

2016

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Treasurer)

# Independent Competition and Regulatory Commission Amendment Bill 2016

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# Independent Competition and Regulatory Commission Amendment Bill 2016

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## A Bill for

An Act to amend the *Independent Competition and Regulatory Commission Act 1997*

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

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J2015-489

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

1 **1 Name of Act**

2 This Act is the *Independent Competition and Regulatory*  
3 *Commission Amendment Act 2016*.

4 **2 Commencement**

5 This Act commences on 1 July 2016.

6 *Note* The naming and commencement provisions automatically commence on  
7 the notification day (see [Legislation Act](#), s 75 (1)).

8 **3 Legislation amended**

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

11 **4 Nature of industry references**  
12 **Section 15 (2)**

13 *omit*

14 **5 New section 15 (3A) and (3B)**

15 *insert*

16 (3A) An industry reference that authorises the commission to make a  
17 price direction may state the period the price direction is to apply.

18 (3B) If an industry reference mentioned in subsection (3A) does not state  
19 the period the price direction is to apply, the commission must  
20 determine the period.

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**6 New section 15A**

*insert*

**15A Industry references—current price directions**

If a price direction in relation to regulated services is in force, a referring authority must provide an industry reference to the commission for prices for the regulated services not later than 12 months before the price direction ends.

**7 Terms of Industry references  
New section 16 (2) (d)**

*insert*

(d) if the industry reference authorises the commission to make a price direction—a specification, after consultation with the commission, of when a draft report is to be made available for public inspection under section 18 (4).

*Note* A draft report into a price regulation investigation must also include a proposed price direction (or variation)—see s 18 (5).

**8 Procedure for industry reference investigations  
New section 17 (4) (aa)**

*before paragraph (a), insert*

(aa) must, within 1 month after receiving the industry reference, give each relevant person for the investigation written notice of—

(i) the information it requires from the person in relation to the investigation; and

(ii) the date, decided after consultation with the person, when the person must give the commission the information; and

1 **9 New section 17 (4A) and (4B)**

2 *insert*

3 (4A) The commission may, by written notice, require a relevant person to  
4 give the commission further stated information during the  
5 investigation, by the date decided after consultation with the person  
6 stated in the notice.

7 (4B) If a relevant person is required to give information to the  
8 commission under this section, the person must give the commission  
9 the information by the date stated in the notice.

10 **10 New section 17 (7)**

11 *insert*

12 (7) In this section:

13 *relevant person*, for a price regulation investigation, means a person  
14 who is the subject of the investigation.

15 **11 Draft reports—industry reference investigations**  
16 **Section 18 (5) (b)**

17 *after*

18 (or variation)

19 *insert*

20 that includes a statement of the extent to which the commission had  
21 regard to the matters mentioned in section 20 (2)



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**12 New section 19L**

*in part 4, insert*

**19L Objective—pt 4**

The objective of the commission, when making a price direction in a regulated industry, is to promote the efficient investment in, and efficient operation and use of regulated services for the long term interests of consumers in relation to the price, quality, safety, reliability and security of the service.

**13 Directions about prices  
Section 20 (1)**

*substitute*

- (1) At the conclusion of an investigation on an industry reference authorising the commission to make a price direction in a regulated industry, the commission must decide on the level of prices for services in relation to the period specified in the reference, or decided by the commission, and give a direction accordingly to each person providing regulated services to whom the price direction applies.

**14 Effective dates  
Section 20C (1) (a)**

*substitute*

(a) comes into effect—

- (i) on a day ascertained in accordance with the direction; or
- (ii) if a day is not ascertained in accordance with the direction—14 days after the day the final report containing the direction is presented to the Legislative Assembly; and

1 **15 New section 20D**

2 *in part 4, insert*

3 **20D Price direction to continue to remain in force**

- 4 (1) This section applies if—
- 5 (a) a price direction in a regulated industry is in force; and
- 6 (b) an industry reference has been provided to the commission to
- 7 make a further price direction in the regulated industry.
- 8 (2) If a further price direction is not made before the price direction
- 9 ends, the price direction remains in force until the further price
- 10 direction comes into effect.

11 **16 Consent variations**

12 **Section 24C (7)**

13 *omit everything after*

14 with effect

15 *substitute*

16 from—

- 17 (a) a day (or days) ascertained in accordance with the report; or
- 18 (b) if a day is not ascertained in accordance with the report—
- 19 14 days after the day the report is presented to the Legislative
- 20 Assembly.

1 **17 Effect of nonconsent price variations**  
2 **Section 24I**

3 *omit everything after*

4 with effect

5 *substitute*

6 from—

7 (a) a day (or days) ascertained in accordance with the report; or

8 (b) if a day is not ascertained in accordance with the report—  
9 14 days after the day the report is presented to the Legislative  
10 Assembly.

11 **18 Definitions—pt 4C**  
12 **Section 24J, definition of *eligible person*, paragraph (c)**

13 *substitute*

14 (c) anyone who made a submission to the commission in the  
15 course of the investigation into the price direction;

16 (d) a group of people at least 1 of whom made a submission to the  
17 commission in the course of the investigation into the price  
18 direction.

19 **19 Right of review**  
20 **Section 24K (1)**

21 *substitute*

22 (1) An eligible person may apply for review by an industry panel of a  
23 price direction for regulated services.

24 *Note* If a form is approved under s 57 for this provision, the form must be  
25 used.

- 1 (1A) An application must include—
- 2 (a) the grounds for review, and the evidence relied on to support
- 3 each ground; and
- 4 (b) a statement setting out how, having regard to the commission’s
- 5 objective when making a price direction, a new price direction
- 6 would be, or would be likely to be, materially better than the
- 7 original price direction.

8 *Note* The commission’s objective is stated in s 19L.

9 **20 Section 24K (2), note**

10 *omit*

11 **21 New section 24KA**

12 *insert*

13 **24KA Grounds for review**

14 An application for review of a price direction may only be made on

15 1 or more of the following grounds:

- 16 (a) the commission made an error of fact in its findings of facts
- 17 that was material to the making of the price direction;
- 18 (b) the commission made more than 1 error of fact in its findings
- 19 of facts and the errors, in combination, were material to the
- 20 making of the price direction;
- 21 (c) the exercise of the commission’s discretion in the making of
- 22 the price direction was incorrect having regard to all the
- 23 circumstances;
- 24 (d) the price direction made by the commission was unreasonable
- 25 having regard to all the circumstances.

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1 **22 Industry panel**  
2 **Section 24M (3)**

3 *omit*

4 **23 New section 24MA**

5 *insert*

6 **24MA Application for review—preliminary assessment**

- 7 (1) An industry panel appointed to hear an application for review of a  
8 price direction must make a preliminary assessment of the  
9 application.
- 10 (2) In making a preliminary assessment of the application, the industry  
11 panel must assess each ground for review.
- 12 (3) After making a preliminary assessment of each ground for review,  
13 the industry panel must decide to—
- 14 (a) accept the ground for review; or  
15 (b) reject the ground for review.
- 16 (4) The industry panel must accept a ground for review only if the panel  
17 is satisfied that the ground for review—
- 18 (a) raises a serious issue to be decided; and  
19 (b) provides a strong case for review, supported by sufficient  
20 evidence on the face of the application to justify the review.
- 21 (5) If the industry panel rejects all the grounds for review in an  
22 application, the panel must dismiss the application.
- 23 (6) The industry panel may review an application under section 24N  
24 only if—
- 25 (a) the panel has accepted a ground, or grounds for review; and

- 1 (b) the panel is satisfied, having regard to the accepted ground or  
2 grounds for review, and to the commission's objective when  
3 making a price direction, that a new price direction would be,  
4 or would be likely to be, materially better than the original  
5 price direction.

6 *Note* The commission's objective is stated in s 19L.

- 7 (7) The industry panel must give a statement of reasons for a decision  
8 under subsection (3) or subsection (6).

9 **24 Nature of review**  
10 **Section 24N (1)**

11 *substitute*

- 12 (1) On application for review of a price direction (the *original price*  
13 *direction*), an industry panel may—
- 14 (a) substitute a new price direction for the original price direction;  
15 or
- 16 (b) confirm the original price direction; or
- 17 (c) set aside the original price direction and remit the matter back  
18 to the commission to make a new price direction in accordance  
19 with any direction of the industry panel.

20 **25 Section 24N (2) (a)**

21 *substitute*

- 22 (a) on the merits of the case, having regard to the commission's  
23 objective when making a price direction; and

24 *Note* The commission's objective is stated in s 19L.

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**26 Section 24O (2), 2nd dot point**

*substitute*

- section 18 (Draft reports—industry reference investigations)
- section 24X (Information to be given to commission following price direction review)

**27 New section 24OA**

*insert*

**24OA Application for review—commission’s response**

- (1) This section applies if an industry panel decides to hear an application for review of a price direction.
- (2) The industry panel must tell the commission—
  - (a) it may make a submission to the panel on any issue raised in the application for review; and
  - (b) the date, decided after consultation with the commission, by which the commission must make a submission under paragraph (a).

**28 Implementation of price direction under review  
Section 24S (1) (a) and (b)**

*substitute*

- (a) if the panel substitutes a new direction for the price direction under review—the day (or days) the substituted direction comes into effect; or
- (b) if the panel confirms the price direction under review—the day the report of the review is presented to the Legislative Assembly (under section 24U (Functions of commission)); or

- 1 (c) if the panel sets aside the price direction under review and  
2 remits the matter back to the commission to make a new price  
3 direction—the day the new price direction comes into effect.

4 **29 Effect of decision**  
5 **Section 24T (1) (a)**

6 *substitute*

- 7 (a) each provision of the substituted direction comes into effect  
8 on—  
9 (i) a day ascertained in accordance with the direction; or  
10 (ii) if a day is not ascertained in accordance with the  
11 direction—14 days after the day the final report  
12 containing the direction is presented to the Legislative  
13 Assembly; and

14 **30 Costs**  
15 **Section 24V (1) (b)**

16 *substitute*

- 17 (b) the costs of the industry panel are payable by the applicants for  
18 the review and the utilities to which the review relates in  
19 proportions determined by the industry panel.

20 **31 New section 24X**

21 *in part 4, insert*

22 **24X Information to be given to commission following price**  
23 **direction review**

- 24 (1) This section applies if an industry panel has—  
25 (a) finished a price direction review; and  
26 (b) made a substituted price direction.



- 1 (2) The industry panel must give the commission any information the  
2 panel considers relevant, after consultation with the commission, to  
3 the commission implementing the substituted price direction.

4 **32 Appointment of members of industry panels**  
5 **Schedule 3, section 3.1 (1), new note 2A**

6 *insert*

7 *Note 2A* Certain Ministerial appointments require consultation with an Assembly  
8 committee and are disallowable (see [Legislation Act](#), div 19.3.3).

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## Endnotes

1 **1 Presentation speech**

Presentation speech made in the Legislative Assembly on 5 May 2016.

2 **2 Notification**

Notified under the [Legislation Act](#) on 2016.

3 **3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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