

Western Australia

**New Tax System Price Exploitation Code
(Western Australia) Act 1999**

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New Tax System Price Exploitation Code (Western Australia) Act 1999

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Western Australia

New Tax System Price Exploitation Code (Western Australia) Act 1999

An Act to apply the New Tax System Price Exploitation Code of the Commonwealth as a law of Western Australia, to make a consequential amendment to the *Competition Policy Reform (Western Australia) Act 1996*, and for other purposes.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *New Tax System Price Exploitation Code (Western Australia) Act 1999*.

2. Commencement

This Act comes into operation on a day fixed by proclamation.

3. Definitions

- (1) In this Act, unless the contrary intention appears —

application law means —

- (a) a law of a participating jurisdiction that applies the New Tax System Price Exploitation Code text, 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 New Tax System Price Exploitation Code text, applying as a law of the participating jurisdiction, either with or without modifications;

Commission means the Australian Competition and Consumer Commission established by section 6A of the Trade Practices Act, and includes a member of the Commission or a Division of the Commission performing functions of the Commission;

instrument means any document whatever, including —

- (a) an Act or an instrument made under an Act;
- (b) a law of this jurisdiction or an instrument made under such a law;
- (c) an award or other industrial determination or order, or an industrial agreement;
- (d) any other order (whether executive, judicial or of any other kind);

- (e) a notice, certificate or licence;
- (f) an agreement;
- (g) an application or declaration made, information or complaint laid, affidavit sworn, or warrant issued, for any purpose;
- (h) an indictment, prosecution notice, 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;

New Tax System Price Exploitation Code means (according to the context) —

- (a) the New Tax System Price Exploitation Code text; or
- (b) the New Tax System Price Exploitation Code text, applying as a law of a participating jurisdiction, either with or without modifications;

New Tax System Price Exploitation Code text means the text described in section 4;

officer, in relation to the Commonwealth, has the meaning given in Part XIA of the Trade Practices Act;

participating jurisdiction means a jurisdiction that is a party to the Conduct Code Agreement and applies the New Tax System Price Exploitation Code text as a law of the jurisdiction, either with or without modifications;

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Schedule version of Part VB means the text that is set out in Part 2 of the Schedule to the Trade Practices Act;

State includes a Territory;

Territory means the Australian Capital Territory or the Northern Territory of Australia;

this jurisdiction means Western Australia;

Trade Practices Act means the *Trade Practices Act 1974* of the Commonwealth.

- (2) If this Act uses an expression that is given a meaning in the Trade Practices Act, the expression has the meaning so given unless the contrary intention appears in this Act.
- (3) The notes in this Act do not form part of this Act.
- (4) The Appendix at the end of this Act does not form part of this Act.

[Section 3 amended by No. 84 of 2004 s. 80.]

Part 2 — The New Tax System Price Exploitation Code

4. The New Tax System Price Exploitation Code text

- (1) The New Tax System Price Exploitation Code text consists of —

(a) the Schedule version of Part VB;

Note: The Schedule version of Part VB (as at the time of the enactment of this Act) is set out in the Appendix at the end of this Act.

(b) the remaining provisions of the Trade Practices 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 VB of that Act;

(c) the regulations under the Trade Practices Act, so far as they relate to any provisions covered by paragraph (a) or (b); and

(d) the guidelines under section 75AV of the Trade Practices Act.

- (2) For the purpose of forming part of the New Tax System Price Exploitation Code text, the provisions referred to in subsection (1)(b), (c) and (d) are to be modified as necessary to fit in with the Schedule version of Part VB and, in particular, references in them to corporations are to include references to persons who are not corporations.

5. Application of New Tax System Price Exploitation Code

- (1) The New Tax System Price Exploitation Code text, as in force for the time being, applies as a law of Western Australia.
- (2) This section has effect subject to section 6.

6. Future modifications of New Tax System Price Exploitation Code text

- (1) A modification made by a law of the Commonwealth to the New Tax System Price Exploitation Code text after the

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commencement of this section does not apply under section 5 unless the modification is declared by an order to be included in the operation of that section.

- (2) If an order is made under subsection (1), the modification of the text applies under section 5 on and from the day fixed by the order.
- (3) An order under subsection (1) —
 - (a) cannot fix any day that is earlier than the day of publication of the order or that is earlier than the day on which the modification of the text takes effect; and
 - (b) is to be regarded in such a case as fixing the day of publication of the order or the day on which the modification of the text takes effect, whichever is the later.
- (4) For the purposes of this section, the date of the modification is —
 - (a) the day 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; or
 - (b) the day on which this Act receives the Royal Assent, whichever is the later.
- (5) In this section —
order means an order made by the Governor and published in the *Gazette*.

7. Interpretation of New Tax System Price Exploitation Code

- (1) The *Acts Interpretation Act 1901* of the Commonwealth applies as a law of this jurisdiction to —
 - (a) the New Tax System Price Exploitation 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 New Tax System Price Exploitation Code of this jurisdiction were a Commonwealth Act; and
 - (b) the regulations in the New Tax System Price Exploitation Code of this jurisdiction or instruments mentioned in that subsection were regulations or instruments under a Commonwealth Act.
- (3) The *Interpretation Act 1984* does not apply to —
 - (a) the New Tax System Price Exploitation Code of this jurisdiction; or
 - (b) any instrument under that Code.

8. Application of New Tax System Price Exploitation Code

The New Tax System Price Exploitation Code of this jurisdiction applies to and in relation to —

- (a) persons carrying on business within this jurisdiction;
- (b) bodies corporate incorporated or registered under the law of this jurisdiction;
- (c) persons ordinarily resident in this jurisdiction; and
- (d) persons otherwise connected with this jurisdiction.

9. Extraterritorial operation

Subject to section 8, the New Tax System Price Exploitation 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).

Part 3 — Citing the New Tax System Price Exploitation Codes

10. Citation of New Tax System Price Exploitation Code of this jurisdiction

The New Tax System Price Exploitation Code text applying as a law of this jurisdiction may be cited as the New Tax System Price Exploitation Code of Western Australia.

11. References to New Tax System Price Exploitation Code

- (1) The object of this section is to help ensure that the New Tax System Price Exploitation Code of this jurisdiction can operate, in appropriate circumstances, as if that Code, together with the New Tax System Price Exploitation Code of each other participating jurisdiction, constituted a single national New Tax System Price Exploitation Code applying throughout the participating jurisdictions.
- (2) A reference in any instrument to the New Tax System Price Exploitation Code is a reference to the New Tax System Price Exploitation 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.

12. References to New Tax System Price Exploitation 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 New Tax System Price Exploitation Code text as in force for the time being applies as a law of that jurisdiction, the New Tax System Price Exploitation Code of that jurisdiction is the New Tax System Price Exploitation Code text, applying as a law of that jurisdiction.

Part 4 — Application of New Tax System Price Exploitation Codes to Crown

13. Application law of this jurisdiction

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

14. Application law of other jurisdictions

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

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;
 - (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 Crown in the same right (and none of whom is an authority of a State);
 - (ii) only persons who are all acting for the same authority of a State;

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- (iii) only the Crown in right of a State and one 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;
 - (b) crops, whether on or attached to the land or not;
 - (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 one person; and
 - (b) it is neither a trading corporation nor a financial corporation.

16. Crown not liable to pecuniary penalty or prosecution

- (1) Nothing in the application law of this jurisdiction makes the Crown in any capacity 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 Crown in right of this jurisdiction 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 any jurisdiction.

17. This Part overrides the prerogative

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

Part 5 — National administration and enforcement of New Tax System Price Exploitation Codes

Division 1 — Preliminary

18. Object

The object of this Part is to help ensure that the New Tax System Price Exploitation 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 officers and authorities of the Commonwealth referred to in the New Tax System Price Exploitation Code of this jurisdiction, including (but not limited to) the Commission, have the functions and powers conferred or expressed to be conferred on them respectively under the New Tax System Price Exploitation Code of this jurisdiction.
- (2) In addition to the powers mentioned in subsection (1), the officers and authorities 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 has power to do acts in this jurisdiction in the performance or exercise of any function or power expressed to be conferred on it by the New Tax System Price Exploitation Code of another participating jurisdiction.

Division 3 — Offences

21. Object

- (1) The object of this Division is to further the object of this Part by providing —
 - (a) for an offence against the New Tax System Price Exploitation 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 New Tax System Price Exploitation 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;
 - (b) the arrest, custody, bail, trial and conviction of offenders or persons charged with offences;
 - (c) proceedings relating to a matter referred to in paragraph (a) or (b);
 - (d) appeals and review relating to criminal proceedings and to proceedings of the kind referred to in paragraph (c);
 - (e) the sentencing, punishment and release of persons convicted of offences;
 - (f) fines, penalties and forfeitures;
 - (g) liability to make reparation in connection with offences;
 - (h) proceeds of crime; and
 - (i) spent convictions.

22. Application of Commonwealth laws to offences against New Tax System Price Exploitation Code of this jurisdiction

- (1) The laws of the Commonwealth apply as laws of this jurisdiction in relation to an offence against the New Tax System Price Exploitation 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 New Tax System Price Exploitation Code of this jurisdiction —
 - (a) is to be regarded as 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 not to be regarded as 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 regulations under this Act.

23. Application of Commonwealth laws to offences against New Tax System Price Exploitation Codes of other jurisdictions

- (1) The laws of the Commonwealth apply as laws of this jurisdiction in relation to an offence against the New Tax System Price Exploitation 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 New Tax System Price Exploitation Code of another participating jurisdiction —
 - (a) is to be regarded as 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 not to be regarded as 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 regulations under this Act.
- (4) This section does not require, prohibit, empower, authorize or otherwise provide for, the doing of an act outside this jurisdiction.

24. Functions and powers conferred on Commonwealth officers and authorities

- (1) A law of the Commonwealth applying because of section 22 that confers on a Commonwealth officer or authority a function or power in relation to an offence against the Trade Practices Act also confers on the officer or authority the same function or power in relation to an offence against the corresponding provision of the New Tax System Price Exploitation Code of this jurisdiction.
- (2) A law of the Commonwealth applying because of section 23 that confers on a Commonwealth officer or authority a function or power in relation to an offence against the Trade Practices Act also confers on the officer or authority the same function or power in relation to an offence against the corresponding provision of the New Tax System Price Exploitation Code of another participating jurisdiction.
- (3) The function or power referred to in subsection (2) can 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 Trade Practices Act.

25. 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 cannot be performed or exercised by an officer or authority of this jurisdiction.

Division 4 — Administrative law

26. Definition

In this Division —

Commonwealth administrative laws means —

(a) the following Acts —

(i) the *Administrative Appeals Tribunal Act 1975* of the Commonwealth;

[(ii) deleted]

(iii) the *Freedom of Information Act 1982* of the Commonwealth;

(iv) the *Ombudsman Act 1976* of the Commonwealth;

(v) the *Privacy Act 1988* of the Commonwealth;

and

(b) the regulations in force under those Acts.

[Section 26 amended by No. 32 of 2001 s.36.]

27. Application of Commonwealth administrative laws to New Tax System Price Exploitation Code of this jurisdiction

- (1) The Commonwealth administrative laws apply as laws of this jurisdiction to any matter arising in relation to the New Tax System Price Exploitation 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 New Tax System Price Exploitation Code of this jurisdiction —
 - (a) is to be regarded as 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 not to be regarded as 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 regulations under this Act.

28. Application of Commonwealth administrative laws to New Tax System Price Exploitation Codes of other jurisdictions

- (1) The Commonwealth administrative laws apply as laws of this jurisdiction to any matter arising in relation to the New Tax System Price Exploitation 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 New Tax System Price Exploitation Code of another participating jurisdiction —
 - (a) is to be regarded as 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 not to be regarded as 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 regulations under this Act.
- (4) This section does not require, prohibit, empower, authorize or otherwise provide for, the doing of an act outside this jurisdiction.

29. Functions and powers conferred on Commonwealth officers and authorities

- (1) A Commonwealth administrative law applying because of section 27 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 New Tax System Price Exploitation Code of this jurisdiction.
- (2) A Commonwealth administrative law applying because of section 28 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 New Tax System Price Exploitation Code of another participating jurisdiction.
- (3) The function or power referred to in subsection (2) can 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.

30. 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 cannot be performed or exercised by an officer or authority of this jurisdiction.

Part 6 — Miscellaneous

31. No doubling-up of liabilities

(1) If —

- (a) an act or omission is an offence against the New Tax System Price Exploitation Code of this jurisdiction and is also an offence against the Trade Practices Act or an application law of another participating jurisdiction; and
- (b) the offender has been punished for the offence under the Trade Practices Act or the application law of the other jurisdiction,

the offender is not liable to be punished for the offence against the New Tax System Price Exploitation Code of this jurisdiction.

- (2) If a person has been ordered to pay a pecuniary penalty under the Trade Practices Act or the application law of another participating jurisdiction, the person is not liable to a pecuniary penalty under the New Tax System Price Exploitation Code of this jurisdiction in respect of the same conduct.

32. Things done for multiple purposes

The validity of an authorization, notification or any other thing given or done for the purposes of the New Tax System Price Exploitation Code of this jurisdiction is not affected only because it was given or done also for the purposes of the Trade Practices Act or the New Tax System Price Exploitation Code of one or more other jurisdictions.

33. Reference in Commonwealth law to a provision of another law

For the purposes of section 22, 23, 27 or 28, a reference in a law of the Commonwealth to a provision of that or another law of the Commonwealth is to be regarded as a reference to that provision as applying because of that section.

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34. Fees and other money

- (1) All fees, taxes, penalties (including pecuniary penalties referred to in section 76 of the New Tax System Price Exploitation Code), fines and other money that, under the application law of this jurisdiction or the *New Tax System Price Exploitation Code (Taxing) Act 1999*, are authorized or directed to be payable by or imposed on any person must be paid to the Commonwealth.
- (2) This subsection imposes the fees that the regulations in the New Tax System Price Exploitation Code of this jurisdiction prescribe, except to the extent that they are taxes.

Note: See also *New Tax System Price Exploitation Code (Taxing) Act 1999*.

35. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

36. Regulations relating to administration and enforcement

- (1) In this section —
 applied provisions means —
 - (a) the New Tax System Price Exploitation Code of this jurisdiction and the New Tax System Price Exploitation Codes of other participating jurisdictions; and
 - (b) the laws of the Commonwealth applying because of sections 22, 23, 27 and 28.

federal court means the Federal Court of Australia or the Family Court of Australia.

- (2) Despite anything in this Act, regulations may make provision for or with respect to enabling jurisdiction conferred under applied provisions to be exercised by courts of this jurisdiction and, for that purpose, may —
 - (a) provide that applied provisions or provisions of Part 5 or section 34 do not have effect or have effect with modifications specified in the regulations;
 - (b) confer jurisdiction on courts of this jurisdiction;
 - (c) provide for a function or power conferred on a Commonwealth officer or authority under applied provisions to be exercised or performed by a person or authority specified in the regulations; and
 - (d) provide for associated, procedural and consequential matters.
- (3) To the extent that, because of regulations referred to in subsection (2), the laws of the Commonwealth do not apply to an offence against applied provisions, the offence is to be regarded as a crime under the laws of this jurisdiction, but it may be dealt with summarily if the prosecutor and the accused both agree.
- (4) Without limiting subsection (2) —
 - (a) this Act is not to be regarded as conferring jurisdiction on a federal court, either directly or indirectly; and
 - (b) applied provisions that would exclude the jurisdiction of any or all State courts are to be regarded as being modified so as not to have that effect.
- (5) Paragraph (a) of subsection (4) does not operate to the extent that, but for that paragraph, a federal court could validly exercise jurisdiction (such as accrued jurisdiction) in connection with this Act or applied provisions.

[Section 36 amended by No. 84 of 2004 s. 82.]

Part 7 — Consequential amendment

37. Competition Policy Reform (Western Australia) Act 1996 amended

The *Competition Policy Reform (Western Australia) Act 1996** is amended in section 3(1), definition of “Schedule version of Part IV”, by deleting “the Schedule” and inserting instead —

“ Part 1 of the Schedule ”.

[* *Act No. 52 of 1996* .

For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 48 To be completed prior to publication , and Act No. 32 of 1999 To be completed prior to publication .]

Appendix
Schedule version of Part VB of the *Trade Practices Act 1974*
of the Commonwealth

Note: This Appendix contains the text as at the time of the enactment of this Act. That text may be modified from time to time. For the current text, reference should be made to Part 2 of the Schedule to the *Trade Practices Act 1974* of the Commonwealth and to orders made under section 6 of this Act.

75AT Definitions

In this section and sections 75AU to 75AZ, unless the contrary intention appears:

GST has the same meaning as in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

Note: The operation of the GST Act is affected by the GST Transition Act.

GST implementation date means the day on which the GST Act commences.

GST Transition Act means the *A New Tax System (Goods and Services Tax Transition) Act 1999* of the Commonwealth.

New Tax System changes means the following:

- (a) the amendment of the *Sales Tax (Exemptions and Classifications) Act 1992* of the Commonwealth made by the GST Transition Act;
- (b) the ending of sales tax, as provided for in the *A New Tax System (End of Sales Tax) Act 1999* of the Commonwealth;
- (c) the imposition of GST;
- (d) any other changes (including changes to Commonwealth, State or Territory laws) prescribed by the regulations for the purposes of this definition.

New Tax System transition period means the period:

- (a) starting on the later of 1 July 1999 and the commencement of the *A New Tax System (Trade Practices Amendment) Act 1999* of the Commonwealth; and
- (b) ending on the day that is 2 years after the GST implementation date.

price, in relation to a supply, includes:

- (a) a charge of any description for the supply; and
- (b) any pecuniary or other benefit, whether direct or indirect, received or to be received by a person for or in connection with the supply.

regulated supply means:

(a) a supply that:

- (i) occurs during the New Tax System transition period and before the GST implementation date; and
- (ii) is of goods of a kind that, immediately before the commencement of the GST Transition Act, were specified in any of items 4 to 14 of Schedule 5 to the *Sales Tax (Exemptions and Classifications) Act 1992* of the Commonwealth; or

(b) a supply that:

- (i) occurs during the New Tax System transition period and on or after the GST implementation date; and
- (ii) is by a person who is registered or required to be registered under the GST Act; and
- (iii) is a taxable supply for the purposes of the GST Act, or would have been a taxable supply for the purposes of the GST Act had it not been GST-free or input taxed for the purposes of that Act.

supply means:

- (a) a supply of goods, including by way of sale, exchange, lease, hire or hire-purchase; or
- (b) any other transaction or dealing that is a supply for the purposes of the GST Act.

75AU Price exploitation in relation to New Tax System changes

- (1) A person contravenes this section if the person engages in price exploitation in relation to the New Tax System changes.
- (2) For the purposes of this section, a person engages in price exploitation in relation to the New Tax System changes if:
 - (a) the person makes a regulated supply; and

- (b) the price for the supply is unreasonably high, having regard alone to the New Tax System changes (so far as they have taken effect); and
- (c) the price for the supply is unreasonably high even if the following other matters are also taken into account:
 - (i) the supplier's costs;
 - (ii) supply and demand conditions;
 - (iii) any other relevant matter.

75AV Price exploitation—guidelines about when prices contravene section 75AU

- (1) In this section:
guidelines means the guidelines in force under section 75AV of the *Trade Practices Act 1974* of the Commonwealth.
- (2) The Commission must have regard to the guidelines in making decisions under section 75AW or 75AX in relation to the issue, variation and revocation of notices under that section.
- (3) The Court may have regard to the guidelines in any proceedings:
 - (a) under section 76 relating to section 75AU; or
 - (b) under section 80 for an injunction relating to section 75AU.

75AW Commission may issue notice to person it considers has contravened section 75AU

- (1) If the Commission considers that a person has made a supply in contravention of section 75AU, the Commission may give the person a notice in writing under this section.
- (2) The notice must:
 - (a) be expressed to be given under this section; and
 - (b) identify:
 - (i) the person that made the supply; and
 - (ii) the kind of supply made; and
 - (iii) the circumstances in which the supply was made; and
 - (c) state that, in the Commission's opinion:

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- (i) the price for the supply was unreasonably high as mentioned in paragraph 75AU(2)(b); and
 - (ii) that unreasonably high price was not attributable to matters referred to in paragraph 75AU(2)(c).
- (3) In any proceedings:
 - (a) under section 76 relating to section 75AU; or
 - (b) under section 80 for an injunction relating to section 75AU;the notice is taken to be prima facie evidence that:
 - (c) the price for the supply was unreasonably high as mentioned in paragraph 75AU(2)(b); and
 - (d) that unreasonably high price was not attributable to matters referred to in paragraph 75AU(2)(c).
- (4) The Commission may vary or revoke the notice on its own initiative or on application made by the person. The Commission must give the person notice in writing of the variation or revocation.

75AX Commission may issue notice to aid prevention of price exploitation

- (1) The Commission may give a person a notice in writing under this section if the Commission considers that doing so will aid the prevention of price exploitation (within the meaning of section 75AU).
- (2) The notice must:
 - (a) be expressed to be given under this section; and
 - (b) be expressed to relate to any supply that the person makes that is:
 - (i) of a kind specified in the notice; and
 - (ii) made in circumstances specified in the notice; and
 - (iii) made during the period specified in the notice (which must not be a period ending after the end of the New Tax System Transition period); and
 - (c) specify the maximum price that, in the Commission's opinion, may be charged for a supply to which the notice is expressed to relate.

- (3) The Commission may, on its own initiative or on application made by the person:
- (a) vary the notice to:
 - (i) change the period specified as required by subparagraph (2)(b)(iii); or
 - (ii) change the price specified in the notice as required by paragraph (2)(c); or
 - (b) revoke the notice.

The Commission must give the corporation notice in writing of the variation or revocation.

- (4) The Commission may publish the notice, or particulars of any variation or revocation of the notice, in such manner as the Commission considers appropriate, including, for example, in a national newspaper.

75AY Commission may monitor prices

- (1) The Commission may monitor prices for either or both of the following purposes:
- (a) to assess the general effect of the New Tax System changes on prices charged by persons for supplies during the New Tax System transition period;
 - (b) to assist its consideration of whether section 75AU has been, is being, or may in the future be, contravened.
- (2) A member of the Commission may, by notice in writing served on a person, require the person:
- (a) to give the Commission specified information in writing signed by:
 - (i) the person; or
 - (ii) if the person is a body corporate a competent officer of the body corporate; or
 - (b) to produce to the Commission specified documents;

being information, or documents containing information, relating to prices or the setting of prices that the member considers will or may be useful to the Commission in monitoring prices as mentioned in subsection (1).

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Note: The powers under this section are in addition to the powers under section 155. Under section 155, the Commission may obtain information about particular matters that constitute or may constitute a contravention of section 75AU.

- (3) Without limiting subsection (2), information or documents that may be required under that subsection may relate to prices, or the setting of prices:
- (a) before or after all or any of the New Tax System changes have taken effect; and
 - (b) before or after the start of the New Tax System transition period; and
 - (c) in a situation, or during a period, specified in the notice.
- (4) A person must not:
- (a) refuse or fail to comply with a notice under subsection (2) to the extent that the person is capable of complying with it; or
 - (b) in purported compliance with such a notice, intentionally or recklessly provide information or a document that is false or misleading.

Penalty: 20 penalty units.

75AZ Reporting

- (1) The Commission must, within 28 days after the end of each quarter, give the Minister administering Part VB of the *Trade Practices Act 1974* of the Commonwealth a written report about the operations of the Commission under sections 75AU to 75AX during the quarter.
- (2) Without otherwise limiting subsection (1), a report under that subsection must include particulars of:
- (a) all notices given under section 75AX during the quarter; and
 - (b) all variations or revocations during the quarter of notices given under section 75AX.
- (3) For this purpose, a **quarter** is a period of 3 months:
- (a) that occurs wholly or partly during the New Tax System transition period; and
 - (b) that starts on any of the following days in a year:
 - (i) 1 January;

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- (ii) 1 April;
 - (iii) 1 July;
 - (iv) 1 October.
 - (4) As soon as practicable after the Minister receives a report under subsection (1), the Minister must make the report public by such means as the Minister considers appropriate.
 - (5) If this section commences during a quarter (but not on the first day of a quarter):
 - (a) no report is to be made at the end of the quarter; but
 - (b) the report made at the end of the next quarter is also to include the information required by subsection (1) in relation to the previous quarter.

Notes

- ¹ This is a compilation of the *New Tax System Price Exploitation Code (Western Australia) Act 1999* and includes all amendments effected by the other written laws referred to in the following table ².

Compilation table

| Short title | Number and year | Assent | Commencement |
|---|------------------------|---------------|--|
| <i>New Tax System Price Exploitation Code (Western Australia) Act 1999</i> | 51 of 1999 | 7 Dec 1999 | 17 Dec 1999 (see s. 2 and <i>Gazette</i> 17 Dec 1999 p.6176) |
| <i>Acts Amendment (Federal Courts and Tribunals) Act 2001</i> Pt. 8 | 32 of 2001 | 21 Dec 2001 | 21 Dec 2001 (see s. 2(1)) |
| <i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80 | 84 of 2004 | 16 Dec 2004 | 2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53)) |

- ² The *Acts Amendment (Federal Courts and Tribunals) Act 2001* s. 40 will not come into operation on commencement of Pt. 4-10 of the *Administrative Review Tribunal Act 2001* of the Commonwealth as expressed in s. 2(3) because that Act has not been passed.