Commonwealth, has the meaning given in part XIA of the Competition and Consumer Act.

**operative date**, for part 7, see section 40.



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- (b) the remaining provisions of the Competition and Consumer Act (except sections 2A, 5, 6 and 172), so far as they would relate to the schedule version if the schedule version were substituted for part IV of that Act; and
  - (c) the regulations under the Competition and Consumer Act, so far as they relate to any provisions covered by paragraph (a) or (b).
- (2) For the purpose of forming part of the Competition Code text—
- (a) the provisions referred to in subsection (1)(b) and (c) are to be modified as necessary to fit in with the Schedule version of Part IV; and
  - (b) in particular, references to corporations are to include references to persons who are not corporations.

## **5 Application of Competition Code**

- (1) The Competition Code text, as in force for the time being, applies as a law of Queensland.
- (2) This section has effect subject to section 6.

## **6 Future modifications of Competition Code text**

- (1) A modification made by a Commonwealth law to the Competition Code text after the commencement of this section—
  - (a) does not apply under section 5 until at least the end of the period of 2 months after the date of the modification, unless a regulation under this Act appoints an earlier date; and
  - (b) does not apply under that section at all, if the modification is declared by a regulation under this Act to be excluded from the operation of that section.
- (2) A regulation under subsection (1)(a)—

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- (a) can not appoint any day that is earlier than the date of notification of the regulation or that is earlier than the date on which the modification of the text takes effect; and
  - (b) is taken in such a case to appoint the date of notification of the regulation or the date on which the modification of the text takes effect, whichever is the later.
- (3) A regulation under subsection (1)(b) has effect only if notified before the end of 2 months after the date of the modification.
  - (4) Subsection (1)(b) ceases to apply to the modification if a further regulation so provides.
  - (5) For the purposes of this section, the date of the modification is the date on which the Commonwealth Act effecting the modification receives the Royal Assent or the regulation effecting the modification is notified in the Commonwealth of Australia Gazette.

## **7 Interpretation of Competition Code**

- (1) The *Acts Interpretation Act 1901* (Cwlth) applies as a law of this jurisdiction to—
  - (a) the Competition Code of this jurisdiction; and
  - (b) any instrument under that code.
- (2) For the purposes of subsection (1), the Commonwealth Act mentioned in that subsection applies as if—
  - (a) the statutory provisions in the Competition Code of this jurisdiction were a Commonwealth Act; and
  - (b) the regulations in the Competition Code of this jurisdiction or instruments mentioned in that subsection were regulations or instruments under a Commonwealth Act.
- (3) The *Acts Interpretation Act 1954* does not apply to—
  - (a) the Competition Code of Queensland; or
  - (b) any instrument under that code.

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## **8 Application of Competition Code**

- (1) The Competition Code of this jurisdiction applies to and in relation to—
  - (a) persons carrying on business within this jurisdiction; or
  - (b) bodies corporate incorporated or registered under the law of this jurisdiction; or
  - (c) persons ordinarily resident in this jurisdiction; or
  - (d) persons otherwise connected with this jurisdiction.
- (2) Subject to subsection (1), the Competition Code of this jurisdiction extends to conduct, and other acts, matters and things, occurring or existing outside or partly outside this jurisdiction (whether within or outside Australia).
- (3) Where a claim under section 82 of the Competition Code of this jurisdiction is made in a proceeding, a person is not entitled to rely at a hearing in respect of that proceeding on conduct to which a provision of the code extends occurring outside Australia except with the consent in writing of the Commonwealth Minister.
- (4) A person other than the Commonwealth Minister or the Commission is not entitled to make an application to the Court for an order under section 87(1) or (1A) of the Competition Code of this jurisdiction in a proceeding in respect of conduct to which a provision of the code extends occurring outside Australia except with the consent in writing of the Commonwealth Minister.
- (5) The Commonwealth Minister is required to give a consent under subsection (3) or (4) in respect of a proceeding unless, in the opinion of the Commonwealth Minister—
  - (a) the law of the country in which the conduct concerned was engaged in required or specifically authorised the engaging in of the conduct; and
  - (b) it is not in the national interest that the consent be given.
- (6) In this section—

***Commonwealth Minister*** means a Minister of State for the Commonwealth administering part IV of the Competition and Consumer Act.

## 9 Special provisions

The references in sections 45 and 45B of the Competition Code of this or another participating jurisdiction to *the commencement of this section* are taken to be references to the commencement of the provision of the law of that jurisdiction that provides that the Competition Code text as in force for the time being applies as a law of that jurisdiction.

# Part 3 Citing the Competition Codes

## 10 Citation of Competition Code of this jurisdiction

The Competition Code text applying as a law of this jurisdiction may be cited as the Competition Code of Queensland.

## 11 References to Competition Code

- (1) The object of this section is to help ensure that the Competition Code of this jurisdiction can operate, in appropriate circumstances, as if that code, together with the Competition Code of each other participating jurisdiction, constituted a single national Competition Code applying throughout the participating jurisdictions.
- (2) A reference in any instrument to the Competition Code is a reference to the Competition Codes of any or all of the participating jurisdictions.
- (3) Subsection (2) has effect except so far as the contrary intention appears in the instrument or the context of the reference otherwise requires.

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## **12 References to Competition Codes of other jurisdictions**

- (1) This section has effect for the purposes of an Act, a law of this jurisdiction or an instrument under an Act or such a law.
- (2) If a law of a participating jurisdiction other than this jurisdiction provides that the Competition Code text as in force for the time being applies as a law of that jurisdiction, the Competition Code of that jurisdiction is the Competition Code text, applying as a law of that jurisdiction.

# **Part 4 Application of Competition Codes to jurisdictions**

## **13 Application law of this jurisdiction**

The application law of this jurisdiction binds (so far as the legislative power of Parliament permits) the State of Queensland and each other State, so far as the relevant State carries on a business, either directly or by an authority of that State.

## **14 Application law of other jurisdictions**

The application law of each participating jurisdiction other than this jurisdiction binds the State of Queensland, so far as the State carries on a business, either directly or by an authority of the State.

## **15 Activities that are not business**

- (1) For the purposes of sections 13 and 14, the following do not amount to carrying on a business—
  - (a) imposing or collecting—
    - (i) taxes; or
    - (ii) levies; or

- (iii) fees for licences;
  - (b) granting, refusing to grant, revoking, suspending or varying licences (whether or not they are subject to conditions);
  - (c) a transaction involving—
    - (i) only persons who are all acting for the same jurisdiction (and none of whom is an authority of a State); or
    - (ii) only persons who are all acting for the same authority of a State; or
    - (iii) only a State and 1 or more non-commercial authorities of that State; or
    - (iv) only non-commercial authorities of the same State;
  - (d) the acquisition of primary products by a government body under legislation, unless the acquisition occurs because—
    - (i) the body chooses to acquire the products; or
    - (ii) the body has not exercised a discretion that it has under the legislation that would allow it not to acquire the products.
- (2) Subsection (1) does not limit the things that do not amount to carrying on a business for the purposes of sections 13 and 14.
- (3) In this section—

***acquisition of primary products by a government body under legislation*** includes vesting of ownership of primary products in a government body by legislation.

***government body*** means a State or an authority of a State.

***licence*** means a licence that allows the licensee to supply goods or services.

***primary products*** means—

- (a) agricultural or horticultural produce; or
- (b) crops, whether on or attached to the land or not; or



- (c) animals (whether dead or alive); or
  - (d) the bodily produce (including natural increase) of animals.
- (4) For the purposes of this section, an authority of a State is ***non-commercial*** if—
- (a) it is constituted by only 1 person; and
  - (b) it is neither a trading corporation nor a financial corporation.

## **16 States not liable to pecuniary penalty or prosecution**

- (1) Nothing in the application law of this jurisdiction makes a State liable to a pecuniary penalty or to be prosecuted for an offence.
- (2) Without limiting subsection (1), nothing in the application law of a participating jurisdiction makes the State of Queensland liable to a pecuniary penalty or to be prosecuted for an offence.
- (3) The protection in subsection (1) or (2) does not apply to an authority of a State.

## **17 This part overrides the prerogative**

If, because of this part, a provision of the law of another participating jurisdiction binds the State of Queensland, the State is subject to that provision despite any prerogative right or privilege.

## **Part 5                      National administration and    enforcement of Competition    Codes**

### **Division 1                      Preliminary**

#### **18            Object**

The object of this part is to help ensure that the Competition Codes of the participating jurisdictions are administered on a uniform basis, in the same way as if those codes constituted a single law of the Commonwealth.

### **Division 2                      Conferral of functions**

#### **19            Conferral of functions and powers on certain bodies**

- (1) The authorities and officers of the Commonwealth referred to in the Competition Code of this jurisdiction, including (but not limited to) the Commission, the Tribunal and the Council, have the functions and powers conferred or expressed to be conferred on them respectively under the Competition Code of this jurisdiction.
- (2) In addition to the powers mentioned in subsection (1), the authorities and officers referred to in that subsection have power to do all things necessary or convenient to be done in connection with the performance of the functions and exercise of the powers referred to in that subsection.

#### **20            Conferral of other functions and powers for purposes of law in this jurisdiction**

The Commission and the Tribunal have power to do acts in this jurisdiction in the performance or exercise of any function or power expressed to be conferred on them respectively by the Competition Code of another participating jurisdiction.

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## Division 4                      Offences

### 24      Object

- (1) The object of this division is to further the object of this part by providing—
  - (a) for an offence against the Competition Code of this jurisdiction to be treated as if it were an offence against a law of the Commonwealth; and
  - (b) for an offence against the Competition Code of another participating jurisdiction to be treated in this jurisdiction as if it were an offence against a law of the Commonwealth.
- (2) The purposes for which an offence is to be treated as mentioned in subsection (1) include, for example (but without limitation)—
  - (a) the investigation and prosecution of offences; and
  - (b) the arrest, custody, bail, trial and conviction of offenders or persons charged with offences; and
  - (c) proceedings relating to a matter referred to in paragraph (a) or (b); and
  - (d) appeals and review relating to criminal proceedings and to proceedings of the kind referred to in paragraph (c); and
  - (e) the sentencing, punishment and release of persons convicted of offences; and
  - (f) fines, penalties and forfeitures; and
  - (g) liability to make reparation in connection with offences; and
  - (h) proceeds of crime; and
  - (i) spent convictions.

**25 Application of Commonwealth laws to offences against Competition Code of this jurisdiction**

- (1) The Commonwealth laws apply as laws of this jurisdiction in relation to an offence against the Competition Code of this jurisdiction as if that code were a law of the Commonwealth and not a law of this jurisdiction.
- (2) For the purposes of a law of this jurisdiction, an offence against the Competition Code of this jurisdiction—
  - (a) is taken to be an offence against the laws of the Commonwealth, in the same way as if that code were a law of the Commonwealth; and
  - (b) is taken not to be an offence against the laws of this jurisdiction.
- (3) Subsection (2) has effect for the purposes of a law of this jurisdiction except as prescribed by a regulation under this Act.

**26 Application of Commonwealth laws to offences against Competition Codes of other jurisdictions**

- (1) The Commonwealth laws apply as laws of this jurisdiction in relation to an offence against the Competition Code of another participating jurisdiction as if that code were a law of the Commonwealth and not a law of that other jurisdiction.
- (2) For the purposes of a law of this jurisdiction, an offence against the Competition Code of another participating jurisdiction—
  - (a) is taken to be an offence against the laws of the Commonwealth, in the same way as if that code were a law of the Commonwealth; and
  - (b) is taken not to be an offence against the laws of that jurisdiction.
- (3) Subsection (2) has effect for the purposes of a law of this jurisdiction except as prescribed by a regulation under this Act.

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- (4) This section does not require, prohibit, empower, authorise or otherwise provide for, the doing of an act outside this jurisdiction.

## **27 Functions and powers conferred on Commonwealth officers and authorities**

- (1) A Commonwealth law applying because of section 25 that confers on a Commonwealth officer or authority a function or power in relation to an offence against the Competition and Consumer Act also confers on the officer or authority the same function or power in relation to an offence against the corresponding provision of the Competition Code of this jurisdiction.
- (2) A Commonwealth law applying because of section 26 that confers on a Commonwealth officer or authority a function or power in relation to an offence against the Competition and Consumer Act also confers on the officer or authority the same function or power in relation to an offence against the corresponding provision of the Competition Code of another participating jurisdiction.
- (3) The function or power referred to in subsection (2) may only be performed or exercised in this jurisdiction.
- (4) In performing a function or exercising a power conferred by subsection (1) or (2), the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power in relation to an offence against the corresponding provision of the Competition and Consumer Act.

## **28 Restriction of functions and powers of officers and authorities of this jurisdiction**

Where, by reason of this division, a function or power is conferred on a Commonwealth officer or authority, that function or power may not be performed or exercised by an officer or authority of this jurisdiction.

## **Division 5                      Administrative law**

### **29            Definition**

In this division—

***Commonwealth administrative laws*** means—

- (a) the following Acts—
  - (i) the *Administrative Appeals Tribunal Act 1975* (Cwlth), excluding part IVA;
  - (ii) the *Freedom of Information Act 1982* (Cwlth);
  - (iii) the *Ombudsman Act 1976* (Cwlth);
  - (iv) the *Privacy Act 1988* (Cwlth); and
- (b) the regulations in force under those Acts.

### **30            Application of Commonwealth administrative laws to Competition Code of this jurisdiction**

- (1) The Commonwealth administrative laws apply as laws of this jurisdiction to any matter arising in relation to the Competition Code of this jurisdiction as if that code were a law of the Commonwealth and not a law of this jurisdiction.
- (2) For the purposes of a law of this jurisdiction, a matter arising in relation to the Competition Code of this jurisdiction—
  - (a) is taken to be a matter arising in relation to laws of the Commonwealth in the same way as if that code were a law of the Commonwealth; and
  - (b) is taken not to be a matter arising in relation to laws of this jurisdiction.
- (3) Subsection (2) has effect for the purposes of a law of this jurisdiction except as prescribed by a regulation under this Act.

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**31 Application of Commonwealth administrative laws to Competition Codes of other jurisdictions**

- (1) The Commonwealth administrative laws apply as laws of this jurisdiction to any matter arising in relation to the Competition Code of another participating jurisdiction as if that code were a law of the Commonwealth and not a law of that jurisdiction.
- (2) For the purposes of a law of this jurisdiction, a matter arising in relation to the Competition Code of another participating jurisdiction—
  - (a) is taken to be a matter arising in relation to laws of the Commonwealth in the same way as if that code were a law of the Commonwealth; and
  - (b) is taken not to be a matter arising in relation to laws of that jurisdiction.
- (3) Subsection (2) has effect for the purposes of a law of this jurisdiction except as prescribed by a regulation under this Act.
- (4) This section does not require, prohibit, empower, authorise or otherwise provide for, the doing of an act outside this jurisdiction.

**32 Functions and powers conferred on Commonwealth officers and authorities**

- (1) A Commonwealth administrative law applying because of section 30 that confers on a Commonwealth officer or authority a function or power also confers on the officer or authority the same function or power in relation to a matter arising in relation to the Competition Code of this jurisdiction.
- (2) A Commonwealth administrative law applying because of section 31 that confers on a Commonwealth officer or authority a function or power also confers on the officer or authority the same function or power in relation to a matter arising in relation to the Competition Code of another participating jurisdiction.

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- (3) The function or power referred to in subsection (2) may only be performed or exercised in this jurisdiction.
- (4) In performing a function or exercising a power conferred by subsection (1) or (2), the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power under the Commonwealth administrative law.

### **33 Restriction of functions and powers of officers and authorities of this jurisdiction**

Where, by reason of this division, a function or power is conferred on a Commonwealth officer or authority, that function or power may not be performed or exercised by an officer or authority of this jurisdiction.

### **33A Construction of references to part IVA of AAT Act (Cwlth)**

For the purposes of sections 30 and 31, a reference in a provision of the *Administrative Appeals Tribunal Act 1975* (Cwlth), as that provision applies as a law of this jurisdiction, to the whole or any part of part IVA of that Act is taken to be a reference to the whole or any part of that part as it has effect as a law of the Commonwealth.

## **Part 6 Miscellaneous**

### **34 No doubling-up of liabilities**

- (1) If—
  - (a) an act or omission is an offence against the Competition Code of this jurisdiction and is also an offence against the Competition and Consumer Act or an application law of another participating jurisdiction; and



- (b) the offender has been punished for the offence under the Competition and Consumer Act or the application law of the other jurisdiction;

the offender is not liable to be punished for the offence against the Competition Code of this jurisdiction.

- (2) If a person has been ordered to pay a pecuniary penalty under the Competition and Consumer Act or the application law of another participating jurisdiction, the person is not liable to a pecuniary penalty under the Competition Code of this jurisdiction in respect of the same conduct.

### **35 Things done for multiple purposes**

The validity of an authorisation, notification or any other thing given or done for the purposes of the Competition Code of this jurisdiction is not affected only because it was given or done also for the purposes of the Competition and Consumer Act or the Competition Code of 1 or more other jurisdictions.

### **36 Reference in Commonwealth law to a provision of another law**

For the purposes of section 25, 26, 30 or 31, a reference in a Commonwealth law to a provision of that or another Commonwealth law is taken to be a reference to that provision as applying because of that section.

### **37 Fees and other money**

- (1) All fees, taxes, penalties (including pecuniary penalties referred to in section 76 of the Competition Code), fines and other money that, under the application law of this jurisdiction, are authorised or directed to be payable by or imposed on any person must be paid to the Commonwealth.
- (2) Subsection (1) does not apply to amounts recovered for loss or damage as referred to in section 82 or 87 of the Competition Code and other amounts prescribed by a regulation under this Act.

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- (3) This subsection imposes the fees (including fees that are taxes) that the regulations in the Competition Code of this jurisdiction prescribe.

### **38 Regulations**

The Governor in Council may make regulations under this Act.

### **39 Regulations for exceptions under section 51 of Competition and Consumer Act or Code**

Without limiting any other power to make regulations under any other Act, the Governor in Council may make regulations under this Act specifically authorising a specified thing to be done in this jurisdiction and referring expressly to the Competition and Consumer Act or the Competition Code.

## **Part 7 Transitional rules**

### **40 Definitions**

In this part—

*Code* means the Competition Code of this jurisdiction.

*cut-off date* means 19 August 1994.

*existing contract* means a contract that was made before the operative date.

*operative date* means the date of commencement of parts 2 to 6 of this Act.

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## 41 Existing contracts

- (1) For the purposes of deciding whether a person has contravened part IV of the Code at any time after the operative date—
  - (a) existing contracts made before the cut-off date, and things done to give effect to those contracts, are to be disregarded; and
  - (b) if an existing contract made before the cut-off date is varied on or after the cut-off date—things done to give effect to the varied contract are not to be disregarded under paragraph (a) unless they would have been disregarded under the contract as in force immediately before the cut-off date; and
  - (c) regard can be had to existing contracts made on or after the cut-off date and to things done to give effect to those contracts.
- (2) Part IV of the Code does not make unenforceable a provision of an existing contract made before the cut-off date, unless it was unenforceable immediately before the operative date.
- (3) Part IV of the Code can make unenforceable a provision of an existing contract made on or after the cut-off date.

## 42 Section 51 exceptions

- (1) This section applies (in addition to section 51(1) of the Code) to conduct taking place before the end of 3 years after 20 July 1995.
- (2) In deciding whether a person has contravened part IV of the Code, a particular thing is to be disregarded if (and to the same extent) it is to be disregarded for the purposes of the Trade Practices Act because of the *Competition Policy Reform Act 1995* (Cwlth), section 33.

**43 Temporary exemption from pecuniary penalties**

- (1) A person is not liable to a pecuniary penalty under the Code for conduct that happens within 2 years after 20 July 1995.
- (2) If the commencement of provisions of this Act is postponed under section 2, the period of 2 years mentioned in this section is extended by the same number of days.

**44 Advance authorisations**

From the commencement of this section—

- (a) an authorisation may be applied for and granted under the Code; and
- (b) a notice may be given under section 93 of the Code; as if the whole of this Act commenced at the same time as this section.

**45 Regulations relating to savings and transitional matters**

A regulation under this Act may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

## **Part 8 Attachment**

**46 Attachment—Schedule version of Part IV**

- (1) Attached to this Act is a copy of the Schedule version of Part IV.
- (2) The attachment does not form part of this Act.
- (3) To remove doubt, it is declared that the copy of the Schedule version of Part IV in the attachment may be revised so that it is an accurate copy of the schedule version as amended from time to time.

*Editor's note—*

The attachment has been omitted from this reprint. For an up-to-date version of the Commonwealth legislation, see the Federal Register of Legislation (ComLaw) website.