

**INDEPENDENT COMPETITION AND
REGULATORY COMMISSION AMENDMENT
BILL 1999**

EXPLANATORY MEMORANDUM

Circulated by authority of
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Treasurer
November 1999

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Independent Competition and Regulatory Commission Amendment Bill 1999

Outline

The Act provides for amendments to the existing *Independent Pricing and Regulatory Commission Act 1997* (IPARC Act) which establishes the Independent Pricing and Regulatory Commission (IPARC). The role of the IPARC is to promote the effective competition in the interests of consumers, facilitate an appropriate balance between efficiency and environmental and social considerations and to ensure nondiscriminatory access to monopoly and near monopoly infrastructure.

The amendments do not represent a significant shift in emphasis in the role of the independent regulator. Rather the changes are adjustments to the existing legislation to facilitate broadening the regulator's role and strengthening the regulator's ability to provide independent high quality advice. The amendments will also change the name of the regulator from the IPARC to the Independent Competition and Regulatory Commission (ICRC).

The amendments to the IPARC Act will provide a consultation mechanism that provides access to a range of views and emerging issues and a wider set of referencing powers, including power to self reference in some circumstances. The ICRC's activities will be funded by the beneficiaries of the regulation, except where the beneficiaries are so dispersed that identification is practically impossible. In these cases, the government may provide specific funding on a case by case basis.

Objective

The primary objective for the legislative amendments is to provide the regulator with a wider regulatory oversight function and to ensure that the existing functions are adequate to deal with emerging market issues. Currently, the scope of the original legislation restricts the regulator's ability to provide the government with advice on a range of issues and to assist in the oversight of regulatory development.

The legislation will also allow for the investigation of competitive neutrality complaints. This will eliminate conflicts that currently arise within government regarding policy priorities and development. This will also satisfy the Legislative Assembly's concern to have an external evaluation of competitive neutrality complaints.

The new arrangements are important not only for the development of an effective regulatory environment in the ACT generally. The changes being sought to the IPARC Act to facilitate the general regulatory role will also assist in the implementation of the Utilities Bill which is currently being drafted.

THE BILL

- Section 1** **Name of Act**
States the name of the Bill.
- Section 2** **Commencement**
Sets the dates of commencement of the provisions.
- Section 3** **Act amended**
Describes the Act to be amended by this Act.
- Section 4** **Long title**
Amends the title of the Act to more fully reflect the role of the Independent Competition and Regulatory Commission (ICRC).
- Section 5** **Substitution**
The new name of the Act is substituted for the old name.
- Section 6** **Interpretation**
Amends section 3 of the Act and redefines: commission, commissioner, confidential information and referring authority. It also provides a definition of: competitive neutrality complaint; competition policy considerations; competitive neutrality principles; legislation review principles; government activity; government-regulated activity; industry reference; protected confidential information; regulatory reference; responsible Minister, sealed section, self-funding referring authority and unsealed section.
- Section 7** **Insertion**
Details who a referring authority is in relation to an industry or regulatory reference and who a self funding referring authority is for a regulatory reference.
- Section 8** **Substitution**
This section repeals section 6 of the IPARC Act and replaces it with a new section 6 which contains details of the changed constitution of the commission.
- Section 9** **Objectives**
Amends section 7 of the IPARC Act to reflect the expanded role of the commission.
- Section 10** **Functions**
Provides for the commission to carry out its objectives.
- Section 11** **Insertion**

- Applies a division to an industry reference to the commission.
- Section 12** **Insertion**
 Applies a division to a regulatory reference for an investigation into a competitive neutrality complaint or government regulated activity. The division details conditions concerning references - acceptance, terms, amendments, termination, procedure for investigation and application of costs.
- Section 13** **Final reports**
 Amends section 21 to cater for industry references and to cater for a commissioner to issue a dissenting report.
- Section 14** **Special reports**
 Amends section 22 to ensure that the responsible minister receives a copy of a special report.
- Section 15** **Substitution**
 Repeals sections 23 and 24 dealing with confidential or commercially sensitive material in reports and tabling of reports in the principal Act. In place of these sections are substituted sections on confidentiality and tabling reports that allow for a report with a sealed section. A new section on a response by a minister to a report on competitive neutrality has also been added. Another section has been inserted that allows for the commission to release a report to correct an error in a final report or special report caused by a clerical mistake or an accidental slip or omission.
- Section 16** **Arbitrator - appointment and functions**
 Amends section 33 by inserting a clause requiring an arbitrator of a dispute to be independent of the initial investigation.
- Section 17** **Arbitration determinations**
 Amends section 35 to provide for the determination to vary the effect of a price determination as it affects the parties to a dispute.
- Section 18** **Arbitration procedure**
 Adds to section 40 to allow the cost of an arbitration procedure to be borne by the commission or the Territory.
- Section 19** **Inspection of documents**
 Amends section 43 to cater for withholding disclosure of documents that contain confidential material.

- Section 20** **Confidential information - notice of proposed disclosure**
- Amends section 45 to require the ICRC to provide to the affected person a more comprehensive reasoning for disclosing a document and to include a copy of the ICRC's disclosure guidelines with the reasoning .
- Section 21** **Confidential information - general disclosure**
- Amends section 46 to broaden the definition of persons who can prevent a disclosure because it would cause them detriment. In addition this section adds that documents can only be withheld from disclosure if the reason is consistent with the disclosure guidelines. The ICRC determine the disclosure guidelines and the guidelines will be a disallowable instrument.
- Section 22** **Insertion**
- Inserts the amended Schedule 1 to the Act.
- Section 23** **Schedule 1 amendments**
- Details the amendments to Schedule 1. The bulk of the amendments relate to the change in the composition of the commission from one commissioner to one commissioner with two assistant commissioners and any number of associate commissioners.
- Appointment of commissioners remains based on knowledge or experience in the fields of: commerce, economics, industry, law or public administration.
- The senior commissioner may give a direction about which commissioners will constitute the commission for a particular purpose.
- When the commission is constituted by more than one person a unanimous or majority decision prevails. If the commissioners' opinion are equally divided, the decision of the commission is to be made with opinion of the presiding commissioner.
- Commissioners must disclose any pecuniary interests before performing a function.