



New South Wales

National Competition Policy Amendments (Commonwealth Financial Penalties) Bill 2004

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The National Competition Policy (*NCP*) reform program was established on 11 April 1995 under the auspices of the Council of Australian Governments. The NCP is implemented through three agreements:

- (a) the *Conduct Code Agreement*,
- (b) the *Competition Principles Agreement*,
- (c) the *Agreement to Implement the National Competition Policy and Related Reforms (Implementation Agreement)*.

Under the *Competition Principles Agreement*, all governments agreed to put in place a range of structural reforms, including the review and reform of all legislation that restricts competition. Reform of legislation is required unless the benefits of restrictions to the community as a whole outweigh the costs, and the objectives of the legislation can only be achieved by restricting competition.

In return for complying with the obligations set out in the three NCP agreements, including legislation review and reform, the Commonwealth agreed to provide annual competition payments to the States and Territories. The NCP agreements recognised that while the States and Territories have responsibility for implementing the major competition reforms, much of the financial dividend from the economic growth arising out of NCP reforms accrues to the Commonwealth rather than the States and Territories through higher income tax receipts. Competition payments to the States and Territories represent their share of the financial benefits arising from the NCP reforms. In 2003–2004, New South Wales' maximum competition payment entitlement is \$254.4 million.

The National Competition Council (*NCC*) has assessed New South Wales as having fulfilled all of its obligations under the three NCP agreements, with the exclusion of certain legislation review and reform activity. The Council has expressed dissatisfaction in relation to the degree of reform undertaken in the regulation of poultry supply, liquor, farm debt mediation, and the dentistry, optometry and pharmacy professions.

The New South Wales Government has made a number of submissions to the NCC and the Commonwealth establishing the net public benefits arising from current regulatory arrangements and justifying the degree of reform undertaken for each Act. In each case, the NCC has not accepted the submissions.

The Commonwealth has advised the New South Wales Government that it accepts the NCC's recommendation to impose a penalty for New South Wales' 2003–04 competition payments of \$50.9 million. The legislative amendments made by this Bill seek to ensure that this penalty is not imposed in future years and, subject to the NCC's assessment and recommendation, may enable New South Wales to earn back a portion of this penalty.

The Bill effects the following amendments:

- (a) the *Liquor Act 1982* is amended:
 - (i) to remove a provision allowing objections to be taken to the granting of an application for a hotelier's licence or an off-licence to sell liquor by retail on the ground that the needs of the public in the neighbourhood of the premises to which the application relates can be met by facilities for the supply of liquor existing in, and outside, the neighbourhood, and to provide instead for a social impact assessment process in relation to any such application, and
 - (ii) to prevent service stations from being granted an off-licence (retail), and

- (iii) to provide that the existing restrictions on granting an off-licence (retail) that apply in relation to convenience stores will also apply to other general stores such as mixed business shops, corner shops and milk bars, and
 - (iv) to provide that the fee for granting a hotelier's licence or an off-licence (retail) will be the fee prescribed by (or determined in accordance with) the regulations instead of being fixed by the Liquor Administration Board, and
 - (v) to provide that an annual fee will be payable in respect of a hotelier's licence or an off-licence (retail),
- (b) the *Poultry Meat Industry Act 1986* is amended:
- (i) to replace the existing requirement for batch poultry supply agreements between poultry growers and poultry processors to be approved by the Poultry Meat Industry Committee with a requirement that they merely be registered with the Committee, and
 - (ii) to abolish the Poultry Meat Industry Committee's existing power to set base rates for batch poultry supplied by poultry growers to poultry processors,
- (c) the *Dentists Act 1989* and the *Dental Practice Act 2001* are amended to remove restrictions on the persons or bodies who may employ dentists or in association with whom dentists may practise, and to prohibit employers of dentists from directing or inciting them to engage in misconduct,
- (d) the *Optometrists Act 2002* is amended to remove restrictions on the persons or bodies who may carry on the business of optometry, and to prohibit employers of optometrists from directing or inciting them to engage in misconduct,
- (e) the *Pharmacy Act 1964* is amended to remove restrictions on the number of pharmacy businesses that pharmacists may carry on or in which they may have a pecuniary interest, and on the ability of friendly societies to carry on pharmacy businesses,
- (f) the *Farm Debt Mediation Act 1994* is amended:
- (i) to remove a provision that prohibits action under the Act being taken within the 12 months following the Rural Assistance Authority's refusal of an application for a certificate declaring that the Act does not apply to a particular farm mortgage, and
 - (ii) to remove a provision that makes certain decisions of the Rural Assistance Authority reviewable by the Administrative Decisions Tribunal.

The Bill also makes ancillary and consequential amendments to the Acts referred to in paragraphs (a)–(f) above.

Outline of provisions

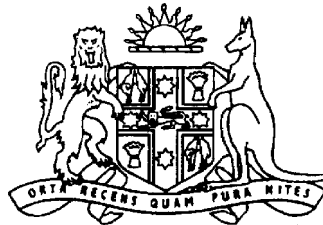
Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent except for Schedule 1 (which is to commence on 1 July 2004, unless sooner commenced by proclamation) and Schedule 2 (which is to commence on 30 June 2004).

Clause 3 is a formal provision that gives effect to the Schedules to the proposed Act containing the amendments.

Clause 4 makes it clear that the explanatory notes contained in the Schedules do not form part of the proposed Act.

Schedules 1–7 amend the *Liquor Act 1982*, the *Poultry Meat Industry Act 1986*, the *Dentists Act 1989*, the *Dental Practice Act 2001*, the *Optometrists Act 2002*, the *Pharmacy Act 1964* and the *Farm Debt Mediation Act 1994*. The amendments made by each Schedule are explained in detail in the explanatory note contained in the Schedule concerned.



New South Wales

National Competition Policy Amendments (Commonwealth Financial Penalties) Bill 2004

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No. , 2004

A Bill for

An Act to amend various Acts in connection with Commonwealth financial penalties arising from National Competition Policy reviews.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>National Competition Policy Amendments (Commonwealth Financial Penalties) Act 2004</i> .	3 4
2 Commencement	5
(1) This Act commences on the date of assent, except as provided by subsections (2) and (3).	6 7
(2) Schedule 1 commences on 1 July 2004 (unless sooner commenced by proclamation).	8 9
(3) Schedule 2 commences on 30 June 2004.	10
3 Amendment of Acts	11
Each Act specified in Schedules 1–7 is amended as set out in those Schedules.	12 13
4 Explanatory notes	14
The matter appearing under the heading “Explanatory note” in any of the Schedules does not form part of this Act.	15 16

Schedule 1 Amendment of Liquor Act 1982 No 147

(Section 3)

[1] Section 19A Duration of licences

Insert “56B, 56C or” after “section” in section 19A (3).

[2] Section 36 Restrictions on liquor licence applications

Omit section 36 (6).

[3] Section 45 Grounds of objection

Omit “(2), (2AA),” from section 45 (1) (c).

[4] Section 45 (2)

Omit the subsection.

[5] Section 45 (4)

Omit “, (2)”.

[6] Section 45 (4) (c)

Omit the paragraph.

[7] Section 47 Grant of application is discretionary in certain cases

Omit “, (2)” from section 47 (1).

[8] Section 49C Grant of off-licence (retail)

Omit “convenience store or service station” from section 49C (2).

Insert instead “general store”.

[9] Section 49C (2A)

Insert after section 49C (2):

(2A) An application for, or to remove, an off-licence to sell liquor by retail that relates to a service station may not be granted in any circumstances.

[10] Section 49C (3)	1
Omit the subsection. Insert instead:	2
(3) In this section:	3
<i>general store</i> means a convenience store, mixed business shop, corner shop or milk bar that has a retail floor area of not more than 240 square metres and that is used for the purpose of selling, exposing or offering for sale by retail principally groceries, smallgoods or associated small items.	4 5 6 7 8
<i>service station</i> means a building or place used primarily for the fuelling of motor vehicles involving the sale by retail of petrol, oil or other petroleum products.	9 10 11
[11] Section 56 Fee for grant of licence	12
Omit “the fee fixed by the Board for the licence” from section 56 (1) (a).	13
Insert instead “the fee prescribed by the regulations or determined in accordance with the regulations”.	14 15
[12] Section 56 (1) (b)	16
Omit “such fee as is fixed by the Board for the licence”.	17
Insert instead “the fee prescribed by the regulations or determined in accordance with the regulations”.	18 19
[13] Section 56 (2)	20
Omit the subsection.	21
[14] Section 56 (4)	22
Omit “(except paragraphs (a) and (b)) or (3) prescribe”.	23
Insert instead “, prescribe”.	24
[15] Section 56C	25
Insert after section 56B:	26
56C Annual fee for hotelier’s licence or off-licence (retail)	27
(1) A fee prescribed by, or determined in accordance with, the regulations is payable in respect of a hotelier’s licence or an off-licence to sell liquor by retail.	28 29 30

(2)	The fee must be paid within the period of 21 days after 31 July in each calendar year for which the licence is in force. The licence is cancelled if the fee is not paid within that 21-day period.	1 2 3 4
(3)	The regulations may provide for exemptions with respect to the payment of fees under this section.	5 6
(4)	An application may be made to the court for the reinstatement of a hotelier's licence, or an off-licence to sell liquor by retail, that has been cancelled by the operation of this section. An application for reinstatement of a licence may only be made within 2 months after the cancellation of the licence.	7 8 9 10 11
(5)	The court may order reinstatement of the licence but only if satisfied that there is a reasonable explanation for the failure to pay the fee that resulted in cancellation of the licence.	12 13 14
(6)	The reinstatement of a licence does not take effect until the unpaid fee is paid.	15 16
[16]	Section 57 Removal of hotelier's licence or off-licence (retail)	17
	Omit section 57 (4).	18
[17]	Part 3, Division 6A	19
	Insert after Division 6:	20
	Division 6A Social impact assessment process	21
62B	Application of Division	22
(1)	This Division applies to an application (referred to in this Division as a <i>relevant application</i>) for the grant or removal of:	23 24 25
(a)	a hotelier's licence, or	26
(b)	an off-licence to sell liquor by retail.	27
(2)	A reference in this Division to the premises to which a relevant application relates is, in the case of the removal of the licence concerned, a reference to the premises to which, if the application were granted, the licence would be removed.	28 29 30 31

62C	Social impact assessment required before relevant application may be granted	1
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(1)	The court must not grant a relevant application unless:	3
(a)	a social impact assessment has been provided to the Board in connection with the application, and	4
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(b)	the Board has approved the social impact assessment.	6
(2)	A social impact assessment must comply with this Division and the regulations.	7
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(3)	A social impact assessment provided to the Board must be accompanied by such fee as may be prescribed by the regulations.	9
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62D	Requirements in relation to social impact assessments	12
	The regulations may make provision for or with respect to the following:	13
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(a)	the requirements that must be satisfied in connection with a social impact assessment,	15
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(b)	the matters to be assessed or addressed by a social impact assessment,	17
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(c)	the information to be provided by a social impact assessment.	19
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62E	Advertising of social impact assessment	21
(1)	If a social impact assessment is provided to the Board in connection with a relevant application, the applicant must:	22
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(a)	place a copy of the social impact assessment on public exhibition at the premises to which the application relates, and	24
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(b)	publish an advertisement in relation to the social impact assessment in a newspaper circulating in the area in which those premises are situated, and	27
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(c)	provide a copy of the social impact assessment to the Director and the local council for that area at or before the time the advertisement is published.	30
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(2)	If the premises to which the relevant application relates are not yet erected or occupied by the applicant, subsection (1) (a) is complied with if the social impact assessment is dealt with as provided by the regulations.	33
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- (3) The advertisement under subsection (1) (b) must: 1
- (a) be in the form approved by the Board, and 2
 - (b) state that a copy of the social impact assessment will be available for public inspection at the place specified in the advertisement, and 3
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 - (c) invite written submissions on the matter to be made to the Board within 30 days after the publication of the advertisement. 6
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- (4) The social impact assessment is not to be determined by the Board until after the expiration of that 30-day period. 9
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- (5) In determining the social impact assessment, the Board must take into account any written submission made on the matter within that 30-day period. 11
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- (6) The regulations may exclude any specified class of social impact assessments from the operation of this section. 14
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- 62F Approval of social impact assessment** 16
- (1) The Board may approve a social impact assessment that is provided in connection with a relevant application only if the Board is satisfied that: 17
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- (a) the social impact assessment complies with this Division and the regulations, and 20
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 - (b) the overall social impact of the application being granted by the court will not be detrimental to the local community or to the broader community. 22
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- (2) If, in determining a social impact assessment, the Board incurs any costs that are not covered by the fee referred to in section 62C (3), the applicant is liable to meet those costs. The Board may refuse to determine the social impact assessment until any such costs are paid or provision, to the Board's satisfaction, has been made for their payment. 25
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- (3) For the purposes of subsection (1) (b), the local community comprises the residents of the neighbourhood in which the premises to which the relevant application relates are (or will be) situated. 31
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[18] Schedule 1 Savings and transitional provisions	1
Insert at the end of clause 1 (1):	2
<i>National Competition Policy Amendments (Commonwealth Financial Penalties) Act 2004</i> , to the extent that it amends this Act	3 4 5
[19] Schedule 1, Part 21	6
Insert after Part 20:	7
Part 21 National Competition Policy Amendments (Commonwealth Financial Penalties) Act 2004	8 9 10
94 Pending applications	11
(1) The amendments made to this Act by Schedule 1 [2]–[7], [11]–[14], [16] and [17] to the <i>National Competition Policy Amendments (Commonwealth Financial Penalties) Act 2004</i> do not apply:	12 13 14 15
(a) to an application pending under this Act on the commencement of those amendments, or	16 17
(b) to an application under section 60 for a final grant of an application conditionally granted under section 40 before the commencement of those amendments.	18 19 20
(2) Subject to the regulations, the amendments made to this Act by Schedule 1 [8]–[10] to the <i>National Competition Policy Amendments (Commonwealth Financial Penalties) Act 2004</i> extend to an application pending under this Act on the commencement of those amendments.	21 22 23 24 25
Explanatory note	26
At present under section 45 (2) of the <i>Liquor Act 1982</i> (the Principal Act), an objection to the grant by the Licensing Court of an application for, or for the removal of, a hotelier's licence or an off-licence to sell liquor by retail (eg a bottle shop) may be taken on the ground that the needs of the public in the neighbourhood of the premises to which the application relates can be met by facilities for the supply of liquor existing in, and outside, the neighbourhood. Schedule 1 [4] omits section 45 (2) so as to remove the taking of an objection on such a ground. Schedule 1 [2], [3], [5]–[7] and [16] are consequential amendments.	27 28 29 30 31 32 33 34
In place of the current "needs" test in relation to hoteliers' licences and off-licences (retail), Schedule 1 [17] inserts a new Division 6A into Part 3 of the <i>Principal Act</i> that provides for a social impact assessment process in relation to applications for the grant or removal of such a licence. Under the new Division, the Licensing Court cannot grant	35 36 37 38

such an application unless a social impact assessment has been provided to the Liquor Administration Board in connection with the application and the Board has approved the social impact assessment. The regulations may make provision with respect to the requirements of a social impact assessment and the applicant will be required to publicly advertise the matter. In approving a social impact assessment, the Board must be satisfied that the overall social impact of the application being granted will not be detrimental to the local community or the broader community.

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At present under section 49C (2) of the Principal Act, an off-licence (retail) that relates to a convenience store or a service station may not be granted unless the Licensing Court is satisfied that no other take-away liquor service is reasonably available in the neighbourhood and the licence would not encourage drink-driving or other liquor-related harm. **Schedule 1 [8]–[10]** amend section 49C in 2 respects. Firstly, service stations will be prevented from being granted an off-licence (retail) in any circumstances, and the definition of **service station** is replaced so that it refers to a building or place used primarily for the fuelling of motor vehicles. Secondly, the term **convenience store** is replaced with **general store** so that the restriction on granting an off-licence (retail) to such a store will extend to other similar stores such as mixed business shops, corner shops and milk bars regardless of their opening hours.

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Schedule 1 [11] and [12] provide that the fee for granting a hotelier's licence or an off-licence (retail) will be the fee prescribed by (or determined in accordance with) the regulations. At present, the fee for the granting of such a licence is fixed by the Board. **Schedule 1 [13] and [14]** are consequential amendments.

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Schedule 1 [15] provides that an annual fee prescribed by (or determined in accordance with) the regulations will be payable in respect of a hotelier's licence or an off-licence (retail). The fee will be payable within 21 days of 31 July in each year and the licence will be cancelled if the fee is not paid. **Schedule 1 [1]** is a consequential amendment.

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Schedule 1 [18] provides for the making of savings and transitional regulations as a consequence of the proposed amendments to the Principal Act, and **Schedule 1 [19]** provides that the proposed amendments that replace the "needs" test with a social impact assessment will not apply to pending applications under the Act.

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The amendments that relate to service stations and general stores extend to pending applications under the Act.

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Schedule 2 Amendment of Poultry Meat Industry Act 1986 No 101

(Section 3)

[1] Section 3 Definitions

Omit the definitions of *agreement*, *base rate*, *efficiency incentive agreement*, *efficiency incentive rules*, *efficiency incentive scheme*, *excluded poultry*, *regulation* and *standard agreement* from section 3 (1).

Insert in alphabetical order:

registered supply agreement means an agreement that has been registered as referred to in section 9.

secretary of the Committee means the person employed as secretary of the Committee as referred to in section 5 (2).

supply agreement means an agreement for the supply of designated poultry by a grower to a processor.

[2] Section 6

Omit the section. Insert instead:

6 Functions of Committee

The functions of the Committee are as follows:

- (a) to facilitate the negotiation of agreements between processors and growers,
- (b) to register agreements entered into between processors and growers,
- (c) to facilitate the resolution of disputes between processors and growers,
- (d) to make reports or recommendations to the Minister on any matter relating to the poultry meat industry referred to the Committee by the Minister or on any matter that the Committee considers necessary or appropriate,
- (e) to exercise such other functions as are prescribed by the regulations.

[3] Part 3	1
Omit Parts 3 and 4. Insert instead:	2
Part 3 Supply agreements	3
Division 1 Negotiation of supply agreements	4
7 Negotiation of supply agreements	5
(1) An application for assistance in negotiating a supply agreement between a grower and a processor may be made to the Committee by either or both of them.	6 7 8
(2) The application must be lodged with the secretary of the Committee together with a deposit, of an amount prescribed by the regulations, towards the Committee's costs in providing the assistance sought by the application.	9 10 11 12
(3) On receiving an application that has been made in accordance with this section, the Committee must use its best endeavours to assist the parties to negotiate a supply agreement.	13 14 15
(4) Subject to any agreement between the parties, the Committee's costs in providing such assistance are to be borne by them in equal proportions.	16 17 18
Division 2 Registration of supply agreements	19
8 Batch poultry to be supplied under registered agreement	20
(1) A grower must not deliver batch poultry to a processor otherwise than in accordance with a registered supply agreement.	21 22 23
Maximum penalty: 20 penalty units.	24
(2) A processor must not accept batch poultry from a grower otherwise than in accordance with a registered supply agreement.	25 26 27
Maximum penalty: 20 penalty units.	28
9 Registration of supply agreements	29
(1) A processor may apply to the Committee for registration of a supply agreement.	30 31

- (2) The application must be lodged with the secretary of the Committee together with the application fee prescribed by the regulations. 1
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- (3) On receiving an application that has been made in accordance with this section, the secretary of the Committee: 4
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- (a) must register the agreement to which the application relates, and 6
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- (b) must issue the applicant with a certificate to the effect that the agreement is registered. 8
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- (4) Registration of a supply agreement may be cancelled on the request of the processor under the agreement, but only with the consent of the grower under the agreement or as authorised by the regulations. 10
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- 10 Annual registration fees** 14
- While a supply agreement is registered, the processor under the agreement must pay to the Committee, on each anniversary of the day on which the agreement was registered, the annual registration fee prescribed by the regulations. 15
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- 11 Growers to contribute to application and registration fees** 19
- (1) A grower under a registered supply agreement is liable to the processor under the agreement for 50 per cent (or, if there is more than one grower, 50 per cent divided by the number of growers) of the sum of all application fees and registration fees paid by the processor under this Division in connection with the agreement. 20
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- (2) Any amount for which a grower is liable to a processor under this section: 26
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- (a) may be offset by the processor against any debt owed by the processor to the grower under a registered supply agreement, or 28
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- (b) may be recovered by the processor from the grower, as a debt, in any court of competent jurisdiction. 31
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Division 3	Resolution of disputes under supply agreements	1
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12	Resolution of disputes under supply agreements	3
(1)	An application for assistance in resolving a dispute between a grower and a processor under a supply agreement (whether registered or not) may be made to the Committee by either or both of them.	4 5 6 7
(2)	The application must be lodged with the secretary of the Committee together with a deposit, of an amount prescribed by the regulations, towards the Committee's costs in providing the assistance sought by the application.	8 9 10 11
(3)	On receiving an application that has been made in accordance with this section, the Committee must use its best endeavours to assist the parties to resolve the dispute to which it relates. Where appropriate, the parties are to be encouraged to participate in alternative dispute resolution procedures.	12 13 14 15 16
(4)	Subject to any agreement between the parties, the Committee's costs in providing such assistance are to be borne by them in equal proportions.	17 18 19
Division 4	General	20
12A	Recovery by Committee of unpaid fees	21
	Any unpaid fees that are due to the Committee under this Part may be recovered by the Committee, as a debt, in any court of competent jurisdiction.	22 23 24
12B	Authorisations	25
(1)	The following are specifically authorised by this Act for the purposes of the <i>Trade Practices Act 1974</i> of the Commonwealth and the <i>Competition Code of New South Wales</i> :	26 27 28 29
(a)	any supply agreements entered into between growers and processors for the purposes of this Act,	30 31
(b)	the conduct of growers and processors in negotiating and entering into any such agreements,	32 33
(c)	the conduct of growers and processors in performing any such agreements.	34 35

(2)	Anything authorised to be done by this section is authorised only to the extent to which it would otherwise contravene Part IV of the <i>Trade Practices Act 1974</i> of the Commonwealth or the <i>Competition Code of New South Wales</i> .	1 2 3 4
[4]	Section 18 Disputes	5
	Omit the section.	6
[5]	Section 19 Certificate as to notification relating to agreement	7
	Omit the section.	8
[6]	Schedule 3 Savings, transitional and other provisions	9
	Insert at the end of clause 1A (1):	10
	<i>National Competition Policy Amendments (Commonwealth Financial Penalties) Act 2004</i> , to the extent that it amends this Act	11 12 13
[7]	Schedule 3, Part 3	14
	Insert after Part 2:	15
Part 3	Provisions consequent on enactment of National Competition Policy Amendments (Commonwealth Financial Penalties) Act 2004	16 17 18 19
12	Definitions	20
	In this Part:	21
	<i>the amended Act</i> means this Act, as amended by Schedule 2 to the <i>National Competition Policy Amendments (Commonwealth Financial Penalties) Act 2004</i> .	22 23 24
	<i>the unamended Act</i> means this Act, as in force immediately before the commencement of Schedule 2 to the <i>National Competition Policy Amendments (Commonwealth Financial Penalties) Act 2004</i> .	25 26 27 28

13	Notified agreements under unamended Act	1
(1)	An agreement in respect of which a notification had been given under section 9 of the unamended Act is taken to be a registered supply agreement for the purposes of the amended Act and, for the purposes of section 10 of the amended Act, is taken to have been registered on the date of commencement of section 10 of the amended Act.	2 3 4 5 6 7
(2)	A certificate under section 19 of the unamended Act that has been issued in relation to an agreement is taken to be a certificate issued under section 9 of the amended Act in relation to that agreement.	8 9 10 11
14	Continued application of section 9A of unamended Act	12
	Section 9A of the unamended Act continues to apply to any agreement and conduct to which it applied immediately before the repeal of that section as if that section had not been repealed.	13 14 15 16
15	Continued application of Part 4 of unamended Act	17
	Part 4 of the unamended Act continues to apply to any agreement to which it applied immediately before the repeal of that Part as if that Part had not been repealed.	18 19 20
16	Continued application of section 18 of unamended Act	21
	Section 18 of the unamended Act continues to apply to any dispute in respect of which an application had been made under that section before the repeal of that section as if that section had not been repealed.	22 23 24 25
	Explanatory note	26
	Schedule 2 [1] amends section 3 of the <i>Poultry Meat Industry Act 1986</i> (the Principal Act) so as to omit certain definitions and insert others as a consequence of the amendments made by the other items of Schedule 2.	27 28 29
	Section 6 of the Principal Act sets out the functions of the Poultry Meat Industry Committee. These functions include the approval of agreements between poultry growers and poultry processors (dealt with in Part 3 of the Act), the determination of base rates for batch poultry (dealt with in Part 4 of the Act) and the settlement of disputes between poultry growers and poultry processors (dealt with in section 18 of the Act). Schedule 2 [2] substitutes section 6 as a consequence of the proposed repeal of Parts 3 and 4 and section 18, and their replacement by proposed Part 3 (see Schedule 2 [3] and [4]).	30 31 32 33 34 35 36 37
	Part 3 of the Principal Act prohibits processors from processing batch poultry (poultry grown in batches of 1,000 or more) unless the poultry has been grown by a grower under a written agreement in a form approved by the Poultry Meat Industry Committee.	38 39 40

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Schedule 2 Amendment of Poultry Meat Industry Act 1986 No 101

The remaining provisions of that Part deal with the process by which such an approval is given, requires notification of the Committee when such an agreement is entered into and grants specific authorisation of such agreements, and conduct relating to such agreements, for the purposes of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*. 1
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Schedule 2 [3] omits Part 3, and replaces it with Divisions 1 and 2 of a new Part 3. Division 1 enables poultry growers and poultry processors to apply to the Committee for assistance in negotiating a supply agreement between them. Division 2 requires all deliveries of batch poultry to be effected in accordance with a registered supply agreement, sets out the procedure for registering a supply agreement, requires payment of annual registration fees and apportions fees between poultry growers and poultry processors. 6
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Part 4 of the Principal Act empowers the Committee to set base rates for batch poultry. **Schedule 2 [3]** omits Part 4, and so removes that power. 13
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The new Part 3 inserted by **Schedule 2 [3]** includes Division 3, which enables poultry growers and poultry processors to apply to the Committee for assistance in resolving disputes between them, and Division 4, which enables the Committee to recover unpaid fees and replicates the specific authorisation referred to above. 15
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Schedule 2 [4] repeals section 18 of the Principal Act, the provisions of which are replicated in Division 3 of proposed Part 3, to be inserted by **Schedule 2 [3]**. 19
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Schedule 2 [5] repeals section 19 of the Principal Act, the provisions of which are no longer necessary as a result of the repeal by **Schedule 2 [3]** of existing Part 3. 21
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Schedule 2 [6] provides for the making of savings and transitional regulations as a consequence of the proposed amendments to the Principal Act. 23
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Schedule 2 [7] adds a new Part 3 to Schedule 3 to the Principal Act. The new Part contains provisions consequent on the enactment of the other items of Schedule 2. The new Part deems certain agreements to be registered for the purposes of the amended Act (clause 13), continues in operation former section 9A (the existing authorisation for the purposes of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*) in relation to existing agreements and past conduct (clause 14), continues in operation former Part 4 (Payments to growers) in relation to existing agreements (clause 15) and continues in operation former section 18 (Disputes) in relation to disputes the subject of existing applications for settlement by negotiation (clause 16). 25
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Schedule 3 Amendment of Dentists Act 1989 No 139	1
(Section 3)	2
[1] Section 3 Definitions	3
Omit the definition of <i>incorporated practice</i> from section 3 (1).	4
[2] Section 3 (3)	5
Insert after section 3 (2):	6
(3) Notes included in this Act do not form part of this Act.	7
[3] Section 5 Professional misconduct	8
Insert after section 5 (1) (a):	9
(a1) engaging in overservicing as provided by subsection (2), and	10 11
[4] Section 5 (1) (d)–(f)	12
Omit the paragraphs.	13
[5] Section 5 (2)	14
Omit section 5 (2)–(6). Insert instead:	15
(2) A dentist engages in overservicing if the dentist, in the course of professional practice:	16 17
(a) provides a service in circumstances in which provision of the service is unnecessary, not reasonably required or excessive, or	18 19 20
(b) engages in conduct that is prescribed by the regulations as constituting overservicing.	21 22
[6] Section 28 Application of Part to incorporated practices	23
Omit the section.	24

[7] Sections 53 and 54	1
Omit the sections. Insert instead:	2
53 Ownership of dental practices	3
Nothing in this Act prevents a registered dentist from practising dentistry as the director or employee of any corporation or in the course of employment by, or in association with, any body or person.	4 5 6 7
Note. Under section 137D of the <i>Dental Practice Act 2001</i> (which applies as a provision of this Act by virtue of section 54) a dentist can be prohibited from operating a business that provides dental services.	8 9 10
54 Prohibition against directing or inciting misconduct	11
The provisions of Part 11A (Prohibition against directing or inciting misconduct) of the <i>Dental Practice Act 2001</i> have effect as provisions of this Act, subject to any necessary modification.	12 13 14 15
Note. The general effect of Part 11A of the <i>Dental Practice Act 2001</i> is as follows:	16 17
(a) to make it an offence for a person who employs a registered dentist to direct or incite the dentist to engage in conduct in the course of professional practice that would constitute unsatisfactory professional conduct or professional misconduct,	18 19 20 21
(b) to enable the Director-General to prohibit persons who have been convicted of or made the subject of a criminal finding for such an offence from operating a business that provides dental services. (Such a prohibition has an extended operation. For example, it will prohibit the person from having a management role or substantial interest in a corporation that operates such a business or from having a substantial interest in a trust under which such a business is operated.)	22 23 24 25 26 27 28 29
[8] Section 67 Regulations	30
Omit “society, council, body or corporation referred to in section 5 (4) (c), (d), (e) or (f)” from section 67 (2) (c).	31 32
Insert instead “person or body”.	33
[9] Section 67 (2) (l) and (m)	34
Omit the paragraphs.	35

[10] Schedule 4 Savings, transitional and other provisions	1
Insert “, and the <i>National Competition Policy Amendments (Commonwealth Financial Penalties) Act 2004</i> to the extent that it amends this Act” after “this Act” in clause 15 (1).	2 3 4
[11] Schedule 4, clause 15 (2)	5
Omit “this Act”. Insert instead “the Act concerned”.	6
Explanatory note	7
Section 5 of the <i>Dentists Act 1989</i> (the Principal Act) defines professional misconduct in relation to a dentist. Under section 5 (1) (f), such conduct includes practising dentistry for fee, salary or other reward in the course of employment by, or in association with, any person other than a registered dentist or an entity specified in section 5 (4) (which includes a body or corporation approved by the Dental Board). Schedule 3 [4] removes this restriction on the practice of dentistry and makes consequential amendments. Schedule 3 [8] makes a consequential amendment.	8 9 10 11 12 13 14
Section 53 of the <i>Principal Act</i> allows registered dentists to practise dentistry as the director or employee of a corporation only if the corporation is an incorporated practice (that is, if the corporation is controlled by one or more registered dentists, and all the directors and shareholders of the corporation are registered dentists or family members of the registered dentists concerned). Schedule 3 [7] removes this restriction on the practice of dentistry and makes a consequential amendment. Schedule 3 [1], [6] and [9] make consequential amendments.	15 16 17 18 19 20 21
Schedule 3 [7] also inserts new sections 53 and 54 into the <i>Principal Act</i> . New section 53 makes it clear that nothing in the Act prevents a registered dentist from practising dentistry as the director or employee of any corporation or in the course of employment by, or in association with, any body or person. New section 54 incorporates into the <i>Principal Act</i> , subject to any necessary modification, the provisions of Part 11A of the <i>Dental Practice Act 2001</i> (which is yet to be commenced) that are proposed to be inserted by Schedule 4 [7].	22 23 24 25 26 27 28
Schedule 3 [2] inserts a formal provision relating to notes.	29
Schedule 3 [5] makes amendments consequential the amendments made by Schedule 3 [3] and [4] .	30 31
Schedule 3 [10] provides for the making of savings and transitional regulations as a consequence of the proposed amendments to the <i>Principal Act</i> . Schedule 3 [11] makes a consequential amendment.	32 33 34

Schedule 4 Amendment of Dental Practice Act 2001 No 64	1
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(Section 3)	3
[1] Section 4 Definitions	4
Omit the definition of <i>incorporated practice</i> .	5
[2] Section 34	6
Omit the section. Insert instead:	7
34 Ownership of dental practices	8
Nothing in this Act (except section 137D) prevents a registered dentist from practising dentistry as the director or employee of any corporation or in the course of employment by, or in association with, any body or person.	9 10 11 12
[3] Section 41 Meaning of “unsatisfactory professional conduct”—dentists	13 14
Insert after section 41 (1) (a):	15
(a1) engaging in overservicing as provided by subsection (2),	16 17
[4] Section 41 (1) (c), (f) and (g)	18
Omit the paragraphs.	19
[5] Section 41 (2)	20
Omit the subsection and note. Insert instead:	21
(2) A dentist engages in overservicing if the dentist, in the course of professional practice:	22 23
(a) provides a service in circumstances in which provision of the service is unnecessary, not reasonably required or excessive, or	24 25 26
(b) engages in conduct that is prescribed by the regulations as constituting overservicing.	27 28
[6] Section 43 Application of Part to incorporated practices	29
Omit the section.	30

[7] Part 11A	1
Insert after Part 11:	2
Part 11A Prohibition against directing or inciting misconduct	3
	4
137A Prohibition against directing or inciting misconduct	5
(1) A person (<i>the employer</i>) who employs a registered dentist must not direct or incite the dentist to engage in conduct in the course of professional practice that would constitute unsatisfactory professional conduct or professional misconduct.	6 7 8 9 10
Maximum penalty:	11
(a) in the case of a corporation, 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence, or	12 13 14
(b) in any other case, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence.	15 16
(2) For the purposes of this section, any actions of an agent or employee of the employer are taken to be actions of the employer unless the employer establishes:	17 18 19
(a) that the employer had no knowledge of those actions, and	20 21
(b) that the employer could not, by the exercise of due diligence, have prevented those actions.	22 23
(3) If a person is convicted of or made the subject of a criminal finding for an offence against this section in respect of the actions of an agent or employee of the person, the agent or employee is for the purposes of this Part taken to have been convicted of or made the subject of a criminal finding for the offence also.	24 25 26 27 28 29
(4) When a court convicts or makes a criminal finding against a person for an offence against this section, the registrar or other proper officer of the court must notify the Director-General in writing of the conviction or criminal finding.	30 31 32 33
(5) This section does not apply in respect of the employment of a dentist by any of the following:	34 35

- (a) a public health organisation within the meaning of the *Health Services Act 1997*, 1
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 - (b) a private hospital or day procedure centre within the meaning of the *Private Hospitals and Day Procedure Centres Act 1988*, 3
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 - (c) a nursing home within the meaning of the *Nursing Homes Act 1988*. 6
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- 137B Extended concept of employment** 8
- (1) When a registered dentist engages in the practice of dentistry in the course of the carrying on of a business, any person who owns, manages, controls, conducts or operates that business is for the purposes of this Part taken to employ the dentist (in addition to any person who actually employs the dentist). 9
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 - (2) When a registered dentist is employed by a corporation, each of the following persons is for the purposes of this Part also considered to be the employer of the dentist (in addition to the corporation): 14
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 - (a) a person who is a director, secretary or executive officer (as defined in the *Corporations Act 2001* of the Commonwealth) of the corporation or is concerned in the management of the corporation, 18
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 - (b) any other employee of the corporation in accordance with whose directions the dentist is required or expected to act. 22
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- 137C Extended concept of carrying on business** 25
- (1) If a dentist engaged in the practice of dentistry is provided, in the course of the carrying on of a business, with services that facilitate that practice and the operator of the business is entitled, in connection with the provision of those services, to a share or interest in the profits or income arising from the practice of dentistry by the dentist: 26
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 - (a) that business is taken for the purposes of this Part to be a business that provides the dental services that are provided by the dentist in the course of that practice, and 32
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 - (b) the dentist is taken for the purposes of this Part to be engaged in the practice of dentistry in the course of the carrying on of that business. 36
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- (2) Subsection (1) does not apply in respect of the practice of dentistry by a dentist in such circumstances as may be prescribed by the regulations as exempt from that subsection. 1
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- (3) For the purposes of this Part, a person is considered to operate a business if the person: 4
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- (a) owns, manages, controls, conducts or operates the business, or 6
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- (b) has (within the meaning of section 137G) a management role or substantial interest in a corporation that operates the business or a substantial interest in a trust under which the business is operated. 8
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- 137D Convicted offenders may be prohibited from carrying on business** 12
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- (1) The Director-General may, by notice in writing given to a person who has been convicted of or made the subject of a criminal finding for an offence against this Part, prohibit the person from operating a business that provides dental services. 14
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- (2) The prohibition may be expressed to be: 19
- (a) for a fixed period (in which case the prohibition remains in force only for that fixed period), or 20
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- (b) for an unlimited period subject to an entitlement to apply after a specified time for the lifting of the prohibition (in which case the prohibition remains in force until it is lifted). 22
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- (3) A prohibition may not be imposed under this section unless the Director-General is of the opinion that the person is not a fit and proper person to operate a business that provides dental services. The Director-General is entitled to presume, in the absence of evidence to the contrary, that a person who has been convicted of or made the subject of a criminal finding for an offence against this Part on 2 or more occasions in any period of 10 years is not a fit and proper person to operate such a business. 26
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- (4) A prohibition under this section may be limited in its operation in either or both of the following ways: 35
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- (a) it may be limited to specified premises, but only where the person concerned operates a business that provides dental services at those premises and at other premises, 1
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- (b) it may be limited to premises within a specified area. 4
- (5) If a prohibition under this section is subject to an entitlement to apply after a specified time for the prohibition to be lifted, such an application may be made to the Director-General after that time. The Director-General may lift the prohibition or confirm the prohibition and set a further period after which an application for the prohibition to be lifted can be made under this subsection. 5
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- 137E Offence of operating business while prohibited** 12
- (1) A person who in contravention of a prohibition under this Part operates a business that provides dental services is guilty of an offence. 13
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- Maximum penalty: 16
- (a) in the case of a corporation, 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence, or 17
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- (b) in any other case, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence. 20
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- (2) If a continuing state of affairs is created by an offence against this section the offender is liable to a maximum penalty of: 22
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- (a) 100 penalty units in the case of a corporation, or 24
- (b) 50 penalty units in any other case, 25
- in respect of each day on which that offence continues, in addition to the penalty specified in subsection (1). 26
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- (3) If dental services are provided on premises on which a business is carried on, it is to be presumed for the purposes of this section, unless the contrary is established, that the business provides those dental services. 28
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- 137F Effect of appeal against conviction** 32
- A prohibition under this Part has no effect while an appeal is pending against the conviction or criminal finding for the offence on which the prohibition is based. 33
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137G Business interests—effect of prohibition

- (1) When a corporation or the trustee of a trust is the subject of a prohibition under this Part in connection with the operation of a business operated by the corporation or under the trust:
- (a) each person who has a management role or substantial interest in the corporation or a substantial interest in the trust is for the purposes of this Part taken to be the subject of that prohibition also, and
 - (b) each corporation in which a person referred to in paragraph (a) has a management role or substantial interest is for the purposes of this Part taken to be the subject of that prohibition also (whether or not the corporation was in existence at the time of the relevant offence), and
 - (c) the trustee and any manager of a trust in which a person referred to in paragraph (a) has a substantial interest are for the purposes of this Part taken to be the subject of that prohibition also (whether or not the trust was in existence at the time of the relevant offence).
- (2) A person is considered to have a management role or substantial interest in a corporation if:
- (a) the person is a director, secretary or executive officer (as defined in the *Corporations Act 2001* of the Commonwealth) of the corporation, or
 - (b) the person is entitled to more than 10% of the issued share capital of the corporation (with the shares to which a person is entitled including shares in which the person or an associate of the person has a relevant interest within the meaning of the *Corporations Act 2001* of the Commonwealth).
- (3) A person is considered to have a substantial interest in a trust if the person (whether or not as the trustee of another trust) is the beneficiary in respect of more than 10% of the value of the interests in the trust.
- (4) The regulations may create exceptions to this section.

137H	Power to require information from convicted persons and others	1
		2
(1)	When a corporation or the trustee of a trust is convicted of or made the subject of a criminal finding for an offence against this Part in connection with the operation of a business operated by the corporation or under the trust, the Director-General may require certain persons to provide specified information to the Director-General, as provided by this section.	3 4 5 6 7 8 9
(2)	The corporation or trustee may be required to provide information that the Director-General may reasonably require to ascertain the identity of each person who has a management role or substantial interest in the corporation or a substantial interest in the trust.	10 11 12 13 14
(3)	A person whom the Director-General reasonably believes has a management role or substantial interest in the corporation or a substantial interest in the trust may be required to provide information that the Director-General may reasonably require to ascertain:	15 16 17 18 19
	(a) the identity of each corporation in which that person has a management role or substantial interest, or	20 21
	(b) the identity of the trustee and any manager of a trust in which that person has a substantial interest.	22 23
(4)	A requirement to provide information is to be imposed by a direction in writing served on the person, corporation or trustee concerned. The direction must specify a period of not less than 7 days as the period within which the required information must be provided.	24 25 26 27 28
(5)	A person who fails without reasonable excuse to comply with a requirement under this section is guilty of an offence.	29 30
	Maximum penalty:	31
	(a) in the case of a corporation, 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence, or	32 33 34
	(b) in any other case, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence.	35 36

(6)	A person who in purported compliance with a requirement under this section provides information that is false or misleading in a material particular is guilty of an offence unless the person satisfies the court that the person did not know and could not reasonably be expected to have known that the information was false or misleading.	1 2 3 4 5 6
	Maximum penalty:	7
(a)	in the case of a corporation, 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence, or	8 9 10
(b)	in any other case, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence.	11 12
137I	Evidentiary certificate	13
(1)	The Director-General may issue a certificate to the effect that a person specified in the certificate is or was prohibited under this Part from operating a business that provides dental services during a period specified in the certificate.	14 15 16 17
(2)	Such a certificate is evidence of the matters certified.	18
(3)	A certificate purporting to be a certificate issued by the Director-General under this section is presumed to have been so issued unless the contrary is established.	19 20 21
[8]	Section 139 Approval for employment of dentists by non-dentists	22
	Omit the section.	23
[9]	Section 141 Carrying on practice of deceased dentist	24
	Omit the section.	25
[10]	Section 142 Civil liability of directors of incorporated practices	26
	Omit the section.	27
[11]	Section 158 Regulations	28
	Omit “referred to in section 41 (2) (d)–(g)” from section 158 (2) (n).	29
[12]	Section 158 (2) (v)	30
	Omit the paragraph.	31

[13] Schedule 7 Savings and transitional provisions

Insert at the end of clause 2 (1):

National Competition Policy Amendments (Commonwealth Financial Penalties) Act 2004, to the extent that it amends this Act

Explanatory note

The *Dental Practice Act 2001* (the **Principal Act**) was enacted to replace the existing *Dentists Act 1989* as a result of a National Competition Policy review of that Act. Section 41 of the Principal Act defines **unsatisfactory professional conduct** in relation to a dentist. Under section 41 (1) (c) of that Act (which continues a restriction under the existing Act), such conduct includes practising dentistry for remuneration in the course of employment by, or in association with, a non-dentist (being any person or body who is not a registered dentist other than certain specified entities, or persons or bodies approved by the Dental Board). **Schedule 4 [4]** removes this restriction on the practice of dentistry and makes consequential amendments. **Schedule 4 [8] and [11]** also make consequential amendments.

Section 34 of the Principal Act (also continuing an existing provision) allows registered dentists to practise dentistry as the director or employee of a corporation only if the corporation is an incorporated practice (that is, if the corporation is controlled by one or more registered dentists, and all the directors and shareholders of the corporation are registered dentists or family members of the registered dentists concerned). **Schedule 4 [2]** removes this restriction on the practice of dentistry. **Schedule 4 [1], [6], [10] and [12]** make consequential amendments.

Schedule 4 [2] also inserts a new section 34 into the Principal Act to make it clear that nothing in the Act prevents a registered dentist from practising dentistry as the director or employee of any corporation or in the course of employment by, or in association with, any body or person.

Schedule 4 [7] inserts a new Part 11A (sections 137A–137I) into the Principal Act. Under proposed section 137A, it will be an offence for a person who employs a registered dentist to direct or incite the dentist to engage in conduct in the course of professional practice that would constitute unsatisfactory professional conduct (which, under the amendment proposed to be made by **Schedule 4 [3]**, will include overservicing) or professional misconduct. Under proposed section 137D, the Director-General of the Department of Health will be able to prohibit persons who have been convicted of or made the subject of a criminal finding for such an offence from operating a business that provides dental services. Such a prohibition has an extended operation. For example, it will prohibit the person from having a management role or substantial interest in a corporation that operates such a business or from having a substantial interest in a trust under which such a business is operated.

Schedule 4 [9] makes an amendment consequential on the amendments made by **Schedule 4 [2] and [4]**.

Schedule 4 [5] substitutes a provision consequential on the amendments made by **Schedule 4 [3] and [4]**.

Schedule 4 [13] provides for the making of savings and transitional regulations as a consequence of the proposed amendments to the Principal Act.

**Schedule 5 Amendment of Optometrists Act 2002
No 30**

(Section 3)

[1] Section 23

Omit the section. Insert instead:

23 Ownership of optometry practices

Nothing in this Act (except section 120D) prevents a registered optometrist from practising optometry as the director or employee of any corporation or in the course of employment by, or in association with, any body or person.

[2] Section 29 Meaning of “unsatisfactory professional conduct”

Omit section 29 (1) (g) and (h).

[3] Section 29 (3)

Omit the subsection.

[4] Part 10A

Insert after Part 10:

**Part 10A Prohibition against directing or inciting
misconduct**

120A Prohibition against directing or inciting misconduct

- (1) A person (*the employer*) who employs a registered optometrist must not direct or incite the optometrist to engage in conduct in the course of professional practice that would constitute unsatisfactory professional conduct or professional misconduct.

Maximum penalty:

- (a) in the case of a corporation, 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence, or
- (b) in any other case, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence.

- (2) For the purposes of this section, any actions of an agent or employee of the employer are taken to be actions of the employer unless the employer establishes:
- (a) that the employer had no knowledge of those actions, and
 - (b) that the employer could not, by the exercise of due diligence, have prevented those actions.
- (3) If a person is convicted of or made the subject of a criminal finding for an offence against this section in respect of the actions of an agent or employee of the person, the agent or employee is for the purposes of this Part taken to have been convicted of or made the subject of a criminal finding for the offence also.
- (4) When a court convicts or makes a criminal finding against a person for an offence against this section, the registrar or other proper officer of the court must notify the Director-General in writing of the conviction or criminal finding.
- (5) This section does not apply in respect of the employment of an optometrist by any of the following:
- (a) a public health organisation within the meaning of the *Health Services Act 1997*,
 - (b) a private hospital or day procedure centre within the meaning of the *Private Hospitals and Day Procedure Centres Act 1988*,
 - (c) a nursing home within the meaning of the *Nursing Homes Act 1988*.
- 120B Extended concept of employment**
- (1) When a registered optometrist engages in the practice of optometry in the course of the carrying on of a business, any person who owns, manages, controls, conducts or operates that business is for the purposes of this Part taken to employ the optometrist (in addition to any person who actually employs the optometrist).
- (2) When a registered optometrist is employed by a corporation, each of the following persons is for the purposes of this Part also considered to be the employer of the optometrist (in addition to the corporation):

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- (a) a person who is a director, secretary or executive officer (as defined in the *Corporations Act 2001* of the Commonwealth) of the corporation or is concerned in the management of the corporation, 1
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 - (b) any other employee of the corporation in accordance with whose directions the optometrist is required or expected to act. 5
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120C Extended concept of carrying on business 8

- (1) If an optometrist engaged in the practice of optometry is provided, in the course of the carrying on of a business, with services that facilitate that practice and the operator of the business is entitled, in connection with the provision of those services, to a share or interest in the profits or income arising from the practice of optometry by the optometrist: 9
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 - (a) that business is taken for the purposes of this Part to be a business that provides the optometrical services that are provided by the optometrist in the course of that practice, and 15
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 - (b) the optometrist is taken for the purposes of this Part to be engaged in the practice of optometry in the course of the carrying on of that business. 19
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- (2) Subsection (1) does not apply in respect of the practice of optometry by an optometrist in such circumstances as may be prescribed by the regulations as exempt from that subsection. 22
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- (3) For the purposes of this Part, a person is considered to operate a business if the person: 25
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 - (a) owns, manages, controls, conducts or operates the business, or 27
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 - (b) has (within the meaning of section 120G) a management role or substantial interest in a corporation that operates the business or a substantial interest in a trust under which the business is operated. 29
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120D	Convicted offenders may be prohibited from carrying on business	1
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(1)	The Director-General may, by notice in writing given to a person who has been convicted of or made the subject of a criminal finding for an offence against this Part, prohibit the person from operating a business that provides optometrical services.	3 4 5 6 7
(2)	The prohibition may be expressed to be:	8
	(a) for a fixed period (in which case the prohibition remains in force only for that fixed period), or	9 10
	(b) for an unlimited period subject to an entitlement to apply after a specified time for the lifting of the prohibition (in which case the prohibition remains in force until it is lifted).	11 12 13 14
(3)	A prohibition may not be imposed under this section unless the Director-General is of the opinion that the person is not a fit and proper person to operate a business that provides optometrical services. The Director-General is entitled to presume, in the absence of evidence to the contrary, that a person who has been convicted of or made the subject of a criminal finding for an offence against this Part on 2 or more occasions in any period of 10 years is not a fit and proper person to operate such a business.	15 16 17 18 19 20 21 22 23
(4)	A prohibition under this section may be limited in its operation in either or both of the following ways:	24 25
	(a) it may be limited to specified premises, but only where the person concerned operates a business that provides optometrical services at those premises and at other premises,	26 27 28 29
	(b) it may be limited to premises within a specified area.	30
(5)	If a prohibition under this section is subject to an entitlement to apply after a specified time for the prohibition to be lifted, such an application may be made to the Director-General after that time. The Director-General may lift the prohibition or confirm the prohibition and set a further period after which an application for the prohibition to be lifted can be made under this subsection.	31 32 33 34 35 36 37

120E	Offence of operating business while prohibited	1
(1)	A person who in contravention of a prohibition under this Part operates a business that provides optometrical services is guilty of an offence.	2 3 4
	Maximum penalty:	5
(a)	in the case of a corporation, 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence, or	6 7 8
(b)	in any other case, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence.	9 10
(2)	If a continuing state of affairs is created by an offence against this section the offender is liable to a maximum penalty of:	11 12
(a)	100 penalty units in the case of a corporation, or	13
(b)	50 penalty units in any other case,	14
	in respect of each day on which that offence continues, in addition to the penalty specified in subsection (1).	15 16
(3)	If optometrical services are provided on premises on which a business is carried on, it is to be presumed for the purposes of this section, unless the contrary is established, that the business provides those optometrical services.	17 18 19 20
120F	Effect of appeal against conviction	21
	A prohibition under this Part has no effect while an appeal is pending against the conviction or criminal finding for the offence on which the prohibition is based.	22 23 24
120G	Business interests—effect of prohibition	25
(1)	When a corporation or the trustee of a trust is the subject of a prohibition under this Part in connection with the operation of a business operated by the corporation or under the trust:	26 27 28
(a)	each person who has a management role or substantial interest in the corporation or a substantial interest in the trust is for the purposes of this Part taken to be the subject of that prohibition also, and	29 30 31 32
(b)	each corporation in which a person referred to in paragraph (a) has a management role or substantial interest is for the purposes of this Part taken to be the	33 34 35

subject of that prohibition also (whether or not the corporation was in existence at the time of the relevant offence), and	1 2 3
(c) the trustee and any manager of a trust in which a person referred to in paragraph (a) has a substantial interest are for the purposes of this Part taken to be the subject of that prohibition also (whether or not the trust was in existence at the time of the relevant offence).	4 5 6 7 8
(2) A person is considered to have a management role or substantial interest in a corporation if:	9 10
(a) the person is a director, secretary or executive officer (as defined in the <i>Corporations Act 2001</i> of the Commonwealth) of the corporation, or	11 12 13
(b) the person is entitled to more than 10% of the issued share capital of the corporation (with the shares to which a person is entitled including shares in which the person or an associate of the person has a relevant interest within the meaning of the <i>Corporations Act 2001</i> of the Commonwealth).	14 15 16 17 18 19
(3) A person is considered to have a substantial interest in a trust if the person (whether or not as the trustee of another trust) is the beneficiary in respect of more than 10% of the value of the interests in the trust.	20 21 22 23
(4) The regulations may create exceptions to this section.	24
120H Power to require information from convicted persons and others	25 26
(1) When a corporation or the trustee of a trust is convicted of or made the subject of a criminal finding for an offence against this Part in connection with the operation of a business operated by the corporation or under the trust, the Director-General may require certain persons to provide specified information to the Director-General, as provided by this section.	27 28 29 30 31 32 33
(2) The corporation or trustee may be required to provide information that the Director-General may reasonably require to ascertain the identity of each person who has a management role or substantial interest in the corporation or a substantial interest in the trust.	34 35 36 37 38

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- (3) A person whom the Director-General reasonably believes has a management role or substantial interest in the corporation or a substantial interest in the trust may be required to provide information that the Director-General may reasonably require to ascertain:
- (a) the identity of each corporation in which that person has a management role or substantial interest, or
 - (b) the identity of the trustee and any manager of a trust in which that person has a substantial interest.
- (4) A requirement to provide information is to be imposed by a direction in writing served on the person, corporation or trustee concerned. The direction must specify a period of not less than 7 days as the period within which the required information must be provided.
- (5) A person who fails without reasonable excuse to comply with a requirement under this section is guilty of an offence.
- Maximum penalty:
- (a) in the case of a corporation, 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence, or
 - (b) in any other case, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence.
- (6) A person who in purported compliance with a requirement under this section provides information that is false or misleading in a material particular is guilty of an offence unless the person satisfies the court that the person did not know and could not reasonably be expected to have known that the information was false or misleading.
- Maximum penalty:
- (a) in the case of a corporation, 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence, or
 - (b) in any other case, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence.

120I Evidentiary certificate

- (1) The Director-General may issue a certificate to the effect that a person specified in the certificate is or was prohibited under this Part from operating a business that provides optometrical services during a period specified in the certificate.
- (2) Such a certificate is evidence of the matters certified.
- (3) A certificate purporting to be a certificate issued by the Director-General under this section is presumed to have been so issued unless the contrary is established.

[5] Schedule 7 Savings and transitional provisions

Insert at the end of clause 2 (1):

National Competition Policy Amendments (Commonwealth Financial Penalties) Act 2004, to the extent that it amends this Act

Explanatory note

The *Optometrists Act 2002* (the **Principal Act**) was enacted to replace the existing *Optometrists Act 1930* as a result of a National Competition Policy review of that Act. Section 23 of the Principal Act (continuing a similar restriction under the existing Act) restricts the carrying on of the business of the practice of optometry to registered optometrists, incorporated practices, existing optometry businesses, persons approved by the Minister for Health, persons carrying on the business of a deceased optometrist for a limited period and others as permitted by the regulations. **Schedule 5 [1]** removes this restriction on the practice of optometry.

Schedule 5 [1] also inserts a new section 23 into the Principal Act to make it clear that nothing in the Act prevents a registered optometrist from practising optometry as the director or employee of any corporation or in the course of employment by, or in association with, any body or person.

Schedule 5 [4] inserts a new Part 10A (sections 120A–120I) into the Principal Act. Under proposed section 120A, it will be an offence for a person who employs a registered optometrist to direct or incite the optometrist to engage in conduct in the course of professional practice that would constitute unsatisfactory professional conduct (which, under the current definition of that term in the Principal Act, includes overservicing) or professional misconduct. Under proposed section 120D, the Director-General of the Department of Health will be able to prohibit persons who have been convicted of or made the subject of a criminal finding for such an offence from operating a business that provides optometrical services. Such a prohibition has an extended operation. For example, it will prohibit the person from having a management role or substantial interest in a corporation that operates such a business or from having a substantial interest in a trust under which such a business is operated.

Schedule 5 [2] and [3] make amendments consequential on the amendments made by **Schedule 5 [1]**.

Schedule 5 [5] provides for the making of savings and transitional regulations as a consequence of the proposed amendments to the Principal Act.

**Schedule 6 Amendment of Pharmacy Act 1964
No 48**

(Section 3)

**[1] Section 26 Restrictions on carrying on business of a pharmacist
in pharmacies**

Omit the section.

[2] Section 27A

Omit the section. Insert instead:

27A Exemption for friendly societies

(1) Section 25 does not operate to prevent any friendly society from carrying on the business of a pharmacist.

(2) In this section:

friendly society includes any society exempted from the operation of sections 24C, 25 and 26 under section 27A as in force immediately before its substitution by Schedule 6 [2] to the *National Competition Policy Amendments (Commonwealth Financial Penalties) Act 2004*.

[3] Section 40

Insert after section 39:

40 Savings and transitional regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

National Competition Policy Amendments (Commonwealth Financial Penalties) Act 2004, to the extent that it amends this Act

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Explanatory note

Section 26 of the *Pharmacy Act 1964* (the **Principal Act**) limits to 3 the number of pharmacy businesses that pharmacists may carry on or in which they may have a direct or indirect pecuniary interest. (The restriction does not apply to certain friendly societies or certain established pharmacy businesses.) The section also prohibits pharmacists from carrying on a pharmacy business or having a direct or indirect pecuniary interest in such a business as a member of more than 3 partnerships of pharmacists. **Schedule 6 [1]** removes these restrictions on the practice of pharmacy.

Section 27A of the *Principal Act* allows certain friendly societies to operate their established pharmacy businesses by exempting the conduct of such pharmacies from section 25 of the Act. (Section 25 provides that, subject to certain limited exceptions, only registered pharmacists or partnerships consisting solely of registered pharmacists may carry on a pharmacy business or otherwise have a direct or indirect pecuniary interest in such a business.) Section 27A also exempts the conduct of such pharmacies from sections 24C (which requires pharmacy premises to be approved and owners registered) and 26 (discussed above). However, the conduct of other friendly society pharmacies is only exempted from these sections (and so such pharmacies may only operate) subject to the approval of the Minister for Health. **Schedule 6 [2]** removes the restriction on the ability of friendly societies to open and operate new pharmacies by applying the exemption from section 25 to the conduct of a pharmacy business by any friendly society. (In substituting section 27A, the item also removes a restriction on the ability of the established friendly society pharmacies to relocate, and removes the exemption from sections 26 (to be repealed by **Schedule 6 [1]**) and 24C.)

Schedule 6 [3] provides for the making of savings and transitional regulations as a consequence of the proposed amendments to the *Principal Act*.

Schedule 7 Amendment of Farm Debt Mediation Act 1994 No 91

(Section 3)

[1] Section 11 Certificate that Act does not apply to farm mortgage

Omit section 11 (3) and the note at the end of that subsection.

[2] Section 29A Reviews by Administrative Decisions Tribunal

Omit the section.

[3] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

National Competition Policy Amendments (Commonwealth Financial Penalties) Act 2004, to the extent that it amends this Act

[4] Schedule 1, clause 8

Insert after clause 7:

8 Application of 2004 amending Act

- (1) In this clause, *the 2004 amending Act* means the *National Competition Policy Amendments (Commonwealth Financial Penalties) Act 2004*.
- (2) Section 11 (3) continues to apply to the farmer and the creditor under a farm mortgage in respect of which the Authority had, before the repeal of that subsection by the 2004 amending Act, failed to issue a certificate under section 11 as if that subsection had not been repealed.
- (3) An application to the Administrative Decisions Tribunal that had been made under section 29A before the repeal of that section by the 2004 amending Act is to be heard and determined, and the decision of the Administrative Decisions Tribunal on the application is to be given effect to, as if that section had not been repealed.

Explanatory note

The *Farm Debt Mediation Act 1994* prohibits the creditor under a farm debt from taking enforcement action in relation to the associated farm mortgage without first giving the farmer an opportunity to seek mediation of the matters giving rise to the creditor's right to take such action.

National Competition Policy Amendments (Commonwealth Financial Penalties) Bill 2004

Schedule 7 Amendment of Farm Debt Mediation Act 1994 No 91

Section 11 of the Act allows the Rural Assistance Authority to issue a certificate to the creditor to the effect that the Act does not apply to the farm mortgage. Section 11 (3) provides that, if the Authority fails to issue such a certificate because it is not satisfied that the creditor has attempted to mediate in good faith, the creditor is prohibited from attempting further mediation, and therefore from enforcing the farm debt, for the next 12 months. **Schedule 7 [1]** omits section 11 (3). Proposed clause 8 (2) of Schedule 1 (to be inserted by **Schedule 7 [4]**) continues the effect of section 11 (3) with respect to past decisions of the Authority to refuse a certificate.

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Section 29A of the Act confers on the farmer and the creditor a right to apply to the Administrative Decisions Tribunal for a review of a decision by the Rural Assistance Authority with respect to a certificate under section 9B or 11 of the Act and on mediators the right to apply to the Tribunal for a review of the Authority's decision to refuse or withdraw accreditation under section 12 of the Act. **Schedule 7 [2]** omits section 29A. Proposed clause 8 (3) of Schedule 1 (to be inserted by **Schedule 7 [4]**) allows existing applications to the Tribunal to be dealt with, and the Tribunal's decision on such an application to be given effect to.

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Schedule 7 [3] amends clause 1 of Schedule 1 to the Act to enable the regulations under the Act to make further provision of a savings or transitional nature.

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