

1999
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

**Independent Competition and Regulatory
Commission Amendment Bill 1999**

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1999
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**Independent Competition and Regulatory
Commission Amendment Bill 1999**

A BILL

FOR

**An Act to amend the *Independent Pricing and Regulatory
Commission Act 1997*, and for other purposes**

The Legislative Assembly for the Australian Capital Territory
enacts as follows:

1 Name of Act

This Act is the *Independent Competition and Regulatory
5 Commission Amendment Act 1999*.

2 Commencement

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

3 Act amended

This Act amends the *Independent Pricing and Regulatory
10 Commission Act 1997*.

4 Long title

The long title is amended by adding at the end “, and to investigate competitive neutrality complaints and government-regulated activities”.

5 **5 Substitution**

Section 1 is repealed and the following section substituted:

“1 Name of Act

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

10 **6 Interpretation**

Section 3 is amended—

- (a) by omitting from subsection (1) the definitions of *Commission*, *Commissioner*, *confidential information* and *referring authority* and substituting the following definitions:

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

commissioner—see section 6.

20 *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*.

25 *referring authority*—

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

and

- 30 (b) by inserting in subsection (1) the following definitions:

“competition policy considerations means the considerations mentioned in paragraphs 1 (3) (d) to (j) (inclusive) of the Competition Principles Agreement, as set out in Schedule 1A to this Act.

35 *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) (inclusive) of the Competition Principles Agreement, as set out in Schedule 1A to this Act.

5 **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

10 (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 reference—see section 14A.

15 **legislation review principles** means the principles under subclauses 5 (1) and (9) of the Competition Principles Agreement, as set out in Schedule 1A to this Act.

20 **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.

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.

25 **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).

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

7 Insertion

After section 3 the following section is inserted:

“3A Who is a referring authority?

“(1) For an industry reference, the **referring authority** is as follows:

35 (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;
- 5 (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:

- 10 (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:

- 15 (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).

8 Substitution

20 Section 6 is repealed and the following section substituted:

“6 Constitution

“(1) The commission is constituted by 3 or more *commissioners*, as follows:

- 25 (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:

- 30 (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.

9 Objectives

35 Section 7 is amended by omitting “and access regimes” and substituting “, access regimes, competitive neutrality complaints and government-regulated activity”.

10 Functions

Section 8 is amended by adding at the end the following paragraph and subsection:

“(h) any function incidental to a function mentioned in this subsection.

5 “(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.”.

10 **11 Insertion**

After the heading to Part 3 the following Division heading and section are inserted:

“Division 1—Industry references

15 **“14A Application of Division (industry references)**

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

12 Insertion

After section 19 the following Division is inserted in Part 3:

“Division 2—Regulatory references

20 **“19A Application of Division (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.

25 **“19B Acceptance of regulatory references—competitive neutrality complaints**

30 “(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
- 5 (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
- 10 (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

15 “(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).

20 “(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
- 25 (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
- 30 (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

35 “(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

5 “(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;
- 10 (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.

15 **“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
- 20 (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 for the *Subordinate Laws Act 1989*.

25 “(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.

30 **“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.

35 “(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 for the *Subordinate Laws Act 1989*.

“(4) The commission may, if it considers it appropriate, publish the notice of termination in an appropriate manner.

5 “(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.

10 “(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.

15 “(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.

20 **“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);

25 (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

30 “(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.

35 “(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).

5 “(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.”.

10 **13 Final reports**

Section 21 is amended—

- (a) by adding at the end of paragraphs (a), (b) and (c) “and”; and
- (b) by inserting in paragraph (b) “for an industry reference—” before “particulars”; and
- 15 (c) by inserting after paragraph (d) the following paragraph:
 - “(da) any report by a commissioner dissenting from majority findings of the commission; and”; and
- (d) by adding at the end the following subsection:

20 “(2) If the referring authority is not a Minister, the commission must also give a copy of the final report to the responsible Minister.”.

14 Special reports

Section 22 is amended—

- 25 (a) by inserting “and (if the referring authority is not a Minister) the responsible Minister” after “referring authority”; and
- (b) by adding at the end the following subsections:

“(2) A special report about a matter must include any report by a commissioner dissenting from majority findings of the commission about the matter.

30 “(3) If the referring authority is not a Minister, the commission must also give a copy of the special report to the responsible Minister.”.

15 Substitution

35 Sections 23 and 24 are repealed and the following sections substituted:

“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:

- 5 (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.

10 “(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

15 “(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).

20 “(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

25 “(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.

30 **“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.

35 “(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.”.

5 **16 Arbitrator—appointment and functions**

Section 33 is amended by inserting after subsection (2) the following subsection:

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

- 10 (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.”.

15 **17 Arbitration determinations**

Section 35 is amended by adding at the end the following subsection:

“(5) A determination may vary the effect of a price determination as it affects the parties to the dispute.”.

20 **18 Arbitration procedure—Commercial Arbitration Act**

Section 40 is amended by inserting after subsection (4) the following subsection:

“(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.”.

25 **19 Substitution**

Section 43 is repealed and the following section substituted:

“43 **Inspection of documents**

30 “(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—

- 35 (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.”.

5 **20 Confidential information—notice to show cause**

Section 45 is amended—

- (a) by omitting from the heading “notice to show cause” and substituting “notice of proposed disclosure”; and
- (b) by adding at the end of paragraph (2) (a) “and”; and
- 10 (c) by inserting after paragraph (b) the following paragraph:
 - “(ba) a copy of the disclosure guidelines under section 46; and”.

21 Confidential information—general disclosure

Section 46 is amended—

- 15 (a) by omitting paragraphs (1) (a) and (b) and substituting the following paragraph:
 - “(a) it considers that, taking into account the disclosure guidelines under subsection (4)—
 - 20 (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”;
- (b) by adding at the end the following subsections:
 - 25 “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.
 - 30 “6) A determination of disclosure guidelines is a disallowable instrument for the *Subordinate Laws Act 1989*.”.

22 Insertion

After section 57, the Schedule set out in Schedule 1 to this Act is inserted.

23 Schedule 1 amendments

- 35 The heading, and clauses 1 and 2, of Schedule 1 are omitted and the following heading and clauses substituted:

“SCHEDULE 1

(See s 6 (2))

**“THE COMMISSION—APPOINTMENTS AND WORKING
ARRANGEMENTS**

“1 Standing commissioners

5 “(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.

10 “(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.

15 “(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

20 “(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).

25 “(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:

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

“1C Terms of office

35 “(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.

5 “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**

10 “(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.

15 “(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.

20 “(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.

25 “(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—

- 30 (a) direct that the investigation continue under the remaining commissioners constituting the commission for the investigation; or
- (b) direct that the investigation continue with another commissioner replacing the commissioner who has ceased to hold office, or been suspended from office; or
- 35 (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

5 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
10 (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 Decision-making

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

- 15 (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)).

20 **“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.

25 “(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.

30 “(3) A commissioner must comply with a direction of the Minister under subsection (2).”

24 Consequential amendments

The Acts specified in Schedule 2 are amended as set out in the Schedule.

SCHEDULE 1

(See s 22)

SCHEDULE 1A

COMPETITION PRINCIPLES AGREEMENT (EXTRACTS)

Competition policy considerations

5 **Interpretation**

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

1.

...

(3)

10 ...

(d) government legislation and policies relating to ecologically sustainable development;

(e) social welfare and equity considerations, including community service obligations;

15 (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;

20 (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

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

30 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.

...

35 (4) Subject to subclause (6), for significant Government business enterprises which are classified as "Public Trading Enterprises" and

SCHEDULE 1—continued

“Public Financial Enterprises” under the Government Financial Statistics Classification:

- 5 (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
- 10 (b) the Parties[†] will impose on the Government business enterprise:
- 15 (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.
- 20 (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:
- 25 (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.
- 30 (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.

SCHEDULE 1—continued

- 5 (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]:

- 10 † *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)]

- 15 5. (1) The guiding principle is that legislation (including Acts, enactments, Ordinances or regulations) should not restrict competition unless it can be demonstrated that:
- 20 (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.
- ...
- 25 (9) Without limiting the terms of reference of a review, a review should:
- 30 (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 2

(See s 24)

CONSEQUENTIAL AMENDMENTS

Energy and Water Act 1988

Subsection 48 (4)—

5 Omit the subsection, substitute the following subsection:

“(4) In this section—

price direction means a direction under Part 4 of the *Independent Competition and Regulatory Commission Act 1997*.”.

Gas Pipelines Access Act 1998

10 **Subsection 8 (1) (definition of *local Regulator*, paragraph (b))—**

Omit the paragraph, substitute the following paragraph:

“(b) in relation to a distribution pipeline—the Independent Competition and Regulatory Commission established by the *Independent Competition and Regulatory Commission Act 1997*.”.

15

Section 14—

Omit “Independent Pricing and Regulatory Commission”, substitute “Independent Competition and Regulatory Commission”.

Gas Supply Act 1998

20 **Section 56 (heading)—**

Omit the heading, substitute the following heading:

“56 Application of Independent Competition and Regulatory Commission Act”.

Subsection 56 (1)—

25 Omit “*Independent Pricing and Regulatory Commission Act 1997*”, substitute “*Independent Competition and Regulatory Commission Act 1997*”.

Paragraph 56 (1) (a)—

Add at the end “under paragraph 3A (1) (e)”.

SCHEDULE 2—continued

Subsection 56 (2)—

Omit “*Independent Pricing and Regulatory Commission Act 1997*”, substitute “*Independent Competition and Regulatory Commission Act 1997*”.

5 ***Independent Pricing and Regulatory Commission Act 1997***

Heading to Part 2—

Omit the heading, substitute the following heading:

“PART 2—INDEPENDENT COMPETITION AND REGULATORY COMMISSION”.

10 **Paragraph 14 (1) (a)—**

Omit “the Commissioner”, substitute “a commissioner”.

Section 15 (heading)—

Omit the heading, substitute the following heading:

“15 Nature of industry references”

15 **Subsection 15 (1)—**

Omit “a reference”, substitute “an industry reference”.

Subsections 15 (3), (4) and (5)—

Omit “A reference to the Commission”, substitute “An industry reference”.

20 **Subsection 15 (6)—**

Omit “a reference”, substitute “an industry reference”.

Section 16 (heading)—

Omit the heading, substitute the following heading:

“16 Terms of industry references”

25 **Subsection 16 (1)—**

Omit the subsection, substitute the following subsection:

“(1) The referring authority may, by instrument, determine terms of reference for an investigation on an industry reference.”.

SCHEDULE 2—continued

Subsection 16 (2)—

Omit “The specified requirements may be”, substitute “The terms of reference may include”.

Section 17 (heading)—

5 Omit the heading, substitute the following heading:

“17 Procedure for industry reference investigations”

Subsection 17 (1)—

Omit “a reference”, substitute “an industry reference”.

Section 18 (heading)—

10 Omit the heading, substitute the following heading:

“18 Draft reports (industry reference investigations)”

Subsections 18 (1)—

After “investigation”, insert “on an industry reference”.

Section 19 (heading)—

15 Omit the heading, substitute the following heading:

“19 Costs for industry reference investigations”

Subsection 19 (1)—

After “investigation”, insert “on an industry reference”.

New subsection 19 (1A)—

20 After subsection 19 (1), insert the following subsection:

“(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.”.

Heading to Part 4—

25 Omit the heading, substitute the following heading:

“PART 4—PRICE DIRECTIONS”.

New Part heading—

After section 20, insert the following heading:

SCHEDULE 2—continued

“PART 4A—REPORTS OF INVESTIGATIONS”.

Paragraph 33 (4) (a)—

After “Competition Principles” insert “Agreement”.

Section 44 (heading)—

5 Omit the heading, substitute the following heading:

“44 Confidential information—disclosure by commissioners and staff”

Schedule 1 (clauses 3 and 4)—

Omit “The Commissioner”, substitute “A commissioner”.

10 **Schedule 1 (subclause 5 (1))—**

Omit “the Commissioner” (first occurring), substitute “a commissioner”.

Schedule 1 (subclause 5 (6))—

Omit “The Commissioner”, substitute “A commissioner”.

15 **Schedule 1 (subclause 6 (1))—**

Omit “Commissioner” (first occurring), substitute “a commissioner”.

Schedule 1 (paragraph 6 (1) (a))—

20 Omit “the office of Commissioner”, substitute “the commissioner’s office”.

Schedule 1 (paragraph 6 (1) (b))—

Omit “the Commissioner”, substitute “the person appointed as that commissioner”

Schedule 1 (subclause 6 (2))—

25 Omit “Commissioner during a vacancy in the office of Commissioner”, substitute “a commissioner during a vacancy in a commissioner’s office”.

Schedule 2 (heading)—

After “PRINCIPLES”, insert “AGREEMENT”.

SCHEDULE 2—continued

Schedule 2, clauses 1, 2 and 3 (headings)—

After “Principles”, insert “Agreement”.

Endnotes

Act amended

1 Act 1997 No. 77 (Not republished).