



Statutory Rules 1995 No. 248¹

Trade Practices Regulations² (Amendment)

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Trade Practices Act 1974*.

Dated 9 August 1995.

BILL HAYDEN
Governor-General

By His Excellency's Command,

GEORGE GEAR
Assistant Treasurer

1. Commencement

1.1 These Regulations commence on the commencement of Part 2 of the *Competition Policy Reform Act 1995*.

2. Amendment

2.1 The Trade Practices Regulations are amended as set out in these Regulations.

3. Regulation 2 (Interpretation)

3.1 Subregulation 2 (1):

Insert:

“ ‘**Competition Code**’ has the same meaning as in Part XIA of the Act;”.

3.2 Subregulation 2 (2):

Omit the subregulation, substitute:

“(2) In these Regulations, a reference to a form by letter is a reference to the Form so lettered in Schedule 1.

“(3) In these Regulations (including any form provided for by these Regulations), unless the contrary intention appears (from section 150C of the Act or otherwise):

- (a) a reference to the Act, or to the Act and these Regulations, includes a reference to the Competition Code; and
- (b) a reference to a provision of the Act (including a reference to a Part, Division or Subdivision of the Act) includes a reference to that provision having effect as a provision of the Competition Code; and
- (c) a reference to a provision of these Regulations (including a reference to a Part of these Regulations) includes a reference to that provision having effect as a provision of the Competition Code.”.

4. Regulation 7 (Application for authorisation—Division 1 of Part VII)

4.1 Omit “E or F”, substitute “E, EA or F”.

5. Regulation 9 (Notification of exclusive dealing)

5.1 Add at the end:

“(2) For the purposes of subsection 93 (7A) of the Act, the prescribed period, in relation to a notice referred to in that subsection, is:



- (a) if the notice is given on or before 30 June 1996–21 days; or
- (b) if the notice is given after 30 June 1996–14 days.”.

6. Regulation 20 (Applications for review)

- 6.1 Subregulation 20 (2):
After “subsection 93 (3)”, insert “or (3A)”.
- 6.2 Subregulation 20 (3):
After “subsection 93 (3)” (wherever occurring), insert “or (3A)”.

7. Regulation 28 (Fees)

- 7.1 Paragraph 28 (5) (a):
Omit “subsections 88 (1), 88 (5), 88 (7), 88 (7A), or 88 (8)”, substitute “subsection 88 (1), (5), (7), (7A), (8) or (8A)”.

8. First Schedule (Forms—general)

- 8.1 Heading:
Omit:

“SCHEDULE”,

substitute:

Subregulation 2 (2)

“SCHEDULE 1

FORMS-GENERAL”.

- 8.2 Form A (back of form):
Omit Notice 1, substitute:

“1. In relation to item 4, your attention is drawn to subsection 90 (8) of the *Trade Practices Act 1974*, which provides as follows:

- ‘(8) The Commission shall not:
 - (a) make a determination granting:
unless it is satisfied in all the circumstances that the proposed provision or the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed contract or arrangement should be allowed to be made, the proposed understanding should be allowed to be arrived at, or the proposed conduct should be allowed to take place, as the case may be; or
 - (b) make a determination granting an authorization under subsection 88 (1) in respect of a provision of a contract, arrangement or understanding that is or may be an exclusionary provision unless it is satisfied in all the circumstances that the provision has resulted, or is likely to result, in such a benefit to the public that the contract, arrangement or understanding should be allowed to be given effect to.’.”.

- 8.3 Form C (front of form):
- Omit 8.4 Form C (front of form):
- Omit 8.5 Form D (back of form):
Omit the Notice, substitute:



“NOTICE

In relation to item 6, your attention is drawn to paragraph 90 (8) (a) of the *Trade Practices Act 1974*, which provides that the Commission shall not:

- ‘(a) make a determination granting:
- (i) an authorization under subsection 88 (1) in respect of a provision of a proposed contract, arrangement or understanding that is or may be an exclusionary provision; or
 - (ii) an authorization under subsection 88 (7) in respect of proposed conduct; or
 - (iii) an authorization under subsection 88 (8) in respect of proposed conduct to which subsection 47 (6) or (7) applies; or
 - (iv) an authorisation under subsection 88 (8A) for proposed conduct to which section 48 applies;
- unless it is satisfied in all the circumstances that the proposed provision or the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed contract or arrangement should be allowed to be made, the proposed understanding should be allowed to be arrived at, or the proposed conduct should be allowed to take place, as the case may be;’.”.

8.6 After Form E, insert:

Regulation 7

“FORM EA

[Front of Form]

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974—Subsection 88 (8A)

RESALE PRICE MAINTENANCE: APPLICATION FOR AUTHORISATION

To the Trade Practices Commission:

Application is made under subsection 88 (8A) of the *Trade Practices Act 1974* for an authorisation under that subsection to engage in conduct that constitutes (or may constitute) the practice of resale price maintenance.

(PLEASE READ DIRECTIONS AND NOTICE ON BACK OF FORM)

1.
 - (a) Name of applicant (*see Direction 2 on the back of this Form*):
 - (b) Short description of business carried on by applicant:
 - (c) Address in Australia for service of documents on the applicant:
2.
 - (a) Description of the goods or services in relation to the supply of which this application relates:
 - (b) Description of the conduct that would or may constitute the practice of resale price maintenance (*see Direction 4 on the back of this Form*):
3.
 - (a) Grounds for grant of authorisation:



- (b) Facts and contentions relied upon in support of those grounds (*see Notice on the back of this Form*):
- 4.
- (a) Does this application deal with a matter relating to a joint venture (*see section 4J of the Trade Practices Act 1974*)?
- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?
- (c) If so, by whom or on whose behalf are those other applications being made?
5. Name and address of person authorised by the applicant to provide additional information in relation to this application:

Dated 19

Signed by/on behalf of the applicant

(Signature)

(Full name)

(Description)

DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
2. If the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application, and the application is to be signed by a person authorised by the corporation to do so.
3. In item 1 (b), describe that part of the applicant's business in the course of which the conduct is engaged in.
4. If particulars of any element of an act of a kind referred to in subsection 96 (3) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the application.

NOTICE

In relation to item 3, your attention is drawn to subsection 90 (8) of the *Trade Practices Act 1974*, which provides as follows:

- ‘(8) The Commission shall not:
- (a) make a determination granting:
 - (i) an authorization under subsection 88 (1) in respect of a provision of a proposed contract, arrangement or understanding that is or may be an exclusionary provision; or
 - (ii) an authorization under subsection 88 (7) in respect of proposed conduct; or
 - (iii) an authorization under subsection 88 (8) in respect of proposed conduct to which subsection 47 (6) or (7) applies; or
 - (iv) an authorisation under subsection 88 (8A) for proposed conduct to which section 48 applies;



unless it is satisfied in all the circumstances that the proposed provision or the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed contract or arrangement should be allowed to be made, the proposed understanding should be allowed to be arrived at, or the proposed conduct should be allowed to take place, as the case may be; or

- (b) make a determination granting an authorization under subsection 88 (1) in respect of a provision of a contract, arrangement or understanding that is or may be an exclusionary provision unless it is satisfied in all the circumstances that the provision has resulted, or is likely to result, in such a benefit to the public that the contract, arrangement or understanding should be allowed to be given effect to.’.”.

8.7 Form F (front of form):

Omit:

“Application is hereby made under subsection 88 (9) of the *Trade Practices Act 1974* for an authorization under that sub-section to acquire shares in the capital, or to acquire assets, of the body corporate named in item 2.”,

substitute:

“Application is made under subsection 88 (9) of the *Trade Practices Act 1974* for an authorisation under that subsection to acquire shares in the capital of the body corporate, or to acquire assets of the person (including a body corporate), named in item 2.”.

8.8 Form F (front of form):

Item 1 (a):

Omit “applicant corporation”, substitute “applicant”.

8.9 Form F (front of form):

Item 1 (d):

Omit “corporation”, substitute “person”.

8.10 Form F (front of form)

Item 2:

Omit the item, substitute:

“2.

- (a) In the case of a body corporate whose shares or assets are to be acquired:

- (i) Name of the body corporate:
- (ii) Place of incorporation of the body corporate:
- (iii) Registered office of the body corporate:
- (iv) Short description of the business carried on by the body corporate:
- (v) Number of shares or description of assets to be acquired:

- (b) In the case of a person (other than a body corporate) whose assets are to be acquired:

- (i) Name and address of the person:
- (ii) Short description of the business carried on by the person:
- (iii) Description of assets to be acquired.”.

8.11 Form F (front of form):

Item 6:

Omit “applicant corporation”, substitute “applicant”.

8.12 Form F (front of form):

Omit “Signed on behalf of the applicant corporation”, substitute “Signed by/on behalf of the applicant”.

8.13 Form F (back of form):

Direction 1:



Omit “on behalf of the applicant corporation”, substitute “by or on behalf of the applicant”.

8.14 Form F (back of form):

Omit Direction 2, substitute:

“2. If the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application, and the application is to be signed by a person authorised by the corporation to do so.”.

8.15 Form F (back of form):

Omit the Notice, substitute:

“NOTICE

In relation to item 4, your attention is drawn to subsections 90 (9) and (9A) of the *Trade Practices Act 1974*, which provide as follows:

‘(9) The Commission shall not make a determination granting an authorization under subsection 88 (9) in respect of a proposed acquisition of shares in the capital of a body corporate or of assets of a person or in respect of the acquisition of a controlling interest in a body corporate within the meaning of section 50A unless it is satisfied in all the circumstances that the proposed acquisition would result, or be likely to result, in such a benefit to the public that the acquisition should be allowed to take place.

‘(9A) In determining what amounts to a benefit to the public for the purposes of subsection (9):

- (a) the Commission must regard the following as benefits to the public (in addition to any other benefits to the public that may exist apart from this paragraph):
 - (i) a significant increase in the real value of exports;
 - (ii) a significant substitution of domestic products for imported goods; and
- (b) without limiting the matters that may be taken into account, the Commission must take into account all other relevant matters that relate to the international competitiveness of any Australian industry.’.”.

8.16 Form G (front of form):

Omit “subsection 47 (2), (3), (4) or (5) or paragraph 47 (8) (a) or (b) or (9) (a), (b) or (c)”, substitute “subsection 47 (2), (3), (4), (5), (6) or (7), or paragraph 47 (8) (a), (b) or (c) or (9) (a), (b), (c) or (d),”.

8.17 Form G (back of form):

Omit the Directions and the Notice, substitute:

“DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice.
2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. In item 1 (b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in subsection 47 (2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. In item 3 (a), describe the nature of the business carried on by the persons referred to in that item.



6. In item 3 (b) (ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

NOTICE

If this notification is in respect of conduct of a kind referred to in subsection 47 (6) or (7), or paragraph 47 (8) (c) or (9) (d), of the *Trade Practices Act 1974* ('the Act'), it comes into force at the end of the period prescribed for the purposes of subsection 93 (7A) of the Act ('the prescribed period') unless the Commission gives a notice under subsection 93A (2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under subsection 93A (2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under subsection 93 (3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in subsection 47 (2), (3), (4) or (5), or paragraph 47 (8) (a) or (b) or (9) (a), (b) or (c), of the Act, it comes into force when it is given."

8.18 Form J, item 1:

Omit "subsection 93 (3)", substitute "subsection 93 (3)/subsection 93 (3A) (here delete whichever is not applicable)".

9. Schedule 1A (Fees payable to Commission for a single application or notice, or a first application or notice)

9.1 After item 5, insert:

"5A. Application for authorisation under subsection 88 (8A) of the Act 7,500".

9.2 Item 7:

Omit the item, substitute:

"7. Notice under subsection 93 (1) of the Act:

- | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| (a) if the conduct is of a kind referred to in subsection 47 (2), (3), (4) or (5), or paragraph 47 (8) (a) or (b) or (9) (a), (b) or (c), of the Act | 2,500 |
| (b) if the conduct is of a kind referred to in subsection 47 (6) or (7), or paragraph 47 (8) (c) or (9) (d), of the Act | 1,000". |

10. Schedule 1B (Fees payable to Commission for an additional application or additional notice)

10.1 Item 6:

Omit the item, substitute:

"5A. Application for an authorisation under subsection 88 (8A) of the Act 1,500".

6. Notice under subsection 93 (1) of the Act:

- | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| (a) if the conduct is of a kind referred to in subsection 47 (2), (3), (4) or (5), or paragraph 47 (8) (a) or (b) or (9) (a), (b) or (c), of the Act | 500 |
| (b) if the conduct is of a kind referred to in subsection 47 (6) or (7), or paragraph 47 (8) (c) or (9) (d), of the Act | 200". |



11. Schedule 2 (Fees—registration of conference agreements)

11.1 Heading:

After:

“SCHEDULE 2

Regulation 31”,

insert:

**“FEES—REGISTRATION OF CONFERENCE
AGREEMENTS”.**

12. Schedule 3 (Forms—registration of conference agreements)

12.1 Heading:

After:

“SCHEDULE 3

Regulation 38”,

insert:

**“FORMS—REGISTRATION OF CONFERENCE
AGREEMENTS”.**

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 16 August 1995.
2. Statutory Rules 1974 No. 170 as amended by 1974 Nos. 175 and 247; 1975 No. 13; 1977 No. 100 (void and of no effect); 1978 No. 212; 1979 Nos. 1 and 87; 1980 No. 39; 1982 No. 68; 1989 No. 199; 1992 Nos. 71 and 92; 1993 No. 21.