



Australian Capital Territory

Independent Competition and Regulatory Commission Act 1997

A1997-77

Republication No 1 (RI)

Effective: 10 April 2000 – 31 December 2000

Republication date of printed version: 10 April 2000
Reissued electronically: 7 February 2023

Last amendment made by A2000-8

About this republication

The republished law

This is a republication of the *Independent Competition and Regulatory Commission Act 1997* effective from 10 April 2000 to 31 December 2000.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation (Republication) Act 1996*, part 3, division 2 authorised the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation (Republication) Act 1996*, s 14 and s 16). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

As in force on
10 April 2000



Australian Capital Territory

Independent Competition and Regulatory Commission Act 1997

CONTENTS

PART 1—PRELIMINARY

- 1 Name of Act
- 2 Commencement
- 3 Interpretation
- 3A Who is a referring authority?
- 4 Regulated industries—declarations

PART 2—INDEPENDENT COMPETITION AND REGULATORY COMMISSION

- 5 Establishment
- 6 Constitution
- 7 Objectives
- 8 Functions
- 9 Annual report
- 10 Independence from Ministerial control
- 11 Staff
- 12 Arrangements with other agencies, bodies and persons
- 13 Delegation of commission's functions
- 14 Immunity from suit

Independent Competition and Regulatory Commission Act 1997

CONTENTS—continued

PART 3—INVESTIGATIONS

Division 1—Industry references

- 14A Application of div 1 (industry references)
- 15 Nature of industry references
- 16 Terms of industry references
- 17 Procedure for industry reference investigations
- 18 Draft reports (industry reference investigations)
- 19 Costs for industry reference investigations

Division 2—Regulatory references

- 19A Application of div 2 (regulatory references)
- 19B Acceptance of regulatory references—competitive neutrality complaints
- 19C Acceptance of regulatory references—government-regulated activities
- 19D Regulatory references initiated by commission
- 19E Terms of regulatory references
- 19F Amendment of terms of regulatory reference
- 19G Termination of investigations into regulatory references
- 19H Procedure for regulatory reference investigations
- 19J Principles for regulatory reference investigations
- 19K Costs for regulatory reference investigations

PART 4—PRICE DIRECTIONS

- 20 Directions about prices

PART 4A—REPORTS OF INVESTIGATIONS

- 21 Final reports
- 22 Special reports
- 23 Confidential material in reports
- 24 Tabling of reports in Legislative Assembly
- 24A Response by Minister to report on competitive neutrality complaint
- 24B Correction of errors in reports

PART 5—ACCESS AGREEMENTS

- 25 Notice of access agreements
- 26 Registration of access agreements
- 27 Investigations into access agreements
- 28 Failure to notify proposals and agreements
- 29 Register of agreements

**PART 6—ARBITRATION OF ACCESS
REGIME DISPUTES**

- 30 Definitions for pt 6

Independent Competition and Regulatory Commission Act 1997

CONTENTS—continued

31	Application
32	Access disputes
33	Arbitrator—appointment and functions
34	Draft determinations
35	Arbitration determinations
36	Effect of determinations
37	Termination of arbitration by parties
38	Termination of arbitration by arbitrator
39	Variation of determinations
40	Arbitration procedure—Commercial Arbitration Act

PART 7—INFORMATION

41	Provision of information to commission
42	Restrictions on publication
43	Inspection of documents
44	Confidential information—disclosure by commissioners and staff
45	Confidential information—notice of proposed disclosure
46	Confidential information—general disclosure
47	Confidential information—disclosure within the commission
48	Cabinet and Executive documents

**PART 8—COOPERATION WITH
THE COMMISSION**

49	Attendance at hearing
50	Non-cooperation offences

**PART 9—ENFORCEMENT OF PRICE
DIRECTIONS AND ARBITRATION DETERMINATIONS**

51	Meaning of <i>direction</i> in pt 9
52	Application
53	Orders
54	Injunctions and declarations

PART 10—MISCELLANEOUS

55	Conduct of directors, servants and agents
56	Service of documents
57	Regulations

SCHEDULE 1A

COMPETITION PRINCIPLES AGREEMENT (EXTRACTS)

SCHEDULE 1

**THE COMMISSION—APPOINTMENTS AND
WORKING ARRANGEMENTS**

Independent Competition and Regulatory Commission Act 1997

CONTENTS—continued

SCHEDULE 2
ARBITRATION GUIDELINES

ENDNOTES

- 1 About this republication
- 2 About the republished Act
- 3 Abbreviation key
- 4 Table of legislation
- 5 Table of amendments
- 6 Table of earlier republications
- 7 Penalties in this republication

As in force on
10 April 2000



Australian Capital Territory

Independent Competition and Regulatory Commission Act 1997

An Act to establish an independent commission to regulate pricing, access and other matters in relation to industries involving the supply of water, electricity and sewerage services, and other industries, and to investigate competitive neutrality complaints and government-regulated activities

PART 1—PRELIMINARY

1 Name of Act

This Act is the *Independent Competition and Regulatory Commission Act 1997*.

2 Commencement

This Act commences on the day on which it is notified in the Gazette.

3 Interpretation

(1) In this Act:

access agreement means an agreement under an access regime for the granting of access to services provided by means of the infrastructure facilities to which the access regime relates.

access regime means a scheme (whether of a legislative or administrative nature, or any other nature) set up for the purpose of implementing the competition principles agreement in respect of third-party access to services provided by means of infrastructure facilities wholly or partly located within the Territory that are wholly or substantially owned, controlled or operated by a single person, being services—

- (a) including the use of an infrastructure facility (such as a road or railway), the handling or transporting of things (such as goods or people) or a communications service or similar service; and
- (b) not including the supply of goods, the use of intellectual property or the use of a production process, except to the extent that that supply or use is an integral but subsidiary part of the service.

commission means the Independent Competition and Regulatory Commission for the Australian Capital Territory, established under section 5.

commissioner—see section 6.

competition policy considerations means the considerations mentioned in paragraphs 1 (3) (d) to (j) of the competition principles agreement, as set out in Schedule 1A.

competition principles agreement means the Competition Principles Agreement made on 11 April 1995 by the Commonwealth, the Territories and the States, as in force for the time being.

competitive neutrality complaint means a complaint that the conduct of a government business activity is not consistent with the competitive neutrality principles.

competitive neutrality principles means the competitive neutrality policy and principles under subclauses 3 (1) and (4) to (7) of the competition principles agreement, as set out in Schedule 1A.

confidential information means information given to the commission that was, when it was given—

- (a) stated by the person giving it to be confidential or commercially sensitive; or
- (b) contained in an exempt document within the meaning of the *Freedom of Information Act 1989*.

determination means an arbitration determination under section 35.

function includes a power and a duty.

government activity means—

- (a) for a regulatory reference into a competitive neutrality complaint—the government business activity that is the subject of the complaint; or
- (b) for a regulatory reference into a government-regulated activity—that activity.

government-regulated activity means an activity regulated under an Act or a subordinate law.

industry includes—

- (a) an industry of any kind (including a business or activity relating to goods and services); and
- (b) a particular industry or part of an industry; and
- (c) a group or groups of particular industries.

industry reference—see section 14A.

investigation means an investigation under Part 3.

legislation review principles means the principles under subclauses 5 (1) and (9) of the competition principles agreement, as set out in Schedule 1A.

price includes any rate, fee, levy and charge and any other valuable consideration (however described), but does not include a Territory tax.

price direction means a direction about prices for the supply of regulated services under section 20.

price regulation means the regulation of prices in relation to the supply and sale of goods and services within a regulated industry.

protected confidential information means confidential information the commission does not have the power to disclose under section 46 or under any law of the Territory other than this Act.

reference means a reference to the commission under section 15.

referring authority—

- (a) for an industry reference—see subsection 3A (1); and
- (b) for a regulatory reference—see subsection 3A (2).

regulated industry means—

- (a) an industry engaged in the supply in the Territory of electricity, water or sewerage services; or
- (b) any other industry declared to be a regulated industry under section 4.

regulated services means services provided in a regulated industry.

regulatory reference—see section 19A.

responsible Minister, for an industry or government activity, means the Minister with primary responsibility for regulating the industry or activity.

sealed section, of a final report or a special report of an investigation—see paragraph 23 (1) (a).

self-funding referring authority, for a regulatory reference—see subsection 3A (3).

unsealed section, of a final report or a special report of an investigation—see paragraph 23 (1) (b).

(2) If 2 or more persons jointly own, control or operate infrastructure facilities—

- (a) a reference in this Act to the ownership, control or operation of infrastructure facilities includes a reference to the jointly owned, controlled or operated infrastructure facilities; and
- (b) a reference in this Act to a person (or a single person) who owns, controls or operates infrastructure facilities includes a reference to each joint owner, controller or operator.

(3) If 2 or more persons jointly provide services (whether those services are provided directly or on those persons' behalf)—

- (a) a reference in this Act to the provision of services includes a reference to the jointly provided services; and
- (b) a reference in this Act to a person (or a single person) who provides services (or on whose behalf services are provided) includes a reference to each joint provider.

3A Who is a referring authority?

- (1) For an industry reference, the *referring authority* is as follows:
- (a) for an industry engaged in the supply in the Territory of electricity, water or sewerage services—the Minister;
 - (b) for any other regulated industry—the Minister who has, under section 4, declared that industry to be regulated;
 - (c) for regulated industries in general—the Minister;
 - (d) for another industry, or industries in general—the Minister;
 - (e) for a reference provided for by another law of the Territory—the person authorised under that law to refer a matter to the commission.
- (2) For a regulatory reference, the *referring authority* may be any of the following:
- (a) the Minister responsible for the relevant government activity;
 - (b) a member of the Legislative Assembly;
 - (c) the commission;
 - (d) any other person.
- (3) For a regulatory reference, a *self-funding referring authority* may be either of the following:
- (a) a member of the Legislative Assembly whose reference is not sponsored by the Territory (under subsection 19K (4));
 - (b) any other person (other than a Minister or the commission).

4 Regulated industries—declarations

- (1) Any Minister may, by instrument, declare an industry to be a regulated industry for the purposes of this Act.
- (2) A Minister may make a declaration under subsection (1) if he or she certifies that—
- (a) the industry infrastructure facilities are in whole or in part owned, controlled or operated by the Territory or a Territory authority; or
 - (b) the industry involves the provision of services in the Territory in whole or in part by or on behalf of the Territory or a Territory authority; or
 - (c) the industry infrastructure facilities are wholly or substantially owned, controlled or operated by a single person; or

Independent Competition and Regulatory Commission Act 1997

- (d) the industry involves the provision of services in the Territory wholly or substantially by or on behalf of a single person.
- (3)** An instrument made by the Minister under subsection (1) is a disallowable instrument.

PART 2—INDEPENDENT COMPETITION AND REGULATORY COMMISSION

5 Establishment

- (1) There shall be an Independent Pricing and Regulatory Commission for the Australian Capital Territory.
- (2) The commission—
 - (a) is a body corporate with perpetual succession; and
 - (b) shall have a common seal; and
 - (c) may acquire, hold and dispose of real and personal property; and
 - (d) may sue and be sued in its corporate name.
- (3) The common seal of the commission shall be kept in such custody as the commission directs and shall not be used except as authorised by the commission.
- (4) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the commission affixed to a document and shall presume that it was duly affixed.

6 Constitution

- (1) The commission is constituted by 3 or more *commissioners*, as follows:
 - (a) a senior commissioner;
 - (b) 2 other standing commissioners;
 - (c) any associate commissioners appointed for particular purposes.
- (2) Schedule 1 has effect in relation to the following:
 - (a) appointments of commissioners;
 - (b) the arrangement of business of the commission;
 - (c) decision making and exercise of powers by the commission;
 - (d) related matters.

7 Objectives

The commission has the following objectives in relation to regulated industries, access regimes, competitive neutrality complaints and government-regulated activity:

- (a) to promote effective competition in the interests of consumers;

- (b) to facilitate an appropriate balance between efficiency and environmental and social considerations;
- (c) to ensure non-discriminatory access to monopoly and near-monopoly infrastructure.

8 Functions

(1) The commission has the following functions in relation to regulated industries:

- (a) the provision of price directions;
- (b) the provision of recommendations about price regulation;
- (c) the provision of advice to the Minister about proposed access agreements;
- (d) the maintenance of a register of access agreements;
- (e) the arbitration of disputes about access to services under access regimes;
- (f) investigation and reporting on matters referred by the Minister and other referring authorities;
- (g) any other function conferred by this or another law of the Territory;
- (h) any function incidental to a function mentioned in this subsection.

(2) The commission has the following additional functions:

- (a) investigating and reporting on competitive neutrality complaints;
- (b) investigating and reporting on government-regulated activities;
- (c) any function incidental to a function mentioned in this subsection.

9 Annual report

In its report under the *Annual Reports (Government Agencies) Act 1995*, the commission shall include details of the following matters:

- (a) investigations;
- (b) final reports and special reports;
- (c) price directions;
- (d) advice about proposed access agreements;
- (e) the number of access agreements notified;
- (f) arbitration disputes;
- (g) determinations of arbitration disputes;

- (h) the number of notices issued under section 41;
- (i) the general use made by the commission of information and documents obtained as a result of notices issued under section 41.

10 Independence from Ministerial control

Except as provided by this or any other law of the Territory, the commission is not subject to the direction or control of the Minister or any other referring authority in relation to any investigation, price direction, report, access agreement or arbitration.

11 Staff

The staff of the commission shall be employed under the *Public Sector Management Act 1994*.

12 Arrangements with other agencies, bodies and persons

(1) The commission may enter into arrangements with any government agency or with any other body or person (whether in the public or private sector)—

- (a) for the agency, body or person to assist the commission in connection with investigations or the performance of other functions of the commission; or
- (b) for the commission to assist the agency, body or person by providing services within the commission's field of expertise and relevant to its functions.

(2) The commission shall not enter into an arrangement to assist an agency, body or person without the Minister's written approval.

(3) In entering into an arrangement to assist an agency, body or person, the commission shall ensure that the provision of such assistance does not interfere with the ability of the commission to perform its functions.

(4) The commission may engage consultants to assist it in performing its functions.

(5) The commission may charge an agency, body or person for the provision of assistance by the commission.

13 Delegation of commission's functions

- (1) The commission may, by instrument, delegate its functions to any person or committee of persons, subject to subsection (2).
- (2) The commission shall not delegate its function of making price directions, reports or providing advice about proposed access agreements.
- (3) If the commission is conducting an arbitration, it shall not delegate its function of making a determination in relation to the arbitration.

14 Immunity from suit

- (1) No action, suit or proceeding lies against a person who is or has been—
 - (a) a commissioner; or
 - (b) a delegate of the commission, or a member of a committee that is a delegate of the commission; or
 - (c) a member of staff of the commission; or
 - (d) a person that the commission has entered into an arrangement with as referred to in section 12;

in relation to an act done or omitted to be done in good faith in the exercise or purported performance of a function under this Act.

- (2) Subsection (1) does not affect any liability that the Territory would, but for that subsection, have in respect of an act or omission referred to in that subsection.

PART 3—INVESTIGATIONS

Division 1—Industry references

14A Application of div 1 (industry references)

This Division applies to a reference to the commission (an *industry reference*) for an investigation into an industry, or industry in general.

15 Nature of industry references

(1) A referring authority may provide an industry reference to the commission in relation to any of the following matters:

- (a) prices for regulated services;
- (b) competition within a regulated industry;
- (c) any other matter in relation to a regulated industry;
- (d) any matter in relation to regulated industries in general;
- (e) any other matter in relation to an industry, or industries in general;
- (f) any matter provided for by another law of the Territory.

(2) The fact that a price direction is in force in relation to a regulated industry does not preclude a further investigation of prices in the industry, or the making of a new price direction in relation to prices in the industry.

(3) An industry reference may limit the scope of the investigation and report to a particular aspect of the regulated industry, or to a particular period during which the industry has been operating, or in any other matter.

(4) An industry reference may relate to a number of goods or services supplied by the same or different suppliers.

(5) An industry reference may be withdrawn or amended by the referring authority at any time before the commission has delivered its report to the person.

(6) If an industry reference is withdrawn or amended, the referring authority shall—

- (a) give written reasons for the withdrawal or amendment to the commission; and
- (b) cause a copy of those reasons to be published in the Gazette within 28 days after they are given to the commission.

16 Terms of industry references

- (1) The referring authority may, by instrument, determine terms of reference for an investigation on an industry reference.
- (2) The terms of reference may include 1 or more of the following:
 - (a) a specification of a period within which a report is required to be submitted to the referring authority;
 - (b) a requirement that the commission consider specified matters;
 - (c) except in relation to price regulation, the making of a price direction and any related investigation and report—a requirement that the commission perform its functions subject to any subsequent written direction of the authority.
- (3) An instrument under subsection (1) is a disallowable instrument.
- (4) A referring authority shall cause a direction referred to in paragraph (2) (c) to be laid before the Legislative Assembly within 6 sitting days after it is given.

17 Procedure for industry reference investigations

- (1) Where the commission receives an industry reference, the commission shall conduct an investigation as authorised by the terms of the reference.
- (2) For the purpose of conducting an investigation, the commission may—
 - (a) request submissions from the public or any specified person or body; or
 - (b) conduct hearings.
- (3) Unless the commission otherwise orders, hearings shall be open to the public.
- (4) Subject to this Act, the commission may conduct an investigation in any manner the commission considers appropriate.

18 Draft reports (industry reference investigations)

- (1) Before giving the referring authority a final report into an investigation on an industry reference, the commission shall cause to be published in the Gazette, and in a daily newspaper circulating in the Territory, a notice—
 - (a) stating that copies of a draft report into the investigation are available for public inspection and purchase during a specified period of not less than 20 working days at specified places; and

- (b) inviting interested persons to submit written comments about the draft report to the commission at a specified address and within a specified period of not less than 20 working days.
- (2) The commission shall make copies of a draft report into an investigation, including any draft price direction, available for public inspection and purchase during office hours during the period, and at the places, specified in the notice.
- (3) In preparing its final report of an investigation, the commission shall take into consideration any written comments submitted pursuant to the invitation in subsection (1) in relation to the draft report of the investigation.
- (4) In this section—

working day means a day other than a Saturday, a Sunday or a public holiday.

19 Costs for industry reference investigations

- (1) The reasonable costs of an investigation on an industry reference into a regulated industry, as assessed by the commission and notified to the person who is to pay those costs, are payable to the commission by—
 - (a) if the industry is a regulated industry by virtue of its infrastructure facilities being owned, controlled or operated by the Territory or a Territory authority—the Territory or that authority, as the case may be; or
 - (b) if the industry is a regulated industry by virtue of the provision of services in the industry by or on behalf of the Territory or a Territory authority—the Territory or that authority, as the case may be; or
 - (c) if the industry is a regulated industry by virtue of the ownership, control or operation of its infrastructure facilities wholly or substantially by a single person—the person who owns, controls or operates the facilities; or
 - (d) if the industry is a regulated industry by virtue of the provision of electricity, water or sewerage services or any other services wholly or substantially by or on behalf of a single person—the person who provides those services, or the person on whose behalf those services are provided, as the case may be.
- (1A) The costs of an investigation payable by a Territory authority or a person mentioned in paragraph (1) (c) or (d) are a debt due to the Territory.

- (2) Costs payable under subsection (1) include any costs incurred by the commission in obtaining the assistance of any other person, body (whether incorporated or unincorporated) or government agency.

Division 2—Regulatory references

19A Application of div 2 (regulatory references)

This Division applies to a reference to the commission (a *regulatory reference*) for an investigation into a competitive neutrality complaint or a government-regulated activity.

19B Acceptance of regulatory references—competitive neutrality complaints

- (1) On a written submission by a referring authority (other than the commission itself) setting out proposed terms of reference for an investigation into a competitive neutrality complaint, the commission may accept the reference in those terms (or in other terms agreed between the commission and the referring authority).
- (2) The commission may accept the reference only if—
- (a) it considers that there are legitimate grounds for the complaint; and
 - (b) it considers that the proposed investigation would be in the public interest, taking into account the competition policy considerations (as set out in Schedule 1A); and
 - (c) if the reference is from a self-funding referring authority—the referring authority has the capacity to bear the cost of the investigation.
- (3) If the commission accepts the reference, it must—
- (a) give the referring authority written notice of acceptance (including the terms of reference for the investigation); and
 - (b) publish a copy of the notice in the Gazette; and
 - (c) if the commission considers it appropriate—publish information about the reference elsewhere.

19C Acceptance of regulatory references—government-regulated activities

- (1) On a written submission by a referring authority (other than the commission itself) setting out proposed terms of reference for an investigation into a government-regulated activity, the commission may accept the reference in those terms (or in other terms agreed between the commission and the referring authority).
- (2) The commission may accept the reference only if—
 - (a) it considers that the proposed investigation would be in the public interest, taking into account the competition policy considerations (as set out in Schedule 1A); and
 - (b) if the reference is from a self-funding referring authority—the referring authority has the capacity to bear the cost of the investigation.
- (3) If the commission accepts the reference, it must—
 - (a) give the referring authority written notice of acceptance (including the terms of reference for the investigation); and
 - (b) publish a copy of the notice in the Gazette; and
 - (c) if the commission considers it appropriate—publish information about the reference elsewhere.

19D Regulatory references initiated by commission

- (1) The commission may initiate a regulatory reference by a notice (including terms of reference) published in the Gazette.
- (2) The commission may publish information about the reference elsewhere if it considers it appropriate.
- (3) The commission may only initiate a regulatory reference if it considers that the proposed investigation would be in the public interest, taking into account the competition policy considerations (as set out in Schedule 1A).

19E Terms of regulatory references

- (1) Terms of reference for a regulatory reference may include (but are not limited to) the following:
 - (a) a specification of a period within which a final report (and any special report into a specified matter) is required to be given;
 - (b) a requirement that the commission consider specified matters;

- (c) if the referring authority is a Minister—a requirement that the commission perform its functions subject to any subsequent written direction of the Minister.
- (2) The Minister mentioned in paragraph (1) (c) must cause any direction mentioned in that paragraph to be laid before the Legislative Assembly within 6 sitting days after it is given.

19F Amendment of terms of regulatory reference

- (1) On application by the referring authority, the commission must—
- (a) amend the terms of reference for a regulatory reference by notice to the authority; and
 - (b) if the referring authority is not a Minister—give a notice specifying the amendment to the responsible Minister.
- (2) If the commission is the referring authority, it may amend the terms of reference for the investigation by notice to the responsible Minister.
- (3) Notice of the amendment is a disallowable instrument.
- (4) The commission may, if it considers it appropriate, publish the notice of amendment in an appropriate manner.
- (5) The commission may publish a special report into the investigation (based on the terms of reference applying immediately before the amendment) after the notice of amendment has been given.

19G Termination of investigations into regulatory references

- (1) On application by the referring authority, the commission must—
- (a) terminate the investigation by notice to the authority; and
 - (b) if the referring authority is not a Minister—give a notice of termination to the responsible Minister.
- (2) If the commission is the referring authority, it may terminate the investigation by notice to the responsible Minister.
- (3) Notice of the termination is a disallowable instrument.
- (4) The commission may, if it considers it appropriate, publish the notice of termination in an appropriate manner.
- (5) The commission may publish a special report into the investigation after the notice of termination has been given.

19H Procedure for regulatory reference investigations

- (1) The commission must conduct an investigation on a regulatory reference in accordance with the terms of reference.
- (2) For the purpose of conducting an investigation, the commission may do either or both of the following:
 - (a) request submissions from the public or any specified person or body;
 - (b) conduct hearings.
- (3) Hearings must be open to the public, unless the commission orders otherwise.
- (4) Unless otherwise provided by this Act, the commission may conduct an investigation in any manner the commission considers appropriate.

19J Principles for regulatory reference investigations

The commission must take into account the following matters in conducting a regulatory reference investigation:

- (a) for any regulatory reference investigation—the competition policy considerations (set out in Schedule 1A);
- (b) for an investigation into a competitive neutrality complaint—the competitive neutrality principles (set out in Schedule 1A);
- (c) for an investigation into a government-regulated activity—the legislation review principles (set out in Schedule 1A).

19K Costs for regulatory reference investigations

- (1) A self-funding referring authority must pay the reasonable costs of an investigation on a regulatory reference by the authority, as assessed by the commission and notified to the authority.
- (2) The costs of an investigation on a reference by a self-funding referring authority are a debt due to the Territory.
- (3) The Territory must pay the reasonable costs of an investigation on a regulatory reference, as assessed by the commission and notified to the referring authority, if the authority is—
 - (a) a Minister; or
 - (b) a member of the Legislative Assembly sponsored by the Minister under subsection (4).

Independent Competition and Regulatory Commission Act 1997

- (4) On application by a member of the Legislative Assembly, the Minister may sponsor a reference by the member if the Minister considers that it is in the public interest to do so.
- (5) The costs of an investigation include any costs incurred by the commission in obtaining the assistance of any other person, body (whether incorporated or unincorporated) or government agency.

PART 4—PRICE DIRECTIONS

20 Directions about prices

(1) At the conclusion of an investigation upon a reference authorising the commission to make a price direction in a regulated industry, the commission shall decide on the level of prices for services in respect of the period specified in the reference and give a price direction accordingly to each person providing regulated services.

(2) In making a decision under subsection (1), the commission shall have regard to—

- (a) the protection of consumers from abuses of monopoly power in terms of prices, pricing policies (including policies relating to the level or structure of prices for services) and standard of regulated services; and
- (b) standards of quality, reliability and safety of the regulated services; and
- (c) the need for greater efficiency in the supply of regulated services to reduce costs to consumers and taxpayers; and
- (d) an appropriate rate of return on any investment in the regulated industry; and
- (e) the cost of providing the regulated services; and
- (f) the principles of ecologically sustainable development referred to in subsection 7 (2) of the *Territory Owned Corporations Act 1990* as modified by virtue of subsection 4 (1) that Act, whether or not—
 - (i) the regulated industry is the electricity or water industry; or
 - (ii) the provider of the regulated services is ACTEW Corporation Ltd; and
- (g) the social impacts of the decision; and
- (h) considerations of demand management and least cost planning; and
- (i) the borrowing, capital and cash flow requirements of persons providing regulated services and the need to renew or increase relevant assets in the regulated industry; and
- (j) the effect on general price inflation over the medium term; and
- (k) any arrangements that a person providing regulated services has entered into for the exercise of its functions by some other person.

(3) In a price direction, the commission shall indicate to what extent it has had regard to the matters referred to in subsection (2).

- (4)** A price direction may specify, in relation to the supply of a regulated service, any or all of the following:
- (a) a price;
 - (b) a maximum price;
 - (c) a maximum price and a minimum price;
 - (d) a formula for calculating a price referred to in paragraph (a), (b) or (c);
 - (e) a method, by reference to price indices or otherwise, by which a price referred to in paragraph (a), (b) or (c) is to be ascertained;
 - (f) a period or periods during which the direction, or any provision of the direction, is to apply.
- (5)** A price direction, or a provision of a price direction, shall come into effect on a day ascertained in accordance with the direction, or 14 days after the day on which the report including a copy of the direction is tabled in the Legislative Assembly under section 24, whichever is later.
- (6)** A price direction shall be accompanied by a statement of reasons for the direction.

PART 4A—REPORTS OF INVESTIGATIONS

21 Final reports

- (1) Upon concluding an investigation, the commission shall give the referring authority a final report containing—
- (a) particulars of the results of its investigations; and
 - (b) for an industry reference—particulars of any comments submitted in relation to the draft report of the investigation pursuant to the invitation in subsection 18 (1), and of the commission's response to those comments; and
 - (c) a copy of any price direction; and
 - (d) the commission's findings on any other matter required by the reference; and
 - (da) any report by a commissioner dissenting from majority findings of the commission; and
 - (e) any other matter arising from the investigation that the commission considers it desirable to include in the report.
- (2) If the referring authority is not a Minister, the commission must also give a copy of the final report to the responsible Minister.

22 Special reports

- (1) The commission may, at any stage of an investigation, give the referring authority and (if the referring authority is not a Minister) the responsible Minister a special report on any matter arising from the investigation.
- (2) A special report about a matter must include any report by a commissioner dissenting from majority findings of the commission about the matter.
- (3) If the referring authority is not a Minister, the commission must also give a copy of the special report to the responsible Minister.

23 Confidential material in reports

- (1) If a final report or a special report includes protected confidential information, the commission must divide the report into 2 documents, as follows:
- (a) a document (the *sealed section*) containing the confidential information, or part of that information;
 - (b) a document (the *unsealed section*) containing the rest of the report.

- (2) If the commission divides a report, the commission must include in the unsealed section—
- (a) a statement to the effect that there is a sealed section of the report including protected confidential information; and
 - (b) a general description of the contents of the sealed section.

24 Tabling of reports in Legislative Assembly

- (1) The referring authority, or the responsible Minister (if the referring authority is not a Minister), must cause a copy of a final report or a special report to be laid before the Legislative Assembly within 6 sitting days after the report is given to the referring authority or responsible Minister (as the case may be).
- (2) If a report is divided into a sealed section and an unsealed section, only the unsealed section is required to be tabled in the Legislative Assembly under subsection (1).

24A Response by Minister to report on competitive neutrality complaint

- (1) This section applies if a final report on an investigation into a competitive neutrality complaint is laid before the Legislative Assembly.
- (2) Within 3 months after the report is laid before the Legislative Assembly, the Minister who caused the report to be laid before the Assembly must cause a written response to be laid before the Assembly.

24B Correction of errors in reports

- (1) At any time after a final report or a special report on an investigation is given to the referring authority, the commission may, by a supplementary report, correct any error in the report arising from a clerical mistake or an accidental slip or omission.
- (2) The commission must give a supplementary report to the referring authority, and sections 23 and 24 apply to the supplementary report as if it were a final or special report.
- (3) If the referring authority is not a Minister, the commission must also give a copy of the supplementary report to the responsible Minister.
- (4) When a supplementary report is laid before the Legislative Assembly, the report has effect as corrected.

PART 5—ACCESS AGREEMENTS

25 Notice of access agreements

- (1)** A person that proposes to enter into an access agreement in relation to infrastructure facilities wholly or substantially owned, controlled or operated by the person, shall notify the commission of the proposal at least 30 days before entering into the agreement.
- (2)** A person that notifies the commission under subsection (1) shall, at the request of the commission, give the commission a copy of the proposed access agreement and any requested details of the proposal.
- (3)** The commission may give advice about the proposal to—
 - (a)** the person that notified the proposal; and
 - (b)** the Minister.

26 Registration of access agreements

- (1)** A person that enters an access agreement in relation to infrastructure facilities wholly or substantially owned, controlled or operated by the person shall notify the commission of that fact.
- (2)** A person that notifies the commission under subsection (1) shall, at the request of the commission, give the commission a copy of the access agreement and any requested details of the agreement.
- (3)** The commission shall register the access agreement under section 29, including in the record of registration the following details:
 - (a)** the names of the parties to the agreement;
 - (b)** the regulated industry, and the particular services, to which it relates;
 - (c)** the date on which it was made;
 - (d)** any other details prescribed by the regulations.

27 Investigations into access agreements

Nothing in this Part precludes the commission from conducting an investigation under Part 3 into an access agreement or proposed access agreement.

28 Failure to notify proposals and agreements

(1) If a person fails to notify the commission under section 25 of a proposal for an access agreement, or under section 26 of entering into an access agreement, the commission may request the person to provide the commission with written reasons for that failure.

(2) The commission shall give a report to the Minister about a failure to notify a proposal for an access agreement or the entering into of an access agreement, and include in the report any reasons provided under subsection (1).

(3) A failure to comply with section 25 or 26, or a failure by the commission to give advice under section 25, does not affect the validity of the agreement.

29 Register of agreements

(1) The commission shall maintain a register of agreements for the purposes of this Part.

(2) The commission shall make the register available for inspection by any person during the office hours of the commission or such other hours as are prescribed by the regulations.

PART 6—ARBITRATION OF ACCESS REGIME DISPUTES

30 Definitions for pt 6

In this Part, in relation to an access regime for the provision of services—

access provider means the person that wholly or substantially owns, controls or operates the infrastructure facilities by means of which the services are provided.

third party means a person who wants access to the services, or wants a change to some aspect of access to the services, and who is in dispute with the access provider, being a dispute to which section 32 applies.

31 Application

This Part does not apply to the arbitration of a dispute in relation to an access regime if another law of the Territory (other than the *Commercial Arbitration Act 1986*) applies to the arbitration.

32 Access disputes

(1) If a dispute exists with respect to an access regime that provides for the application of this Part, a party to the dispute may refer the dispute to arbitration under this Part.

(2) A dispute is to be taken to exist with respect to such an access regime if—

- (a) the third party and the access provider are unable to agree about any aspect of access to the services provided under that regime; or
- (b) the third party and the access provider are unable to agree about a variation of an existing determination.

(3) The parties to a dispute are the third party and the access provider.

33 Arbitrator—appointment and functions

(1) The commission, or a person appointed under subsection (2), may act as arbitrator to hear and determine a dispute referred to arbitration under this Part.

(2) The commission may appoint 1 or more persons to act as arbitrators to hear and determine disputes referred to arbitration under this Part.

(2A) If a dispute concerns the application of a price direction to an access regime, the senior commissioner must ensure—

- (a) that no commissioner who took part in the price direction investigation takes any part in arbitrating the dispute; and
 - (b) that no agency, body or person who assisted in the price direction investigation under an arrangement mentioned in section 12 assists the commission in arbitrating the dispute.
- (3) In the case of a dispute involving a third party wanting, but not having, access to a service, the arbitrator shall give public notice of the dispute inviting public submissions to the arbitrator about the dispute, and specifying when and how submissions may be made.
- (4) In the arbitration of a dispute referred under this Part, or in the variation of an existing determination, the arbitrator shall consider the following matters:
- (a) the matters set out in paragraphs 6 (4) (i), (j) and (l) of the competition principles agreement, in the form in which those matters are set out in Schedule 2;
 - (b) any guidelines for the access regime determined following an investigation;
 - (c) if subsection (3) applies—any public submissions made about the dispute;
 - (d) the value to the access provider of any extensions to the infrastructure facilities the cost of which is borne by someone else;
 - (e) any other matters the arbitrator considers relevant.
- (5) Parts 7 and 8 apply in relation to an arbitration as if references in those Parts to the commission were references to the arbitrator.
- (6) If paragraph 6 (4) (i), (j) or (l) of the competition principles is varied, the regulations may amend Schedule 2 accordingly with effect (retrospective if necessary) from the date of effect of the variation.

34 Draft determinations

Before making a determination in relation to a dispute, an arbitrator shall issue a draft determination to each party.

35 Arbitration determinations

(1) An arbitrator shall determine a dispute by making a written determination on access to the services by the third party.

- (2) A determination may deal with any matter relating to access by the third party to the services, including matters that were not the basis for the notification of the dispute, and matters such as the following:
- (a) a requirement of the access provider to give access to specified services to the third party;
 - (b) a requirement that the third party accept, and pay for, access to the services;
 - (c) a determination of the terms and conditions of access to the services;
 - (d) a requirement that the access provider extend the infrastructure facility;
 - (e) a determination of the extent to which the determination is to override any earlier determination relating to access to the services by the third party.
- (3) A determination shall not require the access provider to bear any of the costs of extending infrastructure facilities or of maintaining such extensions.
- (4) A determination does not have to require the access provider to provide access to the services by the third party.
- (5) A determination may vary the effect of a price determination as it affects the parties to the dispute.

36 Effect of determinations

- (1) The parties to an arbitration shall give effect to a determination in relation to the arbitration.
- (2) If a determination is in favour of a third party's access to services, the access provider shall not engage in conduct for the purpose of preventing or hindering the third party's access to the services under the determination.

37 Termination of arbitration by parties

An arbitration may be terminated by the party that referred the dispute to arbitration at any time before the arbitrator makes a determination.

38 Termination of arbitration by arbitrator

An arbitrator may, without making a determination, terminate the arbitration at any time if the arbitrator thinks that any of the following grounds exists:

- (a) the notification of the dispute was vexatious;

- (b) the subject matter of the dispute was trivial, misconceived or lacking in substance;
- (c) the party who notified the dispute has not engaged in negotiations in good faith;
- (d) access to the services should continue to be governed by an existing contract between the access provider and the third party;
- (e) if the dispute is about varying an existing determination—there is no sufficient reason why the previous determination should not continue to have effect in its present form.

39 Variation of determinations

- (1) An arbitrator may vary a determination on the application of any party.
- (2) An arbitrator shall not vary a determination if the other party objects, but may deal with the matter by way of a dispute on referral by either party.

40 Arbitration procedure—Commercial Arbitration Act

- (1) The *Commercial Arbitration Act 1986* applies in relation to an arbitration, subject to this Part.
- (2) Notwithstanding subsection 20 (1) of the *Commercial Arbitration Act 1986*, a party to a dispute may be represented by a legal practitioner in proceedings before the arbitrator only by leave granted by the arbitrator.
- (3) An arbitrator shall only grant leave under subsection (2) if, in his or her opinion—
 - (a) legal representation of the party is likely to shorten the arbitration or to reduce its costs; or
 - (b) the party would be unfairly disadvantaged otherwise.
- (4) An arbitration is to be heard in private, unless the arbitrator otherwise directs.
- (4A) An arbitrator may direct that the costs of an arbitration are to be paid (in whole or in part) by the commission or the Territory.
- (5) For the purposes of subsection 34 (1) of the *Commercial Arbitration Act 1986*, without limiting the fees and expenses of the arbitrator as referred to in that subsection, such fees and expenses include all costs incurred by the arbitrator and by the commission in relation to the arbitration, including the following:
 - (a) administrative costs;

Independent Competition and Regulatory Commission Act 1997

- (b) costs incurred in engaging consultants and expert witnesses;
- (c) witnesses' expenses.

PART 7—INFORMATION

41 Provision of information to commission

- (1) If the commission has reason to believe that a person has information or a document that may assist it in performing its functions, it may, by written notice, require the person to give it the information or a copy of the document.
- (2) A requirement shall—
- (a) identify the information or document; and
 - (b) specify the period within which the requirement is to be complied with; and
 - (c) specify the form in which the information or the copy of the document is to be given to the commission; and
 - (d) state that it is made under this section; and
 - (e) be accompanied by a copy of this Part.
- (3) A person shall not, without reasonable excuse, fail to comply with a requirement under this section.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (4) It is a reasonable excuse for the purposes of subsection (3) that to comply with the notice or to answer the question might tend to incriminate the person or make the person liable to any forfeiture or penalty.

42 Restrictions on publication

- (1) The commission may, if satisfied that for any reason it is desirable to do so, give directions prohibiting or restricting the disclosure of—
- (a) evidence given before a hearing; or
 - (b) matters contained in documents or information given to the commission.
- (2) A person shall not contravene a notice under subsection (1).

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

43 Inspection of documents

- (1) This section applies if a person requests permission to inspect a document given to the commission in the course of the performance of its functions.

- (2) If the document does not contain confidential information, the commission must make it available to the person for inspection.
- (3) If the document contains confidential information—
- (a) the commission may make the document available to the person for inspection in a form that does not disclose the confidential information; or
 - (b) the commission may make the document available to the person for inspection in a form that discloses so much of that information as the commission has the power to disclose under section 46.

44 Confidential information—disclosure by commissioners and staff

- (1) A person shall not disclose any confidential information obtained in carrying out the person's functions in relation to this Act, except in accordance with subsection (3).

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) A person shall not use any confidential information obtained in carrying out the person's functions in relation to this Act to obtain, directly or indirectly, a pecuniary or other advantage for himself or herself or any other person, except in accordance with subsection (3).

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (3) A person may disclose or use confidential information if—
- (a) the disclosure or use is made in the performance of a function in relation to this Act or any other law of the Territory permitting such disclosure or use; or
 - (b) the disclosure or use is made with the consent of the person who supplied the information; or
 - (c) the disclosure or use is made in legal proceedings at the direction of a court; or
 - (d) the information is in the public domain at the time that it is disclosed.
- (4) For the avoidance of doubt, subsection (3) does not override any rights another person may have with regard to the disclosure or use of the information.

45 Confidential information—notice of proposed disclosure

(1) If the commission proposes to disclose confidential information under section 46, it shall first give any affected person written notice inviting the person to show cause within 28 days after the date the notice is given why the confidential information should not be disclosed.

(2) A notice under subsection (1) shall contain—

- (a) particulars of the proposed disclosure, including details of the person or persons to whom the confidential information is to be disclosed; and
- (b) particulars of the facts and circumstances relied upon by the commission to justify the disclosure; and
- (ba) a copy of the disclosure guidelines under section 46; and
- (c) a statement to the effect that the affected person may, within 28 days after the day on which the notice is given, give the commission particulars of the facts and circumstances relied on to show cause why the proposed disclosure ought not to be carried out.

(3) In this section—

affected person means—

- (a) the supplier of the confidential information to the commission;
or
- (b) any person who provided the confidential information to that supplier, if the commission is aware of the identity and address of that person.

46 Confidential information—general disclosure

(1) Subject to section 47, the commission shall only disclose confidential information if—

- (a) it considers that, taking into account the disclosure guidelines under subsection (4)—
 - (i) the disclosure would not cause detriment to any person; or
 - (ii) although the disclosure would cause detriment to a person, the public benefit in disclosure outweighs the detriment; and
- (c) it gives a notice to show cause in relation to the information or document under section 45; and
- (d) 28 days have elapsed since the notice was given.

- (2) In making a decision under subsection (1), the commission shall take into account any representation made in accordance with the invitation in the notice under section 45.
- (3) For the purposes of this section, the disclosure of anything that is in the public domain at the time the commission proposes to disclose it is not to be taken to cause detriment to any person referred to in paragraph (1) (a) or (b).
- (4) The commission may, by writing, determine disclosure guidelines for paragraph (1) (a).
- (5) The commission must give a copy of a determination of disclosure guidelines to the Minister.
- (6) A determination of disclosure guidelines is a disallowable instrument.

47 Confidential information—disclosure within the commission

- (1) The commission may disclose confidential information to any of the following persons for the purposes of the investigation in relation to which the information was obtained:
 - (a) a delegate of the commission, or a member of a committee that is a delegate of the commission;
 - (b) a member of staff of the commission;
 - (c) a person, body or consultant with which or whom the commission has entered into an arrangement as referred to in section 12.
- (2) A person to whom confidential information is disclosed under subsection (1) or under this section may disclose the information to another person referred to in subsection (1) for the purposes of the investigation in relation to which the information was obtained by the commission.
- (3) The commission and any person to whom confidential information is disclosed under this section may use the information for the purposes of the investigation in relation to which the information was obtained.

48 Cabinet and Executive documents

Nothing in this Act shall be taken to entitle the commission—

- (a) to require a person to give any statement of information or answer any question which relates to Cabinet proceedings or confidential proceedings of the Executive; or

Independent Competition and Regulatory Commission Act 1997

- (b) to require any person to produce an official record of Cabinet office or of the Executive; or
- (c) to inspect an official record of Cabinet or the Executive.

PART 8—COOPERATION WITH THE COMMISSION

49 Attendance at hearing

For the purpose of performing its functions the commission may, by notice in writing served on a person, require the person to attend a hearing of the commission to give evidence.

50 Non-cooperation offences

- (1) A person shall not, without reasonable excuse—
- (a) fail to comply with a notice served under section 49; or
 - (b) fail to answer a question that the person is required to answer by the commission at a hearing for the purposes of this Act.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) It is a reasonable excuse for the purposes of subsection (1) that to comply with the notice or to answer the question might tend to incriminate the person or make the person liable to any forfeiture or penalty.

- (3) A person shall not—
- (a) give to the commission, whether orally or in writing, information that the person knows to be false or misleading in a material particular (unless the person informs the commission of that fact); or
 - (b) at a hearing before the commission, give evidence that the person knows to be false or misleading in a material particular.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (4) A person shall not hinder, obstruct or interfere with the commission, a member of staff of the commission or a person assisting the commission in the performance of its functions.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (5) A person shall not—
- (a) threaten, intimidate or coerce another person because the other person assisted, or intends to assist, the commission in the performance of its functions; or

Independent Competition and Regulatory Commission Act 1997

- (b) take or threaten to take, incite or be otherwise involved in an action that causes another person to suffer any loss, injury or disadvantage because the person assisted, or intends to assist, the commission in the performance of its functions.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (6)** Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because of the making in good faith of a written or oral statement, or the giving in good faith of a document or information, to the commission in the course of the performance (or purported performance) of its functions.

**PART 9—ENFORCEMENT OF PRICE DIRECTIONS AND
ARBITRATION DETERMINATIONS**

51 Meaning of *direction* in pt 9

In this Part:

direction means—

- (a) a price direction of the commission under Part 4; or
- (b) a determination of an arbitrator under Part 6.

52 Application

This Part applies if—

- (a) a person contravenes, or is, in the opinion of the commission, likely to contravene, a direction; and
- (b) the commission considers that the contravention or likely contravention is not trivial.

53 Orders

(1) If this Part applies in relation to a person, the commission may serve an order on the person requiring the person to comply with the direction.

(2) If the commission proposes to make an order in respect of a person, it shall first give the person written notice inviting the person to show cause within 28 days after the date of the notice why the order should not be made.

(3) A notice under subsection (2) shall contain—

- (a) particulars of the proposed order; and
- (b) particulars of the facts and circumstances relied upon by the commission to justify the order; and
- (c) a statement to the effect that the person may, within 28 days after the day on which the notice is given, give the commission particulars of the facts and circumstances relied on to show cause why the proposed order should not be made.

(4) In considering whether to make an order in respect of a person, the commission shall take into account any representation made by the person pursuant to the invitation in the notice under subsection (2).

(5) The commission shall, as soon as possible after serving an order on a person, publish a copy of the order in the Gazette.

(6) A person shall not, without reasonable excuse, contravene an order served on the person under subsection (1).

Maximum penalty: 200 penalty units.

(7) Where a person is convicted of an offence against subsection (6) in relation to the contravention of an order, the person is, in respect of each day after the service of the order during any part of which that contravention continued, guilty of an offence punishable, on conviction, by a fine not exceeding 20 penalty units.

54 Injunctions and declarations

The commission may apply to the Supreme Court for an injunction or declaration (or both) in respect of an order served under subsection 53 (1).

PART 10—MISCELLANEOUS

55 Conduct of directors, servants and agents

(1) Where, for the purposes of this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show—

- (a) that the conduct was engaged in by a director, servant or agent of the body within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body within the scope of his or her actual or apparent authority shall be taken, for the purposes of this Act, to have been engaged in also by the body unless the body establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

(3) Where, for the purposes of this Act, it is necessary to establish the state of mind of a natural person in relation to particular conduct, it is sufficient to show—

- (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
- (b) that the servant or agent had the state of mind.

(4) Any conduct engaged in on behalf of a natural person by a servant or agent of the person within the scope of his or her actual or apparent authority shall be taken, for the purposes of this Act, to have been engaged in also by the firstmentioned person unless the firstmentioned person establishes that the firstmentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

(5) Where—

- (a) a natural person is convicted of an offence; and
- (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been made;

the person is not liable to be punished by imprisonment for that offence.

(6) A reference in subsection (1) or (3) to the state of mind of a person shall be read as including a reference to—

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

(7) A reference in this section to *engaging in conduct* shall be read as including a reference to failing or refusing to engage in conduct.

56 Service of documents

A document may be served on the commission by leaving it at, or by sending it by post, telex, fax, email or similar facility to—

- (a) the office of the commission; or
- (b) if it has more than 1 office, any of its offices.

57 Regulations

The Executive may make regulations for the purposes of this Act.

SCHEDULE 1A

(See ss 19C, 19D and 19J)

COMPETITION PRINCIPLES AGREEMENT (EXTRACTS)

Competition policy considerations

Interpretation

[Competition Principles Agreement cl 1 (3) (d) - (j)]

1.

...

(3)

...

- (d) government legislation and policies relating to ecologically sustainable development;
- (e) social welfare and equity considerations, including community service obligations;
- (f) government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
- (g) economic and regional development, including employment and investment growth;
- (h) the interests of consumers generally or of a class of consumers;
- (i) the competitiveness of Australian businesses;
- (j) the efficient allocation of resources.

Competitive neutrality principles

Competitive Neutrality Policy and Principles

[Competition Principles Agreement cl 3 (1) & (4) - (7)]

3. (1) The objective of competitive neutrality policy is the elimination of resource allocation distortions arising out of the public ownership of entities engaged in significant business activities: Government businesses should not enjoy any net competitive advantage simply as a result of their public sector ownership. These principles only apply to the business activities of publicly owned entities, not to the non-business, non-profit activities of these entities.

SCHEDULE 1A—continued

- (4) Subject to subclause (6), for significant Government business enterprises which are classified as “Public Trading Enterprises” and “Public Financial Enterprises” under the Government Financial Statistics Classification:
- (a) the Parties[†] will, where appropriate, adopt a corporatisation model for these Government business enterprises (noting that a possible approach to corporatisation is the model developed by the inter-governmental committee responsible for GTE National Performance Monitoring); and
 - (b) the Parties[†] will impose on the Government business enterprise:
 - (i) full Commonwealth, State and Territory taxes or tax equivalent systems;
 - (ii) debt guarantee fees directed towards offsetting the competitive advantages provided by government guarantees; and
 - (iii) those regulations to which private sector businesses are normally subject, such as those relating to the protection of the environment, and planning and approval processes, on an equivalent basis to private sector competitors.
- (5) Subject to subclause (6), where an agency (other than an agency covered by subclause (4)) undertakes significant business activities as part of a broader range of functions, the Parties[†] will, in respect of the business activities:
- (a) where appropriate, implement the principles outlined in subclause (4); or
 - (b) ensure that the prices charged for goods and services will take account, where appropriate, of the items listed in paragraph (4) (b), and reflect full cost attribution for these activities.

SCHEDULE 1A—continued

- (6) Subclauses (4) and (5) only require the Parties[†] to implement the principles specified in those subclauses to the extent that the benefits to be realised from implementation outweigh the costs.
- (7) Subparagraph (4) (b) (iii) shall not be interpreted to require the removal of regulation which applies to a Government business enterprise or agency (but which does not apply to the private sector) where the Party[†] responsible for the regulation considers the regulation to be appropriate.

...

Note [not included in the Agreement]:

[†] **Party** is defined in the Agreement (cl 1 (1)) to mean the Commonwealth, a State, the Australian Capital Territory or the Northern Territory of Australia, if the jurisdiction concerned has signed the Agreement and has not withdrawn. The Australian Capital Territory has signed the agreement and has not withdrawn from it; thus it is a Party.

Legislation review principles

Legislation Review

[Competition Principles Agreement cl 5 (1) & (9)]

- 5. (1) The guiding principle is that legislation (including Acts, enactments, Ordinances or regulations) should not restrict competition unless it can be demonstrated that:
 - (a) the benefits of the restriction to the community as a whole outweigh the costs; and
 - (b) the objectives of the legislation can only be achieved by restricting competition.
- ...
- (9) Without limiting the terms of reference of a review, a review should:
 - (a) clarify the objectives of the legislation;
 - (b) identify the nature of the restriction on competition;
 - (c) analyse the likely effect of the restriction on competition and on the economy generally;
 - (d) assess and balance the costs and benefits of the restriction; and
 - (e) consider alternative means for achieving the same result including non-legislative approaches.

SCHEDULE 1

(See s 6 (2))

THE COMMISSION—APPOINTMENTS AND WORKING
ARRANGEMENTS

1 Standing commissioners

(1) The Executive must (by instrument) appoint 3 commissioners (*standing commissioners*), 1 of whom is nominated in the instrument as the senior commissioner, and 2 of whom are nominated in the instrument as assistant commissioners.

(2) A standing commissioner holds office (subject to this Act) for a term of up to 5 years, specified in the instrument of appointment, and is eligible for reappointment.

(3) If the senior commissioner ceases to hold office or is suspended from office (under clause 4 or 5), the Minister must (by instrument) nominate another standing commissioner as senior commissioner.

(4) If a suspended senior commissioner resumes office as a commissioner, he or she also resumes office in the capacity of senior commissioner (and the nominated replacement ceases to hold office in that capacity).

1A Associate commissioners

(1) The Executive may appoint 1 or more commissioners (*associate commissioners*) for a particular investigation, in consideration of advice received from the commission about the need for such an appointment (or appointments).

(2) An associate commissioner holds office (subject to this Act) until the conclusion of the investigation for which he or she is appointed.

1B Qualifications

The Executive may only appoint as commissioner a person who has knowledge or experience in 1 or more of the following fields:

- (a) commerce;
- (b) economics;
- (c) industry;
- (d) law;
- (e) public administration.

SCHEDULE 1—continued

1C Terms of office

- (1) A commissioner is appointed on terms (not inconsistent with this Act) decided by the Executive.
- (2) A commissioner may be appointed on a full-time or part-time basis.
- (3) A full-time commissioner may engage in paid employment outside the functions of the office only with the earlier written approval of the Minister.

1D Appointment defects and vacancies

An act or decision of the commission is not invalid merely because of a defect or irregularity in (or in connection with) the appointment of the commissioner, or a vacancy in an office of commissioner.

1E Arrangement of business

- (1) The senior commissioner—
 - (a) is responsible for ensuring the orderly and expeditious discharge of the functions of the commission; and
 - (b) presides over those investigations that he or she sits on.
- (2) The senior commissioner may give directions for any of the following:
 - (a) the arrangement of business;
 - (b) the commissioner or commissioners who will constitute the commission for particular purposes;
 - (c) the procedure of the commission generally.
- (3) If the senior commissioner does not sit on an investigation, or ceases to sit on an investigation, the senior commissioner must—
 - (a) nominate a commissioner to preside over the investigation; and
 - (b) if a nominated presiding commissioner later ceases to sit on the investigation—nominate another commissioner to preside over the investigation.
- (4) If a commissioner sitting on an investigation is directed to cease doing so (under clause 2), ceases to hold office (under clause 4 or 5), or is suspended from office (under clause 5), the senior commissioner may—
 - (a) direct that the investigation continue under the remaining commissioners constituting the commission for the investigation; or

SCHEDULE 1—continued

- (b) direct that the investigation continue with another commissioner replacing the commissioner who has ceased to hold office, or been suspended from office; or
- (c) dissolve the commission (as constituted for the investigation), reconstitute the commission for the investigation under the same or different commissioners, and direct that the investigation be started again under the reconstituted commission; or
- (d) if a commissioner sitting on the investigation is suspended from office—direct that the investigation is suspended, or issue another direction under this subsection.

1F Exercise of powers

The commission's powers may be exercised for particular purposes by—

- (a) the senior commissioner, or a person authorised by the senior commissioner for those purposes; or
- (b) if a direction has been given under paragraph 1E (2) (b)—by the commissioner or commissioners who constitute the commission for those purposes.

1G Decisionmaking

When the commission is constituted by more than 1 person, a decision of the commission must be made—

- (a) in accordance with the unanimous or majority opinion of the commissioners constituting the commission; or
- (b) if the commissioners are equally divided in opinion—in accordance with the opinion of the presiding commissioner (see subclauses 1E (1) and (3)).

2 Disclosure of interests

(1) Before a commissioner performs a function, he or she must give written notice to the Minister of any direct or indirect pecuniary interests that he or she has in relation to the performance of that function.

SCHEDULE 1—continued

- (2) On receiving notice of a commissioner's interests, the Minister may, by written notice—
- (a) direct the senior commissioner to give notice of the interests to any person whose interests are significantly affected by the performance of the function; or
 - (b) direct the commissioner to cease performing the function.
- (3) A commissioner must comply with a direction of the Minister under subsection (2).

3 Remuneration and allowances

A commissioner is entitled to such remuneration, allowances and other entitlements—

- (a) as are determined by the remuneration tribunal in respect of the commissioner; or
- (b) if there is no such determination—as are determined by the Chief Minister in respect of the commissioner by an interim determination under the *Remuneration Tribunal Act 1995*.

4 Resignation

A commissioner may resign by giving a signed notice of resignation to the Minister.

5 Removal from office

- (1) The Executive may, by written notice to a commissioner, suspend the commissioner from office for mental or physical incapacity or incompetence.
- (2) A notice of suspension shall include a full statement of the grounds for suspension.
- (3) A notice of suspension shall be tabled in the Legislative Assembly within 7 sitting days after it is given to the commissioner.
- (4) The Executive shall remove the commissioner from office if, within 15 sitting days after the notice of suspension was tabled in the Legislative Assembly, the Assembly by resolution declares that the commissioner ought to be removed from office.

SCHEDULE 1—continued

(5) The commissioner shall resume office if, after 15 sitting days have elapsed since the notice of suspension was tabled in the Legislative Assembly, the Legislative Assembly has not passed a resolution declaring that the commissioner ought to be removed from office.

(6) A commissioner ceases to hold office if he or she becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for the benefit of creditors.

6 Acting commissioner

(1) The Executive may, in writing, appoint a person to act as a commissioner—

- (a) during a vacancy in the commissioner's office, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the person appointed as that commissioner is for any reason unable to perform the functions of the office.

(2) A person appointed to act as a commissioner during a vacancy in a commissioner's office shall not so act continuously for more than 12 months.

(3) Anything done by or in relation to a person purporting to act pursuant to an appointment under subclause (1) is not invalid on the ground that—

- (a) the appointment was ineffective or had ceased to have effect; or
- (b) the occasion to act had not arisen or had ceased.

SCHEDULE 2

(See par 33 (4) (a))

ARBITRATION GUIDELINES

(COMPETITION PRINCIPLES AGREEMENT cl. 6 (4) (i), (j) and (l))

1 Terms and conditions for access

(competition principles agreement cl 6 (4) (i))

The arbitrator shall take into account the following considerations in determining terms and conditions for access by the third party:

- (a) the access provider's legitimate business interests and investment in the infrastructure facilities;
- (b) the costs to the access provider of providing access—
 - (i) including any costs of extending the infrastructure facilities; and
 - (ii) not including any costs associated with losses from increased competition in upstream or downstream markets;
- (c) the economic value to the access provider of any additional investment that the third party or the access provider has agreed to undertake;
- (d) the interests of all persons holding contracts for use of the infrastructure facilities;
- (e) the firm and binding contractual obligations of the access provider and any other persons using the infrastructure facilities;
- (f) the operational and technical requirements necessary for the safe and reliable operation of the infrastructure facilities;
- (g) the economically efficient operation of the infrastructure facilities;
- (h) the benefit to the public from having competitive markets.

2 Extension of infrastructure

(competition principles agreement cl 6 (4) (j))

The arbitrator shall only make a determination requiring an access provider to extend the infrastructure facilities, or to permit the extension of the facilities, if the following conditions are met:

- (a) the extension should be technically and economically feasible and consistent with the safe and reliable operation of the facilities;
- (b) the access provider's legitimate business interests in the facilities should be protected;

SCHEDULE 2—continued

- (c) the terms of access for the third party should take account of the costs borne by each party for the extension and the economic benefits to each party resulting from the extension.

**3 Impeding of existing rights
(competition principles agreement cl 6 (4) (l))**

In making a determination that impedes an existing right of a person to use an infrastructure facility, the arbitrator—

- (a) shall consider whether there is a case for compensation of that person; and
 - (b) if appropriate, include in the determination provision for that person to be compensated.
-

ENDNOTES

1 About this republication

This is a republication of the *Independent Competition and Regulatory Commission Act 1997* as in force on 10 April 2000. It includes all amendments made to the Act up to Act 2000 No 8.

Amending laws are annotated in the table of legislation and table of amendments.

The Parliamentary Counsel's Office currently prepares 2 kinds of republications of ACT laws: authorised printed republications to which the *Legislation (Republication) Act 1996* applies and unauthorised electronic republications. The status of this republication appears on the cover.

Section 13 of the *Legislation (Republication) Act 1996* authorises the Parliamentary Counsel, in preparing a law for republication, to make textual amendments of a formal nature which the Parliamentary Counsel considers desirable in accordance with current legislative drafting practice. The amendments do not effect a substantive change in the law.

In preparing this republication, amendments have been made under section 13.

Not all amendments made under section 13 are annotated in the table of amendments. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

2 About the republished Act

The *Independent Competition and Regulatory Commission Act 1997* was originally the *Independent Pricing and Regulatory Commission Act 1997*. It was renamed by the *Independent Competition and Regulatory Commission Amendment Act 2000* (see s 5).

3 Abbreviation key

Key to abbreviations in tables

am = amended	par = paragraph
amdt = amendment	pres = present
ch = chapter	prev = previous
cl = clause	(prev...) = previously
def = definition	prov = provision
dict = dictionary	pt = part
div = division	r = rule/subrule
exp = expires/expired	reg = regulation/subregulation
Gaz = Gazette	renum = renumbered
hdg = heading	reloc = relocated
ins = inserted/added	R[X] = Republication No
LR = Legislation (Republication) Act 1996	s = section/subsection
mod = modified	sch = schedule
No = number	sdiv = subdivision
notfd = notified	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	sp = spent
orig = original	* = SL unless otherwise stated
p = page	† = Act or Ordinance unless otherwise stated

Independent Competition and Regulatory Commission Act 1997

4 Table of legislation

Act†	Year and number†	Gazette notification	Commencement	Transitional provisions
<i>Independent Pricing and Regulatory Commission Act 1997</i>	1997 No 77	25 Nov 1997	25 Nov 1997	
<i>Independent Competition and Regulatory Commission Amendment Act 2000</i>	2000 No 8	23 Mar 2000	23 Mar 2000	—

5 Table of amendments

Provision	How affected†
title.....	am 2000 No 8 s 4
s 1.....	sub 2000 No 8 s 5
s 3.....	am 2000 No 8 s 6
s 3A.....	ins 2000 No 8 s 7
hdg to pt 2.....	sub 2000 No 8 s 24 sch 2
s 6.....	sub 2000 No 8 s 8
s 7.....	am 2000 No 8 s 9
s 8.....	am 2000 No 8 s 10
s 14.....	am 2000 No 8 s 24 sch 2
hdg to div 1 of pt 3.....	ins 2000 No 8 s 11
s 14A.....	ins 2000 No 8 s 11
hdg to s 15.....	sub 2000 No 8 s 24 sch 2
s 15.....	am 2000 No 8 s 24 sch 2
hdg to s 16.....	sub 2000 No 8 s 24 sch 2
s 16.....	am 2000 No 8 s 24 sch 2
hdg to s 17.....	sub 2000 No 8 s 24 sch 2
s 17.....	am 2000 No 8 s 24 sch 2
hdg to s 18.....	sub 2000 No 8 s 24 sch 2
s 18.....	am 2000 No 8 s 24 sch 2
hdg to s 19.....	sub 2000 No 8 s 24 sch 2
s 19.....	am 2000 No 8 s 24 sch 2
div 2 of pt 3 (ss 19A-19K)..	ins 2000 No 8 s 12
ss 19A-19K.....	ins 2000 No 8 s 12
hdg to pt 4.....	sub 2000 No 8 s 24 sch 2
hdg to pt 4A.....	ins 2000 No 8 s 24 sch 2
s 21.....	am 2000 No 8 s 13
s 22.....	am 2000 No 8 s 14
ss 23, 24.....	sub 2000 No 8 s 15
ss 24A, 24B.....	ins 2000 No 8 s 15
s 33.....	am 2000 No 8 s 16 and s 24 sch 2
s 35.....	am 2000 No 8 s 17
s 40.....	am 2000 No 8 s 18
s 43.....	sub 2000 No 8 s 19
hdg to s 44.....	sub 2000 No 8 s 24 sch 2

Independent Competition and Regulatory Commission Act 1997

5 Table of amendments—continued

Provision	How affected†
s 45.....	am 2000 No 8 s 20
s 46.....	am 2000 No 8 s 21
sch 1A.....	ins 2000 No 8 s 22 sch 1
hdg to sch 1	am 2000 No 8 s 23
sch 1	am 2000 No 8 s 23 and s 24 sch 2
hdg to sch 2	am 2000 No 8 s 24 sch 2
sch 2	am 2000 No 8 s 24 sch 2

7 Penalties in this republication

The penalties in this republication have been revised in accordance with the *Interpretation Act 1967*, s 63. The value of a penalty unit for an offence against this Act at the date of publication is, therefore—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

See *Interpretation Act 1967*, s 33AA for additional information.