

Chapter 1

Introduction

1.1 The Competition and Consumer Legislation (Amendment) Bill 2010 revisits two areas of recent inquiry for the Senate Economics Legislation Committee. The first relates to 'creeping acquisitions' and the definition of a 'market' for purposes of merger approvals in section 50 of the *Trade Practices Act 1974* (TPA). The second issue is the definition of 'unconscionable conduct' in subsection 51AC of the TPA. The bill will amend sections 50 and 51AC of the TPA, which will form sections 21 and 22 of the proposed *Competition and Consumer Act 2010*.

1.2 In his Second Reading Speech, the Minister for Competition Policy and Consumer Affairs, the Hon. Dr Craig Emerson, told parliament that the bill will give effect to two important reforms to strengthen and clarify Australia's competition and consumer laws. It will clarify that:

- the Australian Competition and Consumer Commission and the courts can assess the totality of the competitive effects associated with acquisitions which occur in a geographically confined, local market; and
- the unconscionable conduct provisions of the TPA extend beyond the equitable and common law doctrines of unconscionability and the bargaining practices leading to the formation of a contract.¹

Conduct of the inquiry

1.3 On 27 May 2010, the bill was introduced into the House of Representatives. It was automatically referred to the Senate Economics Legislation Committee under the terms of a resolution passed by the Senate on 13 May 2010.

1.4 The committee advertised the inquiry in *The Australian* newspaper and on the committee's website. It also wrote to stakeholders, inviting written submissions by 4 June 2010. The committee received nine submissions, which are listed in Appendix 1.

1.5 The committee held a public hearing in Canberra on 9 June 2010 where it took evidence from Treasury officials, the Law Council of Australia and the National Association of Retail Grocers of Australia.

1.6 The committee thanks all who participated in this inquiry, particularly given the tight timeframe for making submissions.

1 The Hon. Dr Criag Emerson, Second Reading Speech, *House of Representatives Hansard*, 27 May 2010, p. 4.

Structure of the report

1.7 This report has three chapters. Chapter 2 looks at the bill's amendments to section 50 of the TPA while chapter 3 examines the amendments to the unconscionable conduct provisions. Both these chapters discuss the background to the bill in the context of inquiries by this committee and the government.