



# Competition and Consumer Amendment Regulations 2012 (No. )<sup>1</sup>

## Select Legislative Instrument 2012 No.

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I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Competition and Consumer Act 2010*.

Dated 2012

Governor-General

By Her Excellency's Command

**[DRAFT ONLY – NOT FOR SIGNATURE]**

Parliamentary Secretary to the Treasurer

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**DRAFT ONLY**

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**1 Name of Regulations**

These Regulations are the *Competition and Consumer Amendment Regulations 2012 (No. )*.

**2 Commencement**

These Regulations commence on 6 June 2012.

**3 Amendment of *Competition and Consumer Regulations 2010***

Schedule 1 amends the *Competition and Consumer Regulations 2010*.

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## Schedule 1 Amendments

(regulation 3)

### [1] Regulation 9

*substitute*

#### 9 Notification of exclusive dealing and private disclosure of pricing information

- (1) A notice under subsection 93 (1) of the Act in relation to conduct of a kind referred to in subsections 47(2) to (9) of the Act must be in accordance with Form G.
- (2) A notice under subsection 93 (1) of the Act in relation to conduct of a kind referred to in section 44ZZW of the Act must be in accordance with Form GAA.
- (3) For subsection 93 (7A) of the Act, the period in relation to a notice describing conduct or proposed conduct referred to in:
  - (a) section 44ZZW of the Act; or
  - (b) subsection 47 (6) or (7) of the Act; or
  - (c) paragraph 47 (8) (c) or (9) (d) of the Act;is 14 days.

*Note* The period starts on the day when a corporation gives the Commission the notice mentioned in subsection 93 (1) of the Act.

### [2] Paragraph 26 (2) (b)

*after*

Form B

*insert*

Form BA

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**[3] Paragraph 26 (2) (b)**

*after*

Form GA

*insert*

Form GAA

**[4] Subregulation 28 (7), definition of *additional notice*, paragraphs (a) and (b)**

*substitute*

- (a) a notice given, after a person's first notice under subsection 93 (1) of the Act, about conduct of a kind mentioned in:
- (i) section 44ZZW of the Act; or
  - (ii) subsection 47 (2), (3), (4) or (5) of the Act; or
  - (iii) paragraph 47 (8) (a) or (b) of the Act; or
  - (iv) paragraph 47 (9) (a), (b) or (c) of the Act; or
- (b) if a person is not an individual or a proprietary company, a notice given, after the person's first notice under subsection 93 (1) of the Act, about conduct of a kind mentioned in:
- (i) section 44ZZW of the Act; or
  - (ii) subsection 47 (6) or (7) of the Act; or
  - (iii) paragraph 47 (8) (c) of the Act; or
  - (iv) paragraph 47 (9) (d) of the Act; or

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[5] **After Part 3**

*insert*

**Part 4** **Anti-competitive disclosure of pricing and other information**

**48** **Anti-competitive disclosure of pricing and other information: goods and services to which Division 1A of Part IV of the Act applies (goods and services)**

For subsection 44ZZT (1) of the Act, the table sets out classes of goods or services.

<b>Item</b>	<b>Classes</b>
1	A good or service: <ul style="list-style-type: none"><li>(a) provided by an authorised deposit-taking institution within the meaning of the <i>Banking Act 1959</i>; and</li><li>(b) consisting, to any extent, of taking money on deposit (otherwise than as part-payment for identified goods or services)</li></ul>
2	A good or service: <ul style="list-style-type: none"><li>(a) provided by an authorised deposit-taking institution within the meaning of the <i>Banking Act 1959</i>; and</li><li>(b) consisting, to any extent, of making advances of money</li></ul>

**49** **Anti-competitive disclosure of pricing and other information: goods and services to which Division 1A of Part IV of the Act applies (process)**

- (1) For subsection 44ZZT (3) of the Act, this regulation sets out a process to be gone through before regulations are made, for the purpose of subsection 44ZZT (1) of the Act, prescribing a class of goods or services.

*Note* Before the Governor-General makes regulations, for the purpose of subsection 44ZZT (1), prescribing a class of goods or services, the Minister must be satisfied that the prescribed process has been complied with. This does not apply to the first regulations made for the purpose of subsection 44ZZT (1).

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- (2) Before the Governor-General makes regulations for the purpose of subsection 44ZZT (1), the Minister must be satisfied that any consultation that is considered by the Minister to be appropriate and that is reasonably practicable to undertake, has been undertaken.
- (3) In determining whether any consultation that was undertaken is appropriate, the Minister may have regard to any relevant matter, including the extent to which the consultation:
- (a) drew on the knowledge of persons having expertise in fields relevant to the proposed regulations; and
  - (b) ensured that persons likely to be affected by the proposed regulations had an adequate opportunity to comment on its proposed content.
- (4) Without limiting, by implication, the form that consultation referred to in subregulation (2) might take, the consultation could:
- (a) involve notification, either directly or by advertisement, of bodies that, or of organisations representative of persons who, are likely to be affected by the proposed regulations; and
  - (b) invite submissions to be made by a specified date; or
  - (c) invite participation in public hearings to be held concerning the proposed regulations.

**[6] Regulation 70, table, after item 2**

*insert*

2A	Form BA	subsection 89 (1)	Anti-competitive disclosure of pricing and other information: application for authorisation
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**[7] Regulation 71, heading**

*substitute*

**71 Forms for exclusive dealing, private disclosure of pricing information and collective bargaining notifications**

**[8] Regulation 71, after item 1**

*insert*

1A Form GAA subsection 93 (1A) Notification of private disclosure of pricing information

**[9] Schedule 1, after Form B**

*insert*

**Form BA**

Commonwealth of Australia

*Competition and Consumer Act 2010 — subsection 88 (6A)*

**ANTI-COMPETITIVE DISCLOSURE OF PRICING  
AND OTHER INFORMATION:  
APPLICATION FOR AUTHORISATION**

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing their application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

To the Australian Competition and Consumer Commission:

**DRAFT ONLY**

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Application is hereby made under subsection 88 (6A) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a disclosure of information to which section 44ZZW of that Act would or might apply.
- to make a disclosure of information to which section 44ZZX of that Act would or might apply.

*(Strike out if not applicable)*

*(Refer to direction 1)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

**1. Applicant**

- (a) Name of applicant:  
*(Refer to direction 2)*
- (b) Description of business carried on by applicant:  
*(Refer to direction 3)*
- (c) Address in Australia for service of documents on the applicant:

**2. Application lodged on behalf of**

Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

*(Refer to direction 4)*

**3. Proposed disclosure**

- (a) General description of the proposed disclosure for which authorisation is sought:  
*(Refer to direction 5)*
- (b) Description of the goods or services to which the disclosure relates:
- (c) The term for which authorisation of the disclosure is being sought and grounds supporting this period of authorisation:



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**4. Likely or proposed recipient/s of the disclosure**

- (a) Class or classes of recipients:  
(Refer to direction 6)
- (b) Number of those recipients:
- (c) Names and addresses of likely or proposed recipient/s:  
(Refer to direction 7)

**5. Similar disclosures of information**

- (a) Is this application for authorisation expressed to be made in relation to other disclosures that will be similar to the abovementioned disclosure?
- (b) If so, the following information is to be furnished:
  - (i) description of any variations between the disclosure for which authorisation is sought and those similar disclosures of information:  
(Refer to direction 8)
  - (ii) where the recipient(s) to the similar disclosures is known — names, addresses and descriptions of business carried on by those other parties:  
(Refer to direction 9)
  - (iii) where the recipient(s) to the similar disclosures is not known — description of the class of business carried on by those possible parties:

**6. Market definition**

Provide a description of the market(s) in which the goods or services described at 3 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):  
(Refer to direction 10)

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**7. Public benefit claims**

- (a) Arguments in support of application for authorisation:  
(Refer to direction 11)
- (b) Facts and evidence relied upon in support of these claims:

**8. Public detriments**

- (a) Detriments to the public resulting or likely to result from the disclosure for which authorisation is sought, in particular the result of the disclosure on the prices of the goods or services described at 3 (b) and the prices of goods or services in other affected markets:  
(Refer to direction 12)
- (b) Facts and evidence relevant to these detriments:

**9. Further information**

- (a) Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:

Dated

Signed by/on behalf of the applicant

(Signature)  
(Full Name)  
(Organisation)  
(Position in organisation)

**DIRECTIONS**

- 1. Use Form B if the disclosure might constitute part of a contract, arrangement or understanding which includes a provision which:
  - (a) might be a cartel provision; or
  - (b) is likely to have the purpose, or might have the effect, of substantially lessening competition.

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2. Where the application is made by or on behalf of a business, the name of the business 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 business to do so.
  3. Describe that part of the applicant's business relating to the subject matter of the disclosure in respect of which authorisation is sought.
  4. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
  5. Provide details of the nature of the proposed disclosure in respect of which the authorisation is sought. In providing these details:
    - (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
    - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
  6. Provide a description of the business carried on by the likely or proposed recipients of the proposed disclosure.
  7. Where authorisation is sought to make a disclosure of information to which section 44ZZX of the *Competition and Consumer Act 2010* would or might apply, the applicant is only required to disclose this information where there are less than 50 recipients.
  8. Where the application is made also in respect of other disclosures, which are or will be in similar terms to the disclosure referred to in item 3, furnish with the application details of the manner in which those disclosures vary in their terms from the disclosure referred to in item 3.
  9. Where authorisation is sought to make a disclosure of information to which section 44ZZX of the *Competition and Consumer Act 2010* would or might apply, the applicant is only required to disclose this information where there are less than 50 recipients.

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10. Provide details of the market(s) likely to be effected by the disclosure in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.
  11. Provide details of those public benefits claimed to result or to be likely to result from the proposed disclosure including quantification of those benefits where possible.
  12. Provide details of the detriments to the public, including those resulting from any lessening of competition, which may result from the proposed disclosure. Provide quantification of those detriments where possible.

**[10] Schedule 1, after Form G**

*insert*

**Form GAA**

Commonwealth of Australia

*Competition and Consumer Act 2010 — subsection 93 (1)*

**NOTIFICATION OF PRIVATE DISCLOSURE OF  
PRICING INFORMATION**

In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

Protection provided by the notification extends only to conduct described in this form.

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Competition and Consumer Act 2010*, of particulars of proposed conduct of a kind referred to in section 44ZZW of that Act in which the person giving notice proposes to engage.

**DRAFT ONLY**

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To the extent that notified conduct is capable of also being caught by section 44ZZX of the *Competition and Consumer Act 2010*, a valid notice will also provide immunity from section 44ZZX of that Act for the notified conduct.

*(Refer to direction 1)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

**1. Applicant**

- (a) Name of person giving notice:  
*(Refer to direction 2)*
- (b) Description of business carried on by that person:  
*(Refer to direction 3)*
- (c) Address in Australia for service of documents on that person:

**2. Notified conduct**

- (a) Description of the proposed conduct to which this notification relates:  
*(Refer to direction 4)*
- (b) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

**3. Likely or proposed recipient/s of the conduct**

- (a) Class or classes of recipients:  
*(Refer to direction 5)*
- (b) Names and addresses of likely or proposed recipient/s:

**4. Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):  
*(Refer to direction 6)*

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**5. Public benefit claims**

- (a) Arguments in support of notification:  
(Refer to direction 7)
- (b) Facts and evidence relied upon in support of these claims:

**6. Public detriments**

- (a) Detriments to the public resulting or likely to result from the notification, in particular, the persons or classes of persons likely to be adversely affected by the notified conduct, the number of those persons, the likely effect of the notified conduct on the prices of the goods or services described at 2 (b) above and the prices of goods or services in other affected markets:  
(Refer to direction 8)
- (b) Facts and evidence relevant to these detriments:

**7. Further information**

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Dated

Signed by/on behalf of the applicant

(Signature)

(Full Name)

(Organisation)

(Position in organisation)

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## DIRECTIONS

1. Use Form B, to seek authorisation, if the disclosure might constitute part of a contract, arrangement or understanding which includes a provision which:
  - (a) might be a cartel provision; or
  - (b) is likely to have the purpose, or might have the effect, of substantially lessening competition.
2. If the notice is given by or on behalf of a business, the name of the business 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 business to do so.
3. Describe that part of the business of the person giving the notice relating to the conduct to which this notice relates.
4. If particulars of a private disclosure of the type referred to in section 44ZZW of the *Competition and Consumer Act 2010* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Provide a description of the business carried on by the likely or proposed recipients of the proposed conduct.
6. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
7. Provide details of those public benefits claimed to result or likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.

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**[11] Schedule 1B, after item 2**

*insert*

2A	Application for an authorisation under subsection 88 (6A) of the Act	7 500	1 500
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**[12] Schedule 1B, after item 9**

*insert*

9A	Notice, given under subsection 93 (1) of the Act about conduct of a kind mentioned in section 44ZZW of the Act	100	100
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**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.