

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

INDEPENDENT PRICING AND REGULATORY COMMISSION BILL 1997

EXPLANATORY MEMORANDUM

Circulated by the authority of

KATE CARNELL

Chief Minister



ACT GOVERNMENT

INDEPENDENT PRICING AND REGULATORY COMMISSION BILL 1997

OUTLINE

The objective of this Bill is to provide for the establishment of an independent commission to regulate pricing, access and other matters in relation to industries involving the supply of water, electricity, sewerage and other industries.

The Bill sets out the functions, powers, membership and staffing of the Commission. Other significant provisions deal with the financial, accountability and reporting arrangements for the Commission. The Commission is subject to the *Financial Management Act 1996* (Part VIII) which sets out financial provisions dealing with Territory Authorities.

Revenue/Cost Implications

The Bill will not impact on the 1997/98 budget.

DETAILS OF THE BILL

PART I PRELIMINARY

Short title, Commencement, Interpretation. These are formal provisions.

Regulated Industries - Declarations The pricing and regulatory functions of the Commission are directed at *regulated industries*. The legislation allows Ministers to declare by instrument an industry to be a *regulated industry* for the purposes of the Act.

PART II INDEPENDENT PRICING AND REGULATORY COMMISSION

Establishment This provision establishes the Independent pricing and regulatory Commission as a body corporate.

Constitution The Commission is constituted by the Commissioner.

Objectives The objectives of the Commission are to promote effective competition in the interest of consumers, to facilitate efficiency and to ensure non-discriminatory access to monopoly and near-monopoly infrastructure.

Functions In relation to *regulated industries* the functions of the Commission are to provide pricing directions, provide recommendations about price regulation, provide advice to the minister about proposed access agreements, the maintenance of a register of access agreements, the arbitration of disputes about access to services under access regimes, investigation and reporting on matters referred by the Minister and referring authorities and any other function conferred by the Act or any other law of the Territory.

Annual Report Details of the Commission's exercise of its functions are to be provided in the Annual Report. There is also a requirement to make information disclosures in the annual report on the general use made by the Commission of information and documents obtained under its information powers.

Independence from Ministerial Control	The Commission is independent from Ministerial control in relation to pricing and access issues.
Staff	Staff of the Commission must be employed under the Public Sector Management Act 1994. In effect, the Commissioner would have the powers of a Chief Executive in relation to that staff.
Arrangements with other Agencies, Bodies and persons	The Commission may enter into arrangements with other entities in the pursuit of its functions.
Delegation of Commission's Functions	Functions (excluding price directions, reports, providing advice about proposed access agreements and arbitration determinations) can be delegated.
Immunity from Suit	The Commission is immune from suit.

PART III INVESTIGATIONS

References for Investigations	A referring authority may instruct the Commission to investigate on any matter relating to regulated industries or an any matter provided by another law of the Territory.
Terms of Reference	A referring authority may specify requirements in relation to an investigation.
Procedure	The Commission is to conduct an investigation as authorised by the terms of reference.
Costs	Reasonable costs of an investigation may be recovered by the Commission from the bodies it regulates, investigates etc.

PART IV PRICE DIRECTIONS AND REPORTS

Directions about prices	The Commission, upon a reference, is to issue price directions to regulated industries.
Final Reports	On conclusion of an investigation, the Commission is to provide a final report to the referring authority on its findings.
Special Reports	A special report on any matter arising from an investigation may be provided to the referring authority.

Confidential or Commercially sensitive material in reports	Final reports may be divided into a confidential report and another report at the Commission's discretion.
Tabling of Reports	A final report is to be tabled before the Assembly 6 sitting days after receipt of the report by the referring authority.

PART V ACCESS AGREEMENTS

Notice of Access Agreements	Persons entering into access agreements are to notify the Commission and provide a copy of proposed access agreements.
Registration of Access Agreements	Details of access agreements are to be registered with the Commission.
Investigation into Access Agreements	The Commission may investigate access arrangements whether registered or not.
Failure to Notify Proposals and Agreements	The Commission may request reasons for failure to notify in writing.
Register of Agreements	A register of access agreements is to be kept by the Commission.

PART VI ARBITRATION OF ACCESS REGIME DISPUTES

Interpretation	Defines "access providers" and "third parties" in relation to access to infrastructure.
Application	Arbitration guidelines in this act do not apply if another Act of the Territory specifies arbitration procedures. This is to allow national laws such as the National Electricity Market Code to operate.
Access Disputes	A party may refer access disputes to the Commission.
Arbitrator - Appointment and Functions	The Commission may act as arbitrator or it may appoint arbitrators itself.
Draft Determinations	The arbitrator is to issue a draft determination before making a determination.
Arbitration Determinations	An arbitrator is to provide a written determination on an access dispute.
Effect of Determination	Affected parties are to abide by the arbitration.

Termination of Arbitration by Parties	An arbitration may be terminated at any time by either party but must be done before the arbitrator makes a determination.
Termination of Arbitration by Arbitrator	The arbitrator may terminate an arbitration at any time if certain circumstances such as lack of substance arise.
Variation of Determinations	An arbitrator may vary a determination at the request of any party but may not vary if the other party objects. A request to vary may be dealt with as a dispute.
Arbitration Procedure- Commercial Arbitration Act 1986	Arbitration procedures detailed by the Commercial Arbitration Act are to be followed. However, the arbitrator may grant leave for a party to engage a legal representative.

PART VII INFORMATION

Provision of Information to the Commission	The Commission may request information for the purpose of performing its functions. Penalties are applied for non-compliance with an information notice.
Restriction on Publication	Information given to the Commission may not be published if the Commission so instructs. Penalties apply for non-compliance with a restriction order from the Commission.
Inspection of Documents	Documents provided to the Commission may be made available for inspection by parties seeking to inspect such information. However, the Commission has scope for not disseminating information that is confidential or detrimental to affected parties.
Disclosure of Confidential Information	Penalties apply to non-authorized disclosures of information. This is a control on staff of the Commission.
Confidential Information- Notice to Show Cause	A decision to disclose confidential information requires 28 days notice be given to affected parties.
Confidential Information-	Generally, the Commission may disclose

General Disclosure	confidential information if no harm or detriment is caused unless the public benefit outweighs the detriment.
Confidential Information-Disclosure Within the Commission	Information may be disclosed to staff of the Commission or entities engaged by the Commission to perform duties on its behalf.
Cabinet and Executive Documents	The Commission has no power to request information on executive business.

PART VIII CO-OPERATION WITH THE COMMISSION

Attendance at hearing	Penalties apply if persons required to attend hearings fail to attend.
Non-Cooperation Offences	Penalties apply for failure to cooperate with the Commission.

PART IX ENFORCEMENT OF PRICE DIRECTIONS AND ARBITRATION DETERMINATIONS

Interpretation	This section defines the term “Directions”.
Application	Enforcement provisions apply if a person does not abide by a direction of the Commission.
Orders	The Commissioner may issue an order to comply with a direction. Penalties apply for non-compliance.
Injunctions and Declarations	Injunctions and declarations may be actioned through the Supreme Court.

PART X MISCELLANEOUS

Conduct Of Directors, Servants and Agents	The conduct of directors etc associated with a party are deemed to be performed with that party’s knowledge.
Service of Documents	This section outlines the form in which documents may be provided to the Commission.
Regulations	Regulations may be made under this Act.

Schedule 1

Appointment and Terms of Office of Commissioner

The executive is to appoint the Commissioner subject to certain qualification and experience requirements being met. This section also deals with remuneration, resignation and acting Commissioner guidelines.

Schedule 2

Arbitration Guidelines

Relevant arbitration guidelines from the Competition Principles Agreement have been included as a schedule to give them force in the context of the Bill.