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# CONDUCT CODE AGREEMENT

WHEREAS the Council of Australian Governments at its meeting in Hobart on 25 February 1994 agreed to the principles of competition policy articulated in the report of the National Competition Policy Review;

AND WHEREAS the Parties intend to achieve and maintain consistent and complementary competition laws and policies which will apply to all businesses in Australia regardless of ownership;

THE COMMONWEALTH OF AUSTRALIA

THE STATE OF NEW SOUTH WALES

THE STATE OF VICTORIA

THE STATE OF QUEENSLAND

THE STATE OF WESTERN AUSTRALIA

THE STATE OF SOUTH AUSTRALIA

THE STATE OF TASMANIA

THE AUSTRALIAN CAPITAL TERRITORY, AND

THE NORTHERN TERRITORY OF AUSTRALIA agree as follows:

## **Interpretation**

1. (1) In this Agreement, unless the context indicates otherwise:

"Commission" means the Australian Competition and Consumer Commission established by the Trade Practices Act;

"Commonwealth Minister" means the Commonwealth Minister responsible for competition policy;

"Competition Code" means the text in:

- (a) the Schedule version of Part IV of the Trade Practices Act;
- (b) the remaining provisions of that Act (except sections 2A, 5, 6 and 172), so far as they would relate to the Schedule version if the Schedule version were substituted for Part IV; and

- (c) the regulations under that Act, so far as they relate to any provision covered by paragraph (a) or (b)

applying as a law of a participating jurisdiction;

"Competition Laws" means:

- (a) Part IV of the Trade Practices Act and the remaining provisions of that Act, so far as they relate to that Part; and
- (b) the Competition Code of the participating jurisdictions;

"Council" means the National Competition Council established by the Trade Practices Act;

"fully-participating jurisdiction" means:

- (a) until the end of twelve months after the day on which the *Competition Policy Reform Act 1995* receives the Royal Assent – a State or Territory that is a Party to this Agreement; and
- (b) after that date – has the meaning given by section 4 of the Trade Practices Act;

"jurisdiction" means the Commonwealth, a State, the Australian Capital Territory or the Northern Territory of Australia;

"legislation" includes Acts, enactments, Ordinances and regulations;

"modifications" has the meaning given by section 150A of the Trade Practices Act;

"participating jurisdiction" has the meaning given by section 150A of the Trade Practices Act;

"Party" means a jurisdiction that has executed, and has not withdrawn from, this Agreement;

"Trade Practices Act" means the *Trade Practices Act 1974*.

- (2) Where this Agreement refers to a provision in legislation which has not been enacted at the date of commencement of this Agreement, or to an entity which has not been established at the date of commencement of this Agreement, this Agreement will apply in respect of the provision or entity from the date when the provision or entity commences operation.

## Exceptions from the Competition Laws

2. (1) Where legislation, or a provision in legislation, is enacted or made in reliance upon section 51 of the Competition Laws, the Party responsible for the legislation will send written notice of the legislation to the Commission within 30 days of the legislation being enacted or made.
- (2) After four months from when a Party sends written notice to the Commission pursuant to subclause (1), the Commonwealth Minister will not table in the Commonwealth Parliament regulations made for the purposes of paragraph 51(1B)(f) of the Trade Practices Act in respect of the legislation referred to in the notice unless the Commonwealth Minister tables in the Parliament at the same time a report by the Council on:
  - (a) whether the benefits to the community from the legislation referred to in the notice, including the benefits from transitional arrangements, outweigh the costs;
  - (b) whether the objectives achieved by restricting competition by means of the legislation referred to in the notice can only be achieved by restricting competition; and
  - (c) whether the Commonwealth should make regulations for the purposes of paragraph 51(1B)(f) of the Trade Practices Act.<sup>1</sup>
- (3) Each Party will, within three years of the date on which the *Competition Policy Reform Act 1995* receives the Royal Assent, send written notice to the Commission of legislation for which that Party is responsible, which:
  - (a) existed at the date of commencement of this Agreement;
  - (b) was enacted or made in reliance upon section 51 of the Trade Practices Act (as in force at the date of commencement of this Agreement); and

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<sup>1</sup> At its meeting on 3 November 2000, the Council of Australian Governments agreed that the references in clause 2(2) of the Conduct Code Agreement to paragraph 51(B)(f) of the Trade Practices Act are drafting errors. The correct reference is section 51(C)(f).

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- (c) will continue to except conduct pursuant to section 51 of the Trade Practices Act after three years from the date on which the *Competition Policy Reform Act 1995* receives the Royal Assent.

## **Funding of the Commission**

- 3. The Commonwealth will be responsible for funding the Commission.

## **Appointments to the Commission**

- 4. (1) When the Commonwealth proposes that a vacancy in the office of Chairperson, Deputy Chairperson, member or associate member of the Commission be filled, it will send written notice to the Parties that are fully-participating jurisdictions inviting suggestions as to suitable persons to fill the vacancy. The Commonwealth will allow those Parties a period of thirty five days from the date on which the notice was sent to make suggestions before sending a notice of the type referred to in subclause (2) or (3).
- (2) The Commonwealth will send to the Parties that are fully-participating jurisdictions written notice of persons whom it desires to put forward to the Governor-General for appointment as Chairperson, Deputy Chairperson or member of the Commission.
- (3) The Commonwealth will send to the Parties that are fully-participating jurisdictions written notice of persons whom it desires to put forward to the Commonwealth Minister for appointment as associate members of the Commission.
- (4) Within thirty five days from the date on which the Commonwealth sends a notice of the type referred to in subclause (2) or (3), the Party to whom the Commonwealth sends a notice will notify the Commonwealth Minister in writing as to whether the Party supports the proposed appointment. If the Party does not notify the Commonwealth Minister in writing within that period, the Party will be taken to support the proposed appointment.
- (5) The Commonwealth will not put forward to the Governor-General a person for appointment as a Chairperson, Deputy Chairperson or member of the Commission unless a majority of the fully-participating jurisdictions support, or pursuant to this clause are taken to support, the appointment.

- (6) The Commonwealth will not put forward to the Commonwealth Minister a person for appointment as an associate member of the Commission unless a majority of the fully-participating jurisdictions support, or pursuant to this clause are taken to support, the appointment.

## **The Competition Code**

5. (1) The Parties agree that the Competition Code text should apply by way of application legislation to all persons within the legislative competence of each State and Territory.
- (2) Each State and Territory that is a Party will put forward for the consideration by their legislatures legislation which implements the principle set out in subclause (1).
- (3) If the Commonwealth Minister is satisfied that the laws of a participating jurisdiction have made significant modifications to the Competition Code text in its application to persons within the legislative competence of the participating jurisdiction, the Commonwealth Minister may publish a notice in the Commonwealth of Australia Gazette stating that the Commonwealth Minister is so satisfied. Any such notice is to be published before the expiry of two months from the date on which the Commonwealth received written notice pursuant to subclause 6(8).
- (4) If the Commonwealth Minister has published a notice of the type specified in subclause (3), the Commonwealth Minister may revoke that notice by publishing a further notice in the Commonwealth of Australia Gazette.

## **Modifications to the Competition Laws**

6. (1) It is the intention of the Parties that where modifications are made to provisions of either Part IV of the Trade Practices Act or of the Schedule version of Part IV of that Act, similar modifications will be made to corresponding provisions of the other.
- (2) The Commonwealth will consult with fully-participating jurisdictions before it puts forward for parliamentary consideration any modification to Part IV of the Trade Practices Act or to the Competition Code text.
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- (3) At the conclusion of the Commonwealth's consultation with the fully-participating jurisdictions in relation to proposed amendments to the Competition Code text, the Commonwealth will call a vote on the proposed amendments by sending written notice to each fully-participating jurisdiction.
- (4) For the purposes of voting:
  - (a) the Commonwealth will have 2 votes;
  - (b) each fully-participating jurisdiction will have 1 vote; and
  - (c) the Commonwealth will have a casting vote.
- (5) If a fully-participating jurisdiction does not vote in respect of a proposed amendment within thirty five days of the Commonwealth sending notice under subclause 6(3), that jurisdiction will be taken to have voted in favour of the amendment.
- (6) The Commonwealth will not put forward for parliamentary consideration an amendment to the Competition Code text unless a majority of the votes of the Commonwealth and the fully-participating jurisdictions support the amendment.
- (7) The Commonwealth will not be obliged to put forward for parliamentary consideration any amendment with which it does not concur.
- (8) Each Party will send written notice to all other Parties setting out modifications to the Competition Laws that have been made by the legislature of that Party, or by any person.

## **Consultation**

7. Where clause 6 requires consultation between the Parties or some of them, the Party initiating the consultation will:<sup>2</sup>

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<sup>2</sup> In its meeting on 3 November 2000, the Council of Australian Governments agreed that references in clause 7 of the Conduct Code Agreement to 'the Parties' should be replaced with 'fully participating jurisdictions'; the words 'the Party initiating the consultation' should be replaced with 'the Commonwealth'; and the words 'or some of them' should be deleted.

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- (a) send to the Parties that must be consulted a written notice setting out the matters on which consultation is to occur;
- (b) allow those Parties a period of three months from the date on which the notice was sent to respond to the matters set out in the notice; and
- (c) where requested by one or more of those Parties, convene a meeting between it and those Parties to discuss the matters set out in the notice and the responses, if any, of those Parties.

### **New Parties and Withdrawal of Parties**

- 8. (1) A jurisdiction that is not a Party at the date this Agreement commences operation may become a Party by sending written notice to all the Parties.
- (2) A Party may withdraw from this Agreement by sending written notice to all other Parties. The withdrawal will become effective six months after the notice was sent.
- (3) If a Party withdraws from this Agreement, this Agreement will continue in force with respect to the remaining Parties.

### **Sending of Notices**

- 9. A notice is sent to a Party by sending it to the Minister responsible for the competition legislation of that Party.

### **Review of this Agreement**

- 10. Once this Agreement has operated for five years, the Parties will review its operation and terms.

### **Commencement of this Agreement**

- 11. This Agreement commences once the Commonwealth and at least three other jurisdictions have executed it.