

Australian Capital Territory

Independent Competition and Regulatory Commission Act 1997

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About this republication

The republished law

This is a republication of the *Independent Competition and Regulatory Commission Act 1997* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 16 December 2025. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 16 December 2025.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

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 Act 2001*, part 11.3 authorises 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 Act 2001*, s 115 and s 117). 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.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is $160 for an individual and $810 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

Independent Competition and Regulatory Commission Act 1997

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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 provision of water, electricity and sewerage services, and other industries, and to investigate competitive neutrality complaints and government-regulated activities

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Part 1 Preliminary

1 Name of Act

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

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (***signpost definitions***) to other terms defined elsewhere in this Act.

For example, the signpost definition '***industry reference***—see section 14A.' means that the term 'industry reference' is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

2A Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

2B Joint ownership, control or operation

A reference in this Act to a person who owns, controls or operates infrastructure facilities includes a reference to each of 2 or more people who jointly own, control or operate infrastructure facilities.

3 Joint provision of services

A reference in this Act to a person who provides services includes a reference to each of 2 or more people who jointly provide services.

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3A Who is a *referring authority*?

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

(a) for an industry engaged in the provision in the ACT of electricity, water or sewerage services—the Minister;

(b) for an industry engaged in the provision in the ACT of gas services—the Minister;

(c) for any other regulated industry—the Minister who has, under section 4, declared that industry to be regulated;

(d) for regulated industries in general—the Minister;

(e) for another industry, or industries in general—the Minister;

(f) 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 section 19K (4));

(b) any other person (other than a Minister or the commission).

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4 Regulated industries—declarations

(1) Any Minister may declare an industry to be a regulated industry for this Act.

(2) A Minister may make a declaration under subsection (1) if the Minister 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 ACT 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

(d) the industry involves the provision of services in the ACT wholly or substantially by or on behalf of a single person.

(3) A declaration under subsection (1) is a disallowable instrument.

4A National electricity rules—electricity distribution and transmission pricing

(1) On and after the day when ACT distribution service pricing becomes regulated under the national electricity rules, no reference may be made under this Act for a price regulation investigation into that service.

(2) However, a provision of a price direction for a matter related to ACT distribution service pricing that is in force on the day when prices for the service become regulated under the national electricity rules continues in force (subject to the direction) after that day until the jurisdictional regulator makes a direction about that matter.

(3) No reference may be made under this Act for a price regulation investigation into ACT transmission service pricing.

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(4) In this section:

ACT distribution service means a distribution service within the meaning given by the national electricity rules for distribution networks (within the meaning of the rules) situated in the ACT.

ACT transmission service means a transmission service within the meaning given by the national electricity rules for transmission networks (within the meaning of the rules) situated in the ACT.

jurisdictional regulator means the commission in its capacity as jurisdictional regulator under the national electricity rules.

Note 1 The day when distribution service pricing will become regulated under the national electricity rules is fixed at 31 December 2000 (by the ACT derogation under the rules), but may be changed under the derogation.

Note 2 The day when transmission service pricing became regulated under the national electricity rules was fixed at 1 July 1999 (by the ACT derogation under the rules).

4B ACT gas transmission service pricing

(1) No reference may be made under this Act for a price regulation investigation into ACT gas transmission service pricing.

(2) No reference may be made under this Act for a price regulation investigation into ACT gas distribution service pricing.

(3) In this section:

ACT gas distribution service means a distribution service provided by means of a natural gas distribution pipeline.

ACT gas transmission service means a transmission service provided by means of a natural gas transmission pipeline.

***distribution pipeline*—**see the *National Gas (ACT) Law*, section 2.

***transmission pipeline*—**see the *National Gas (ACT) Law*, section 2.

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4C Declared fees to be passed on to consumers

(1) The Minister may declare that—

(a) a statutory fee affects the cost of providing a utility service and may be passed on in full to consumers of the service; or

(b) a fee for a regulated service is to be passed on in full to consumers of the service.

(2) A declaration is a disallowable instrument.

(3) In this section:

statutory fee means a fee or charge determined under a disallowable instrument.

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Part 2 Independent competition and regulatory commission

5 Establishment

(1) The Independent Competition and Regulatory Commission for the Australian Capital Territory is established.

(2) The commission—

(a) is a body corporate with perpetual succession; and

(b) must 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 must be kept in the custody that the commission directs and must not be used except as authorised by the commission.

6 Constitution

(1) The commission is constituted by—

(a) 1 or more standing commissioners; and

(b) any associated commissioners appointed for particular purposes.

(2) Schedule 2 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.

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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 given by or under any of the following:

(i) the *Utilities Act 2000*;

(ii) the *National Electricity (ACT) Law*;

(iii) the *National Electricity (ACT) Regulation*;

(iv) the national electricity rules;

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(v) the *National Gas (ACT) Law*;

(vi) the *National Gas (ACT) Regulation*;

(vii) the *National Energy Retail Law (ACT) Act 2012*;

(viii) the *National Energy Retail Law (ACT)*;

(ix) the *National Energy Retail Regulation (ACT)*;

(x) the national energy retail rules;

(xi) another law of the Territory.

(2) The commission has the following additional functions:

(a) investigating and reporting on competitive neutrality complaints;

(b) investigating and reporting on government-regulated activities.

Note A provision of a law that gives an entity (including a person) a function also gives the entity the powers necessary and convenient to exercise the function (see Legislation Act, s 196 (1) and dict, pt 1, defs of ***entity*** and ***function***).

9 Commission's annual report

A report prepared by the commission under the *Annual Reports (Government Agencies) Act 2004* for a financial year must include details of the following during the year:

(a) investigations;

(b) final reports and special reports;

(c) price directions;

(d) advice about proposed access agreements;

(e) the number of access agreements notified;

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(f) arbitration disputes;

(g) determinations of arbitration disputes;

(h) the number of notices issued under section 41 (Provision of information to commission);

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

(j) any other functions exercised by the commission.

Note ***Financial year*** has an extended meaning in the *Annual Reports (Government Agencies) Act 2004*.

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.

10A Chief executive officer

(1) The director-general must appoint a public servant as the Chief Executive Officer of the commission.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

(2) However, the director-general must not appoint the chief executive officer unless the director-general has consulted the commission about the proposed appointment.

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10B Chief executive officer's functions

(1) The chief executive officer has the following functions:

(a) ensuring, as far as practicable, that the commission's statement of intent is implemented effectively and efficiently;

(b) managing the day-to-day operations of the commission secretariat in accordance with—

(i) applicable governmental policies (if any) for the commission; and

(ii) the policies set by the commission (if any); and

(iii) each legal requirement that applies to the commission;

(c) regularly advising the commission about the commission's operation and financial performance.

Example for par (b) (iii)

a direction given to the commission under the *Utilities Act 2000*, section 19

(2) In this section:

applicable governmental policies—see the *Financial Management Act 1996*, section 103.

commission secretariat means—

(a) the chief executive officer; and

(b) the other staff of the commission.

statement of intent—see the *Financial Management Act 1996*, section 61 (1).

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11 Commission's staff

(1) The chief executive officer may employ staff for the commission on behalf of the Territory.

(2) The commission's staff must be employed under the *Public Sector Management Act 1994*.

Note The *Public Sector Management Act 1994*, div 8.2 applies to the chief executive officer in relation to the employment of staff (see *Public Sector Management Act 1994*, s 152).

12 Arrangements with other agencies, bodies and people

(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 relation to investigations or the exercise 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 must 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 must ensure that the provision of the assistance does not interfere with the ability of the commission to exercise its functions.

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

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

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13 Delegation of commission's functions

(1) The commission may delegate its functions to any person or committee of people, subject to subsection (2).

Note 1 A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def ***entity***).

Note 2 For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

(2) However, the commission must not delegate—

(a) its function of making price directions, reports or providing advice about proposed access agreements; and

(b) if the commission is conducting an arbitration—its function of making a determination in relation to the arbitration.

14 Protection from liability

(1) A person is not personally liable for anything done, or omitted to be done, honestly and without recklessness—

(a) in the exercise of a function under this Act; or

(b) in the reasonable belief that the act was in the exercise of a function under this Act.

(2) Any liability that would, apart from this section, attach to a person attaches instead to the Territory.

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Part 3 Investigations

Division 3.1 Industry references

14A Application of div 3.1—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) 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.

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

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

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(5) An industry reference that authorises the commission to make a price direction about maximum prices for the sale of energy to small customers (however described) may state the NERL retailer to whom the direction is to apply.

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

(7) 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.

(8) If an industry reference is amended or withdrawn, the referring authority must prepare a written notice setting out the reasons for the amendment or withdrawal.

(9) The referring authority must give a copy of the notice to the commission.

(10) The notice is a notifiable instrument.

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.

16 Terms of industry references

(1) The referring authority may 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;

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(c) except in relation to price regulation, the making of a price direction and any related investigation and report—a requirement that the commission exercise its functions subject to any subsequent written direction of the authority;

(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).

(3) A determination under subsection (1) is a disallowable instrument.

(4) A referring authority must cause a direction mentioned in subsection (2) (c) to be presented to the Legislative Assembly within 6 sitting days after it is given.

17 Procedure for industry reference investigations

(1) If the commission receives an industry reference, the commission must 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 must be open to the public.

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(4) In a price regulation investigation, the commission—

(a) 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

(b) must invite public submissions and conduct public hearings; and

(c) is not required to hear submissions from every person attending a public hearing.

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

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

(7) On an industry reference, the commission is not to question the amount of a declared fee or the basis on which the fee is worked out.

(8) Subject to this Act, the commission may conduct an investigation in any way the commission considers appropriate.

(9) In this section:

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

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18 Draft reports—industry reference investigations

(1) Before giving the referring authority a final report into an investigation on an industry reference, the commission must prepare a notice—

(a) stating that copies of a draft report into the investigation are available for public inspection and purchase during a stated period of not less than 20 business days at a stated place or places; and

(b) inviting interested people to submit written comments about the draft report to the commission at a stated address and within a stated period of not less than 20 business days.

(2) The notice is a notifiable instrument.

(3) The commission must give additional public notice of the notice.

Note ***Public notice*** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see Legislation Act, dict, pt 1). The requirement in s (3) is in addition to the requirement for notification on the legislation register as a notifiable instrument.

(4) The commission must make copies of a draft report into an investigation available for public inspection and purchase during office hours during the period, and at the places, specified in the notice.

(5) A draft report into a price regulation investigation must include all of the following:

(a) a proposed price direction (or variation);

(b) a proposed statement of reasons for the direction (or variation) that includes a statement of the extent to which the commission had regard to the matters mentioned in section 20 (2);

(c) any proposed report by a commissioner dissenting from proposed majority findings of the commission.

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(6) In preparing its final report of an investigation, the commission must take into consideration any written comments submitted in accordance with the invitation in subsection (1) in relation to the draft report of the investigation.

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 (or the people who are) to pay the costs, are payable to the commission by—

(a) if the industry is a regulated industry because of its infrastructure facilities being owned, controlled or operated by the Territory or a territory authority—the Territory or territory authority; or

(b) if the industry is a regulated industry because of the provision of services in the industry by or on behalf of the Territory or a territory authority—the Territory or territory authority; or

(c) if the industry is a regulated industry because 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 engaged in the provision in the ACT of a utility service—the utility or utilities responsible for the provision of the service; or

(e) if the industry is a regulated industry because of the provision of any other services wholly or substantially by or on behalf of a single person—the person who provides those services.

(2) The costs of an investigation payable by a territory authority or a person mentioned in subsection (1) (c) or (d) are a debt owing to the Territory.

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(3) 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.

(4) If more than 1 utility is liable to pay costs under subsection (1) (d), the commission must, by written notice to each utility, determine the proportion of those costs to be borne by each utility.

Division 3.2 Regulatory references

19A Application of div 3.2—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 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 1); 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.

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(3) If the commission accepts the reference, it must prepare a written notice of acceptance that sets out the terms of reference for the investigation.

(4) The commission must give a copy of the notice to the referring authority.

(5) The notice is a notifiable instrument.

(6) The commission may also publish information about the reference in any other appropriate way.

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 1); 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 prepare a written notice of acceptance that sets out the terms of reference for the investigation.

(4) The commission must give a copy of the notice to the referring authority.

(5) The notice is a notifiable instrument.

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(6) The commission may also publish information about the reference in any other appropriate way.

19D Regulatory references initiated by commission

(1) The commission may initiate a regulatory reference by preparing a notice that sets out the terms of reference for the investigation.

(2) The notice is a notifiable instrument.

(3) The commission may publish information about the reference in any appropriate way.

(4) 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 set out in schedule 1.

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 exercise its functions subject to any subsequent written direction of the Minister.

(2) The Minister mentioned in subsection (1) (c) must present any direction mentioned in that paragraph to the Legislative Assembly within 6 sitting days after it is given.

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19F Amendment of terms of regulatory reference

(1) On application by the referring authority for a regulatory reference, the commission must amend the terms of reference for the regulatory reference.

(2) If the commission is the referring authority for a regulatory reference, it may amend the terms of reference for the regulatory reference.

(3) The commission must—

(a) if it makes an amendment under subsection (1)—give notice of the amendment to the referring authority and, if the referring authority is not a Minister, to the responsible Minister; or

(b) if it makes an amendment under subsection (2)—give notice of the amendment to the responsible Minister.

(4) An amendment under subsection (1) or (2) is a disallowable instrument.

(5) The commission may publish an amendment in any other appropriate way.

(6) The commission may publish a special report into the investigation (based on the terms of reference applying immediately before the amendment) after notice of an amendment of the terms of reference has been given under subsection (3).

19G Termination of investigations into regulatory references

(1) On application by the referring authority for regulatory reference, the commission must terminate the investigation.

(2) If the commission is the referring authority for regulatory reference, it may terminate the investigation.

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(3) The commission must—

(a) if it makes a termination under subsection (1)—give notice of the amendment to the authority and, if the referring authority is not a Minister, to the responsible Minister; or

(b) if it makes a termination under subsection (2)—give notice of the amendment to the responsible Minister.

(4) A termination under subsection (1) or (2) is a disallowable instrument.

(5) The commission may publish a termination in any other appropriate way.

(6) The commission may publish a special report into the investigation after notice of the termination of the investigation has been given under subsection (3).

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 way the commission considers appropriate.

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19J Principles for regulatory reference investigations

(1) 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 1);

(b) for an investigation into a competitive neutrality complaint—the competitive neutrality principles (set out in schedule 1);

(c) for an investigation into a government-regulated activity—the legislation review principles (set out in schedule 1).

(2) On a regulatory reference, the commission is not to question the amount of a declared fee or the basis on which the fee is worked out.

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 owing 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).

(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 sponsor the reference.

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(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.

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Part 4 Price directions

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.

20 Directions about prices

(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.

(2) In making a decision under subsection (1), the commission must 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 provision 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

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(f) the principles of ecologically sustainable development mentioned in subsection (5);

(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 people 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) Also, in making a decision under subsection (1), the commission must allow a declared fee to be passed on in full to consumers of the service.

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

(5) For subsection (2) (f), ***ecologically sustainable development*** requires the effective integration of economic and environmental considerations in decision-making processes through the implementation of the following principles:

(a) the precautionary principle—that if there is a threat of serious or irreversible environmental damage, a lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;

(b) the inter-generational equity principle—that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;

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(c) conservation of biological diversity and ecological integrity;

(d) improved valuation and pricing of environmental resources.

20A Price regulation provisions

(1) A price direction must include a direction about the pricing of regulated services in the form of either or both of the following:

(a) a price, a maximum price or both a minimum and maximum price for each regulated service;

(b) a maximum total amount (***revenue cap***) that may be earned by a person providing regulated services from the provision of those services.

(2) A price direction must be made in accordance with the current reset principles for the regulated industry (see section 20B).

(3) A price direction may include any or all of the following:

(a) a formula for calculating a price or amount mentioned in subsection (1);

(b) a method by which a price or amount mentioned in subsection (1) is to be ascertained;

(c) a reference to an event or events (***price variation triggers***) the happening of which would entitle the commission to initiate a reference for an investigation into a variation of the direction (under section 24F (Commission-initiated variation)).

Example for par (c)—method

by reference to price indices

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20B Reset principles

(1) ***Reset principles*** are principles governing the redetermination of prices or revenue caps in a regulated industry.

(2) ***Current reset principles*** governing a price direction for a regulated industry are the reset principles currently in force in the industry (because of a previous price direction).

(3) ***Future reset principles*** are reset principles included in a price direction that are to take effect after the end of the current reset principles.

(4) In a price direction, the commission may not—

(a) vary, omit or replace the current reset principles; or

(b) include any future reset principles that will have the effect of varying, omitting or replacing the current reset principles in their application at a future date.

(5) The commission may fix a period of effect for a price regulation provision of a price direction for regulated services that ends before the day when the current reset principles for the regulated services end.

(6) If the current reset principles governing a price direction (***the earlier direction***) will end on or before the date when any price regulation provisions in the earlier direction (***the earlier provision***) will end, the earlier direction must include future reset principles governing any price regulation provision (in the next price direction for the industry) that will supersede the earlier provision.

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20C Effective dates

(1) Each provision of a price direction—

(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

(b) remains in effect until a day ascertained in accordance with the direction.

(2) Under subsection (1), the dates and periods of effect of different provisions of a price direction may be different.

Note The dates and periods of effect of the price regulation provisions of the direction and any future reset principles in the direction will necessarily be different (see s 20B (3)).

20D Price direction to continue to remain in force

(1) This section applies if—

(a) a price direction in a regulated industry is in force; and

(b) an industry reference has been provided to the commission to make a further price direction in the regulated industry.

(2) If a further price direction is not made before the price direction ends, the price direction remains in force until the further price direction comes into effect.

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Part 4A Reports of investigations

21 Final reports

(1) On concluding an investigation, the commission must 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 section 18 (1), and of the commission's response to those comments; and

(c) for a price direction or price variation investigation—

(i) a copy of the price direction; and

(ii) a statement of the reasons for the direction; and

(iii) a statement of the methodology used in determining the direction; and

(iv) a statement to the effect that review of the decision by an industry panel (except for a price variation by consent) is available under part 4C (Review of price directions), subject to procedures explained in the statement;

(d) the commission's findings on any other matter required by the reference; and

(e) any report by a commissioner dissenting from majority findings of the commission; and

(f) 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.

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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.

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(3) In this section:

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.

24 Presenting of reports to 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 presented to the Legislative Assembly within 6 sitting days after the report is given to the referring authority or responsible Minister.

(2) If a report is divided into a sealed section and an unsealed section, only the unsealed section is required to be presented to 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 presented to the Legislative Assembly.

(2) Within 3 months after the report is presented to the Legislative Assembly, the Minister who caused the report to be presented to the Assembly must present a written response to 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.

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(2) The commission must give a supplementary report to the referring authority, and section 23 and section 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 presented to the Legislative Assembly, the report has effect as corrected.

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Part 4B Variation of price directions

Division 4B.1 Consent variations

24C Consent variations

(1) A referring authority for a regulated service, or a utility providing a regulated service, may apply in writing to the commission for consent to a variation of a price direction in force for the service.

(2) The commission may consent to the variation applied for by giving the applicant a written report (a ***consent report***) to that effect.

(3) The commission may consent to a variation only if satisfied on reasonable grounds that the variation is—

(a) justified, having regard to the criteria listed at section 20 (2); and

(b) in accordance with the current reset principles for the regulated service.

(4) However, in deciding whether to consent to a variation, the commission must allow a declared fee to be passed on in full to consumers of the service.

(5) The commission may not consent to a variation of a direction with the effect of—

(a) varying, omitting or replacing the current reset principles for the regulated service, or any future reset principles included in the direction; or

(b) including any future reset principles into the price direction.

(6) The following sections apply to a consent report as if it were the final report into a price regulation investigation:

- section 21 (Final reports)
- section 23 (Confidential material in reports)
- section 24 (Presenting of reports to Legislative Assembly)

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- section 24B (Correction of errors in reports).

(7) When presented to the Legislative Assembly under section 24, a consent report has the effect of varying the provisions of the price direction as indicated in the report with effect from—

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

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

Division 4B.2 Nonconsent variations

24D Reference by referring authority

(1) The referring authority for a regulated service may provide a reference for part 3 (Investigations) requiring the commission to investigate whether a price direction in force for the service should be varied.

(2) The commission may accept the reference from the referring authority only if, in the opinion of the commission based on reasonable grounds, there has been a material change in the cost conditions for the provision of the regulated service.

24E Reference by utility

(1) A utility providing a regulated service may provide a reference for part 3 requiring the commission to investigate whether a price direction in force for the service should be varied.

(2) The commission may accept the reference from the utility only if, in the opinion of the commission based on reasonable grounds—

(a) there has been a material change in the cost conditions for the provision of the regulated service; and

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(b) the change was brought about by external events beyond the control of the utility.

(3) The external events mentioned in subsection (2) (b) include the following:

(a) a Ministerial direction under section 19 (Ministerial directions) of the *Utilities Act 2000*;

(b) the approval or determination of an industry code under the *Utilities Act 2000* or the approval of a technical code under the *Utilities (Technical Regulation) Act 2014*.

(4) Terms of reference for the variation—

(a) may be specified by the utility under section 16 (Terms of industry references); and

(b) are not a disallowable instrument.

24F Commission-initiated variation

(1) The commission may initiate a reference for part 3 (Investigations) for the investigation of whether a price direction in force for regulated services should be varied.

(2) The commission may only initiate a reference for the variation of a price direction if a price variation trigger stated in the price direction has happened.

(3) Terms of reference for the variation—

(a) may be specified by the commission under section 16 (Terms of industry references); and

(b) are not a disallowable instrument.

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24G Permissible nonconsent variations

(1) The commission may vary a price direction only if it is satisfied on reasonable grounds that the variation is—

(a) justified by the material change in cost conditions, or price variation trigger, that is the basis for the investigation, having regard to the criteria listed at section 20 (2); and

(b) in accordance with the current reset principles for the regulated service.

(2) The commission may not vary a price direction so as to—

(a) vary, omit or replace the current reset principles for the regulated service; or

(b) include any future reset principles into the price direction that will have the effect of varying, omitting or replacing the current reset principles for the regulated service in their application at a future date.

(3) Subject to subsections (1) and (2), the commission may vary a price direction to vary, omit or replace any future reset principles in the direction, or to include future reset principles into the direction.

24H Procedure for nonconsent price variation investigation

(1) The commission must conduct a price variation investigation in the same way as a price direction investigation.

(2) However, in deciding whether to vary a price direction under this division, the commission must allow a declared fee to be passed on in full to consumers of the service.

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24I Effect of nonconsent price variations

When presented to the Legislative Assembly under section 24 (Presenting of reports to Legislative Assembly), a report into a price variation investigation has the effect of varying the provisions of the price direction as indicated in the report (if at all) with effect from—

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

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

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Part 4C Review of price directions

24J Definitions—pt 4C

In this part:

eligible person, for a review of a price direction for regulated services, means any of the following people:

(a) the referring authority;

(b) a utility providing any of those services;

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

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

price direction includes a variation of a price direction.

24K Right of review

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

(2) An application must include—

(a) the grounds for review, and the evidence relied on to support each ground; and

(b) a statement setting out how, having regard to the commission's objective when making a price direction, a new price direction would be, or would be likely to be, materially better than the original price direction.

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

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(3) An application for review must be lodged with the commission within 3 months after the final report into the price direction investigation is presented to the Legislative Assembly under section 24 (Presenting of reports to Legislative Assembly).

(4) After lodgment of an application for review, the commission must—

(a) give all other eligible people a copy of the application, inviting them to lodge written notice with the commission within 14 days if they intend to appear as a party; and

(b) give public notice of the application.

Note ***Public notice*** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see Legislation Act, dict, pt 1).

24KA Grounds for review

An application for review of a price direction may only be made on 1 or more of the following grounds:

(a) the commission made an error of fact in its findings of facts that was material to the making of the price direction;

(b) the commission made more than 1 error of fact in its findings of facts and the errors, in combination, were material to the making of the price direction;

(c) the exercise of the commission's discretion in the making of the price direction was incorrect having regard to all the circumstances;

(d) the price direction made by the commission was unreasonable having regard to all the circumstances.

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24L Who are the parties to a review?

(1) The applicant and any eligible person who notifies the commission as invited under section 24K (4) are the parties to the review.

(2) A party to a review may be represented by another person.

24M Industry panel

(1) An application for review must be heard by a panel (an ***industry panel***) of 3 members.

(2) Provisions for the constitution of the panel and for the terms of office of the panel and panel members are set out in schedule 3.

24MA Application for review—preliminary assessment

(1) An industry panel appointed to hear an application for review of a price direction must make a preliminary assessment of the application.

(2) In making a preliminary assessment of the application, the industry panel must assess each ground for review.

(3) After making a preliminary assessment of each ground for review, the industry panel must decide to—

(a) accept the ground for review; or

(b) reject the ground for review.

(4) The industry panel must accept a ground for review only if the panel is satisfied that the ground for review—

(a) raises a serious issue to be decided; and

(b) provides a strong case for review, supported by sufficient evidence on the face of the application to justify the review.

(5) If the industry panel rejects all the grounds for review in an application, the panel must dismiss the application.

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(6) The industry panel may review an application under section 24N only if—

(a) the panel has accepted a ground, or grounds for review; and

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

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

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

24N Nature of review

(1) On application for review of a price direction (the ***original price direction***), an industry panel may—

(a) substitute a new price direction for the original price direction; or

(b) confirm the original price direction; or

(c) set aside the original price direction and remit the matter back to the commission to make a new price direction in accordance with any direction of the industry panel.

(2) An industry panel must make a decision on an application for review—

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

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

(c) as required by section 20A, section 20B and section 20C for price directions.

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(3) Despite subsection (2), the panel may not consider any matter on an application for review that was not raised on behalf of the applicant in submissions to the commission for the purposes of the investigation of the price direction that is the subject of the review.

(4) An industry panel review is not a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

24O Procedure for review

(1) In considering an application for review, an industry panel has the same powers as the commission in conducting a price regulation investigation.

(2) Without limiting subsection (1), the following provisions apply to the panel on the hearing of the application for review as if it were the commission conducting a price regulation investigation:

- section 17 (Procedure for industry reference investigations)
- section 18 (Draft reports—industry reference investigations)
- section 24X (Information to be given to commission following price direction review)
- part 7 (Information)
- part 8 (Cooperation with the commission).

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).

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24P Referral of matters to commission

(1) An industry panel may, in writing, refer any matter raised in the course of a review to the commission for an advisory opinion.

(2) The commission must consider any matter raised on a reference from the panel, and give the panel a report setting out its findings.

(3) The panel must take into account the commission's findings on the reference in making a decision on the review.

24Q Witnesses and evidence

(1) At the request of any party, an industry panel may exercise its powers under section 41 (Provision of information to commission) and section 49 (Attendance at hearing) (as applied by section 24O (Procedure for review)) to require the provision of information or a document, or to require a person to attend before the panel, for the purpose of hearing the application for review.

(2) The party must pay all the expenses of any person in complying with a requirement on a request under subsection (1).

24R Frivolous or vexatious applications

If an industry panel considers that an application for review is frivolous or vexatious, it may, at any stage during the hearing—

(a) by a written direction, dismiss the application; and

(b) at the request of any party, make a written declaration preventing any subsequent application for the review of any price direction by the applicant from being heard without leave of an industry panel established for the purpose of the later application.

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24S Implementation of price direction under review

(1) A price direction has effect despite any application for its review, unless the industry panel, on an application by a party, declares in writing that the implementation of the price direction is suspended or altered until—

(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

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

(2) The declaration of suspension or alteration is taken to be a variation of the price direction while the direction remains in force.

(3) The following sections apply to the declaration of suspension or alteration as if it were the final report of a price regulation investigation:

- section 21 (Final reports)
- section 23 (Confidential material in reports)
- section 24 (Presenting of reports to Legislative Assembly)
- section 24B (Correction of errors in reports).

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24T Effect of decision

(1) If, as a result of a review, an industry panel substitutes a new price direction for the original—

(a) each provision of the substituted direction comes into effect on—

(i) 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

(b) each provision of the substituted direction remains in effect until a day ascertained in accordance with the direction; and

(c) the date and period of effect of different provisions of the substituted direction may be different; and

(d) this Act applies as if the substituted price direction were a price direction made by the commission (subject to subsection (2))—

Example

The substituted price direction may be varied under part 4B (Variation of price directions).

(2) A substituted direction may not be reviewed under this part.

24U Functions of commission

(1) The commission must give an industry panel any assistance the panel requires, including the provision of all the information available to the commission in the original investigation.

(2) The following sections apply (with necessary changes) to the report of an industry panel's decision on an application for review as if it were a report by the commission into a price regulation investigation:

- section 21 (Final reports)
- section 23 (Confidential material in reports)

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- section 24 (Presenting of reports to Legislative Assembly)
- section 24B (Correction of errors in reports).

(3) The commission must take any action necessary to implement a decision of an industry panel.

24V Costs

(1) The reasonable costs of the review of a price direction, as assessed by the industry panel and notified to the applicant, are payable as follows:

(a) the costs of each party are payable by the party;

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

(2) The costs of the industry panel include any costs incurred by the panel in obtaining the assistance of the commission or any other person, body (whether incorporated or unincorporated) or government agency.

24W Protection from liability of panel members, parties and representatives

(1) A person who is or has been a member of an industry panel is not personally liable for anything done, or omitted to be done, honestly and without recklessness—

(a) in the exercise of a function under this Act; or

(b) in the reasonable belief that the act was in the exercise of a function under this Act.

(2) Any liability that would, apart from this section, attach to a person who is or has been a member of an industry panel attaches instead to the Territory.

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(3) A person who is or has been a party to an application or a representative of a party is not personally liable for anything done, or omitted to be done, honestly and without recklessness, as a party to an application or a representative of a party.

24X Information to be given to commission following price direction review

(1) This section applies if an industry panel has–

(a) finished a price direction review; and

(b) made a substituted price direction.

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

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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, must 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) must, 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 must notify the commission of that fact.

(2) A person that notifies the commission under subsection (1) must, 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 must 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 it was made;

(d) any other details prescribed by regulation.

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27 Investigations into access agreements

This part does not prevent 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 must 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 section 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 must maintain a register of agreements for this part.

(2) The commission must make the register available for inspection by any person during the office hours of the commission or the other hours that are prescribed by regulation.

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Part 6 Arbitration of access regime disputes

30 Definitions—pt 6

In this part:

access provider, in relation to an access regime for the provision of services, means the person that wholly or substantially owns, controls or operates the infrastructure facilities by means of which the services are provided.

third party, in relation to an access regime for the provision of services, 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—pt 6

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 2017*) applies to the arbitration.

32 Access disputes

(1) If a dispute exists in relation 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 in relation 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

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(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 people to act as arbitrators to hear and determine disputes referred to arbitration under this part.

(3) 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.

(4) For a dispute involving a third party wanting, but not having, access to a service, the arbitrator must give public notice of the dispute inviting public submissions to the arbitrator about the dispute, and specifying when and how submissions may be made.

Note ***Public notice*** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see Legislation Act, dict, pt 1).

(5) In the arbitration of a dispute referred under this part, or in the variation of an existing determination, the arbitrator must consider the following matters:

(a) the matters set out in the competition principles agreement, clause 6 (4) (i), (j) and (l), in the form in which those matters are set out in schedule 4;

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(b) any guidelines for the access regime determined following an investigation;

(c) if subsection (4) 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.

(6) Part 7 and part 8 apply in relation to an arbitration as if references in those parts to the commission were references to the arbitrator.

(7) However, an arbitration is not a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

(8) If the competition principles, clause 6 (4) (i), (j) or (l) is varied, a regulation may amend schedule 4 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 must issue a draft determination to each party.

35 Arbitration determinations

(1) An arbitrator must decide 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 like the following:

(a) a requirement of the access provider to give access to specified services to the third party;

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(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 must not require the access provider to bear any of the costs of extending infrastructure facilities or of maintaining those 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 must 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 must 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.

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38 Termination of arbitration by arbitrator

An arbitrator may, without making a determination, terminate the arbitration at any time if the arbitrator considers 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 honestly;

(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 must 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 2017* applies in relation to an arbitration, subject to this part.

(2) Despite the *Commercial Arbitration Act 2017*, section 24A, a party to a dispute may be represented by a lawyer in a proceeding before the arbitrator only by leave given by the arbitrator.

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(3) An arbitrator must only give leave under subsection (2) if, in the arbitrator's 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.

(5) 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.

(6) For the *Commercial Arbitration Act 2017*, section 33B (1), without limiting the fees and expenses of the arbitrator mentioned in that subsection, the arbitrator's 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;

(b) costs incurred in engaging consultants and expert witnesses;

(c) witnesses' expenses.

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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 exercising its functions, it may, by written notice, require the person to give it the information or a copy of the document.

(2) A requirement must—

(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) The commission may also require a NERL retailer required to comply with the *Utilities Act 2000*—

(a) to conduct an audit, in a way approved by the commission, of the NERL retailer's compliance with that Act; and

(b) to report the results of the audit to the commission.

Note A reference to an Act includes a reference to a provision of an Act (see Legislation Act, s 7 (3)).

(4) A person must not, without reasonable excuse, fail to comply with a requirement under this section.

Maximum penalty (subsection (4)): 100 penalty units, imprisonment for 1 year or both.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

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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 must 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 exercise 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.

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44 Confidential information—disclosure by commissioners and staff

(1) A person must 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 must 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 themself 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 exercise of a function in relation to this Act or any other law of the Territory permitting the 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 a legal proceeding at the direction of a court; or

(d) the information is in the public domain at the time that it is disclosed.

(4) To remove any doubt, subsection (3) does not override any rights another person may have with regard to the disclosure or use of the information.

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45 Confidential information—notice of proposed disclosure

(1) If the commission proposes to disclose confidential information under section 46, it must 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) must contain—

(a) particulars of the proposed disclosure, including details of the person or people to whom the confidential information is to be disclosed; and

(b) particulars of the facts and circumstances relied on by the commission to justify the disclosure; and

(c) a copy of the disclosure guidelines under section 46; and

(d) a statement to the effect that the affected person may, within 28 days after the day 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) anyone who provided the confidential information to the supplier, if the commission is aware of the identity and address of that person.

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46 Confidential information—general disclosure

(1) Subject to section 47, the commission must 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

(b) it gives a notice to show cause in relation to the information or document under section 45; and

(c) 28 days have elapsed since the notice was given.

(2) In making a decision under subsection (1), the commission must take into account any representation made in accordance with the invitation in the notice under section 45.

(3) For this section, the disclosure of anything that is in the public domain at the time the commission proposes to disclose it is not taken to cause detriment to any person mentioned in subsection (1) (a).

(4) The commission may determine disclosure guidelines for subsection (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.

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47 Confidential information—disclosure within the commission

(1) The commission may disclose confidential information to any of the following people 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 mentioned 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 mentioned 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

This Act does not entitle the commission—

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

(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.

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Part 8 Cooperation with commission

49 Requirement to attend hearing and answer questions

For the exercise of its functions the commission—

(a) may, by written notice given to a person, require the person to attend a hearing of the commission to give evidence; and

(b) may require a person appearing before the commission to give evidence to answer a question relevant to the hearing.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

50 Application of Criminal Code, ch 7

A hearing before the commission is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

Note That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to commission hearings.

50A Witnesses etc protected from civil liability

A person does not incur civil liability for a statement made, or a document or information given, honestly and without recklessness to the commission.

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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 of pt 9

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 relation to a person, it must 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) must contain—

(a) particulars of the proposed order; and

(b) particulars of the facts and circumstances relied on by the commission to justify the order; and

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(c) a statement to the effect that the person may, within 28 days after the day 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 relation to a person, the commission must take into account any representation made by the person in accordance with the invitation in the notice under subsection (2).

(5) An order served under subsection (1) is a notifiable instrument.

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

Maximum penalty: 200 penalty units.

(7) If a person is convicted of an offence against subsection (6) in relation to the contravention of an order, the person commits, in relation to each day after the service of the order during any part of which that contravention continued, 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 relation to an order served under section 53 (1).

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Part 9A Enforcement of civil penalty provisions

Division 9A.1 Preliminary

54A Definitions—pt 9A

In this part:

conduct means an act or a failure to act.

corresponding offence, in relation to a contravention of a civil penalty provision, means an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

court means the Supreme Court.

54B Part does not limit other powers of court

Nothing in this part is to be interpreted as limiting any other power of the court.

Division 9A.2 Enforceable undertakings

54C Enforceable undertakings

(1) The commission may accept a written undertaking given by a person for this division in relation to the person's compliance with a civil penalty provision.

(2) The person may withdraw or amend the undertaking at any time, but only with the commission's consent.

54D Application for enforcement of undertakings

(1) If the commission considers that a person has contravened an undertaking given by the person under section 54C, it may apply to the court for an order under subsection (2).

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(2) If the court is satisfied the person has contravened the undertaking, the court may make 1 or more of the following orders:

(a) an order that the person comply with the undertaking;

(b) an order that the person pay the Territory an amount up to the amount of any financial benefit the person has obtained directly or indirectly and that is reasonably attributable to the contravention;

(c) an order the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the contravention;

(d) any other order the court considers appropriate.

(3) An amount ordered to be paid under subsection (2) (b) is a debt payable to the Territory.

Note An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see Legislation Act, s 177).

Division 9A.3 Civil penalty notices

54E Service of civil penalty notice

(1) If the commission believes on reasonable grounds that a person has contravened a civil penalty provision, it may serve the person with a notice to pay a penalty for the contravention (a ***civil penalty notice***).

(2) The commission must serve the notice within 12 months after the day it forms the belief that the person has contravened the civil penalty provision.

54F Contents of civil penalty notice

A civil penalty notice must state the following:

(a) the date it is served;

(b) the name and address of the person served with the notice;

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(c) that the person is alleged to have engaged in conduct that constitutes a contravention of a stated civil penalty provision;

(d) a brief description of the alleged contravention, including when and where it is alleged to have occurred;

(e) the amount payable under the notice for the alleged contravention;

(f) how the person may pay the amount;

(g) the time for payment of the amount (being within 28 days or a stated longer period);

(h) that if the person pays the amount within the time for payment, unless the notice is withdrawn under section 54J—

(i) the commission will not start an enforcement order proceeding against the person in relation to the alleged contravention; and

(ii) the person will not be prosecuted for a corresponding offence;

(i) that if the person fails to pay the amount within the time for payment, or the notice is withdrawn under section 54J—

(i) the commission may start an enforcement order proceeding against the person in relation to the alleged contravention; or

(ii) the person may be prosecuted for a corresponding offence;

(j) anything else prescribed by regulation.

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54G Amount payable under civil penalty notice

(1) The amount payable under a civil penalty notice for an alleged contravention of a tier 1 civil penalty provision or tier 2 civil penalty provision is—

(a) for an individual—$15 000 or a lesser amount prescribed by regulation; and

(b) for a corporation—$75 000 or a lesser amount prescribed by regulation.

(2) The amount payable under a civil penalty notice for an alleged contravention of a tier 3 civil penalty provision is—

(a) for an individual—$7 510 or a lesser amount prescribed by regulation; and

(b) for a corporation—$37 500 or a lesser amount prescribed by regulation.

(3) However, the commission may decide that the amount payable under a civil penalty notice for an alleged contravention of a tier 3 civil penalty provision for a corporation is the amount mentioned in subsection (2) (a) if—

(a) the corporation is not a listed corporation, or is subject to the payment only because it is a related corporation; and

(b) the commission considers the lesser amount is appropriate after taking into account the following:

(i) the nature of the alleged contravention;

(ii) the degree of financial impact on the corporation if the higher amount were to apply;

(iii) the extent to which the higher amount appears excessive in the circumstances;

(iv) any other matter the commission considers relevant.

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(4) In this section:

***listed corporation*—**see the Corporations Act, section 9.

tier 1 civil penalty provision means a civil penalty provision to which a tier 1 civil penalty applies under schedule 5.

tier 2 civil penalty provision means a civil penalty provision to which a tier 2 civil penalty applies under schedule 5.

tier 3 civil penalty provision means a civil penalty provision to which a tier 3 civil penalty applies under schedule 5.

54H Time for payment of amount

(1) A person served with a civil penalty notice must pay the amount payable under the notice within—

(a) 28 days after the day the notice is served; or

(b) a longer period stated in the notice.

(2) The commission may accept payment of the amount after the time for payment stated in the notice if—

(a) the commission has not started an enforcement order proceeding against the person in relation to the alleged contravention; and

(b) the person has not been prosecuted for a corresponding offence; and

(c) the notice has not been withdrawn under section 54J.

54I Effect of payment of amount

(1) If a person served with a civil penalty notice pays the amount payable under the notice in accordance with the notice—

(a) any liability of the person for the alleged contravention is discharged; and

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(b) the person must not be prosecuted for a corresponding offence; and

(c) the person is not taken to have been convicted of a corresponding offence; and

(d) the commission must not start an enforcement order proceeding against the person in relation to the alleged contravention; and

(e) the person is not taken to have admitted guilt or liability for the alleged contravention.

(2) Subsection (1) does not apply if the notice is withdrawn under section 54J.

54J Withdrawal of civil penalty notice

(1) The commission may withdraw a civil penalty notice by serving a notice (a ***withdrawal notice***) on the person served with the civil penalty notice—

(a) if the time for payment stated in the civil penalty notice has not ended; and

(b) whether or not the amount payable under the civil penalty notice has been paid.

(2) If the commission serves a withdrawal notice, it must refund any amount paid under the civil penalty notice.

54K Conduct contravening multiple civil penalty provisions

(1) If a person is alleged to have engaged in conduct constituting a contravention of 2 or more civil penalty provisions, the commission may serve the person with a civil penalty notice in relation to the contravention of 1 or more of those provisions.

(2) However, the person is not liable to pay more than 1 amount for contraventions in relation to the same conduct.

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54L Effect of civil penalty notice on enforcement order proceeding

The commission must not start an enforcement order proceeding against a person in relation to an alleged contravention of a civil penalty provision if—

(a) it has served a person with a civil penalty notice in relation to the alleged contravention; and

(b) the time for payment stated in the notice has not ended; and

(c) the notice has not been withdrawn under section 54J.

Division 9A.4 Enforcement orders

54M Application for enforcement order

(1) The commission may apply to the court for an order under subsection (3) (an ***enforcement order***) in relation to an alleged contravention of a civil penalty provision by a person.

(2) The commission must make the application within 6 years of the alleged contravention.

(3) If the court is satisfied the person has contravened the civil penalty provision, it may make 1 or more of the following orders:

(a) an order that the person pay the Territory a civil penalty for the contravention decided in accordance with section 54N;

(b) an order that the person stop engaging in the conduct constituting the contravention within a stated period;

(c) an order that the person take stated action to remedy the contravention or prevent the contravention from recurring;

(d) an order that the person implement a stated program for compliance with civil penalty provisions;

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(e) an order that the person perform a stated service relating to the contravention for the benefit of the community or a part of the community;

(f) an order that the person engage a person or kind of person to perform a service mentioned in paragraph (e);

(g) an order to ensure that the person does not engage in conduct constituting the contravention, or similar or related conduct, for up to 3 years, including—

(i) an order that the person set up a compliance or education and training program for employees or other people involved in the person's business, that is designed to ensure their awareness of the responsibilities and obligations in relation to the conduct; or

(ii) an order that the person revise the internal operations of their business that led to the contravention;

(h) an order that the person—

(i) disclose stated information to which the person has access in a stated way to stated people; and

(ii) publish an advertisement in a stated way and in terms stated in, or determined in accordance with, the order;

(i) an order prescribed by regulation.

(4) A civil penalty payable under subsection (3) (a) is a debt payable to the Territory.

Note An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see Legislation Act, s 177).

(5) An order under subsection (3) (f) is not enforceable against the person engaged to perform the service.

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54N Deciding civil penalty for enforcement order

(1) The maximum civil penalty payable for a contravention of a civil penalty provision is the penalty mentioned in schedule 5, section 5.3, column 3 for the provision.

(2) Without limiting the matters the court may consider, in deciding the amount of the civil penalty for an enforcement order, the court must consider the following:

(a) the nature and extent of the contravention;

(b) the circumstances in which the contravention took place;

(c) any loss or damage suffered because of the contravention;

(d) any benefit the person and, for a corporation, a related corporation, has obtained directly or indirectly that is reasonably attributable to the contravention;

(e) whether the person has previously engaged in conduct similar to the conduct constituting the contravention.

54O Enforcement order proceeding is civil proceeding

An enforcement order proceeding is a civil proceeding for all purposes.

54P Proceedings may be heard together

The court may direct that 2 or more enforcement order proceedings be heard together.

54Q Civil proceeding after criminal proceeding

The court must not make an enforcement order against a person for a contravention of a civil penalty provision if the person has been convicted of a corresponding offence.

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54R Criminal proceeding during civil proceeding

(1) An enforcement order proceeding is stayed if—

(a) a criminal proceeding is started or has already been started against a person alleged to have contravened a civil penalty provision; and

(b) the criminal proceeding is for a corresponding offence.

(2) If the person—

(a) is not convicted of the offence—the enforcement order proceeding may be resumed; or

(b) is convicted of the offence—the enforcement order proceeding is dismissed and costs must not be awarded in relation to the proceeding.

54S Criminal proceeding after civil proceeding

A criminal proceeding may be started against a person for a corresponding offence whether or not an enforcement order has been made against the person for a related contravention of a civil penalty provision.

54T Evidence given in civil proceeding not admissible in criminal proceeding

(1) This section applies to information given and documents produced by an individual in an enforcement order proceeding (whether or not an enforcement order was made).

(2) The information and documents are not admissible in evidence in a criminal proceeding against the individual for a corresponding offence.

(3) However, subsection (2) does not apply to a criminal proceeding in relation to the falsity of the evidence given by the individual in the enforcement order proceeding.

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54U Conduct contravening multiple civil penalty provisions

(1) If a person contravenes 2 or more civil penalty provisions, an enforcement order proceeding against the person may be started in relation to the contravention of 1 or more of those provisions.

(2) However, the person is not liable to more than 1 civil penalty in relation to the same conduct.

54V Multiple contraventions

(1) The court may order that a person pay a single civil penalty for multiple contraventions of a civil penalty provision if the contraventions—

(a) are based on the same facts; or

(b) form, or are part of, a series of contraventions of the same or a similar kind.

(2) However, the single civil penalty must not exceed the sum of the maximum penalties that the court may have ordered if separate civil penalties were ordered for each of the contraventions.

Division 9A.5 Injunctions

54W Application for injunction

(1) If a person has engaged, is engaging or is proposing to engage, in conduct constituting a contravention of a civil penalty provision, the court may, on application by the commission, grant an injunction—

(a) restraining the person from engaging in the conduct; and

(b) if, in the court's opinion, it is desirable to do so—requiring the person to do a thing.

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(2) The court's power to grant an injunction restraining a person from engaging in conduct may be exercised—

(a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; and

(b) whether or not the person has previously engaged in conduct of that kind; and

(c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.

54X Discharging or varying injunctions

The court may discharge or vary an injunction granted under section 54W.

Division 9A.6 Other provisions about liability

54Y Meaning of *evidential burden*—div 9A.6

In this division:

evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

54Z Ancillary contraventions

(1) A person must not—

(a) attempt to contravene a civil penalty provision; or

(b) aid, abet, counsel or procure a contravention of a civil penalty provision; or

(c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision.

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(2) A person who contravenes subsection (1) in relation to a civil penalty provision is taken to have contravened the civil penalty provision.

54ZA State of mind

(1) It is not necessary to prove a person's state of mind in a proceeding against the person under this part.

(2) Subsection (1) does not apply—

(a) to the extent that the proceeding relates to a contravention of section 54Z (1) (Ancillary contraventions); and

(b) to the extent that the civil penalty provision, or a provision that relates to the civil penalty provision, expressly provides otherwise.

(3) In this section:

state of mind, of a person, includes the person's intention, knowledge, recklessness or negligence.

54ZB Mistake of fact

(1) A person is not liable for a contravention of a civil penalty provision if—

(a) when engaging in the conduct constituting the contravention, the person considered whether or not facts existed, and was under a mistaken but reasonable belief about the facts; and

(b) had the facts existed, the conduct would not have constituted a contravention.

(2) A person may be taken to have considered whether or not facts existed when engaging in conduct if the person—

(a) had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and

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(b) honestly and reasonably believed that the circumstances surrounding the present occasion were substantially the same as those surrounding the previous occasion.

(3) The person has an evidential burden in relation to the matters mentioned in subsection (1) and (2).

54ZC Burden of proof for exceptions etc

A person wishing to rely on any exception, exemption, excuse, qualification or justification provided by the law creating a civil penalty provision has an evidential burden in relation to the matter.

54ZD Extended liability of corporations

Conduct is taken to be engaged in by a corporation if it is engaged in by an employee, agent or officer of the corporation acting within—

(a) the actual or apparent scope of their employment; or

(b) their actual or apparent authority.

54ZE Limited liability of individuals

An individual is not liable under this part for a contravention of a civil penalty provision if the contravention has a corresponding offence.

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Part 10 Miscellaneous

54ZF Exercise of enforcement functions under Utilities Act 2000

(1) An ICRC inspector may exercise their functions under the *Utilities Act 2000*, chapter 10 (Enforcement) for the purpose of investigating, monitoring and enforcing compliance with a civil penalty provision.

(2) For subsection (1)—

(a) a reference in that chapter to an offence against that Act is taken to be a reference to a contravention of a civil penalty provision; and

(b) a reference in that chapter to a prosecution for an offence is taken to be a reference to an enforcement order proceeding in relation to a contravention of a civil penalty provision.

(3) In this section:

ICRC inspector—see the *Utilities Act 2000*, dictionary.

55 Acts and omissions of representatives

(1) In this section:

person means an individual.

Note See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

representative, of a person, means an employee or agent of the person.

state of mind, of a person, includes—

(a) the person's knowledge, intention, opinion, belief or purpose; and

(b) the person's reasons for the intention, opinion, belief or purpose.

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(2) This section applies to a prosecution for any offence against this Act.

(3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—

(a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and

(b) the representative had the state of mind.

(4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.

(5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.

(6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

56 Service of documents

A document may be served on the commission by leaving it at, or by sending it by post, 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 Approved forms

(1) The commission may approve forms for this Act.

(2) If the commission approves a form for a particular purpose, the form must be used for that purpose.

(3) An approved form is a notifiable instrument.

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58 Regulation-making power

The Executive may make regulations for this Act.

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Schedule 1 Competition principles agreement extracts

(see s 19C, s 19D and s 19J)

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.

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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.

(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 intergovernmental 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.

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(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 subclause (4) (b), and reflect full cost attribution for these activities.

(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) Subclause (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

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(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.

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Schedule 2 Commission appointments and working arrangements

(see s 6 (2))

2.1 Standing commissioners

(1) The Executive must appoint 1 or more standing commissioners.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act s 207).

(2) A standing commissioner holds office (subject to this Act) for a term not longer than 5 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def ***appoint***).

2.1AA Arrangements if more than 1 standing commissioner

(1) This section applies if the commission is constituted by more than 1 standing commissioner.

(2) The Executive must appoint 1 standing commissioner as senior commissioner.

(3) If the senior commissioner ceases to hold office or is suspended from office (under section 2.4 or section 2.5), the Minister must (by instrument) nominate another standing commissioner as senior commissioner.

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

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2.1A 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 the associate commissioner is appointed.

2.1B 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.

2.1C 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.

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2.1E 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 the senior commissioner 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 section 2.2), ceases to hold office (under section 2.4 or section 2.5), or is suspended from office (under section 2.5), the senior commissioner may—

(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

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(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 subclause.

2.1F 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 section 2.1E (2) (b)—by the commissioner or commissioners who constitute the commission for those purposes.

2.1G Decision-making

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 section 2.1E (1) and (3)).

2.2 Disclosure of interests

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

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(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 exercise of the function; or

(b) direct the commissioner to cease exercising the function.

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

2.3 Remuneration and allowances

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

(a) that are determined by the remuneration tribunal in relation to the commissioner; or

(b) if there is no such determination—that are determined by the Chief Minister in relation to the commissioner by an interim determination under the *Remuneration Tribunal Act 1995*.

2.4 Resignation

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

2.5 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 must include a full statement of the grounds for suspension.

(3) A notice of suspension must be presented to the Legislative Assembly within 7 sitting days after it is given to the commissioner.

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(4) The Executive must remove the commissioner from office if, within 15 sitting days after the notice of suspension was presented to the Legislative Assembly, the Assembly by resolution declares that the commissioner ought to be removed from office.

(5) The commissioner must resume office if, after 15 sitting days have elapsed since the notice of suspension was presented to 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 the commissioner becomes bankrupt or personally insolvent.

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Schedule 3 Industry panels constitution and procedure

(see s 24M)

3.1 Appointment of members of industry panels

(1) The referring authority must appoint an industry panel of 3 members (1 of whom is declared in the appointment as the president) to hear an application for the review of a price direction.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act s 207).

Note 3 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

Note 4 A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def of ***appoint***).

(2) The following are not eligible to be members of an industry panel established for the review of a price direction:

(a) a commissioner;

(b) a member of the staff of the commission;

(c) a party to the review.

(3) A member holds office (subject to this Act) until the conclusion of the review for which the member is appointed.

(4) A member is otherwise appointed on terms, not inconsistent with this Act, determined by the referring authority.

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3.2 Qualifications

A member of an industry panel must have knowledge or experience in 1 of the following fields:

(a) commerce;

(b) economics;

(c) industry;

(d) law;

(e) public administration.

3.4 Remuneration and allowances

A member of a panel is entitled to the remuneration, allowances and other entitlements—

(a) that are determined by the remuneration tribunal in relation to the member; or

(b) if there is no such determination—that are determined by the Chief Minister in relation to the member by an interim determination under the *Remuneration Tribunal Act 1995*.

3.5 Presiding member

(1) The president presides over the hearing of an application.

(2) If the president resigns or is removed from office, the referring authority must declare another member to be the presiding member.

(3) A declaration must be in writing.

(4) A copy of a declaration must be given to the other members of the panel and the parties to the review.

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3.6 Decision-making

The panel's decision on a review must be reached as follows:

(a) if all, or a majority, of the panel are of a particular opinion—the decision is to be made according to that opinion;

(b) if no 2 members agree—in accordance with the opinion of the president or, if the president has resigned or been removed from office, the presiding member.

3.7 Disclosure of interests

(1) Before a panel begins to hear an application for review, the members of the panel must give written notice to the referring authority of any direct or indirect pecuniary interests that they have in relation to the review.

(2) On receiving notice of the interests of a member of a panel, the referring authority may—

(a) give written notice of the interests to the other members and to the parties to the review; or

(b) by written notice to the member, remove the member from office.

(3) The referring authority must give a copy of a notice of the removal of a member from office to the other members and to the parties to the review.

(4) If a member of a panel is removed from office—

(a) the review may proceed under the remaining members, if the parties agree; or

(b) failing agreement—the referring authority must dissolve the panel and constitute a new panel (under this schedule) with the remaining members and a new member.

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3.8 Resignation

(1) A member of a panel may resign from office by written notice to the referring authority.

(2) A member of a panel must give written notice of absence to the referring authority if the member becomes unavailable to consider the application at any stage of the review.

(3) After a notice of absence is given, the member must resign from the panel if so directed in writing by the referring authority.

(4) If a member of the panel resigns—

(a) the review may proceed under the remaining members, if the parties agree; or

(b) failing agreement, the referring authority must dissolve the panel and constitute a new panel (under this schedule) with the remaining members and a new member.

3.9 Removal from office

(1) The Executive may, by written notice to a member of a panel, suspend the member from office for mental or physical incapacity or incompetence.

(2) A notice of suspension must include a full statement of the grounds for suspension.

(3) The notice of suspension must be presented to the Legislative Assembly within 7 sitting days after it is given to the member.

(4) The Executive must remove the member from office if, within 15 sitting days after the notice of suspension was presented to the Legislative Assembly, the Assembly by resolution declares that the member ought to be removed from office.

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

(6) A member of a panel ceases to hold office if the member becomes bankrupt or personally insolvent.

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Schedule 4 Arbitration guidelines—competition principles agreement, cl 6 (4) (i), (j) and (l)

(see s 33 (5) (a))

4.1 Terms and conditions for access—competition principles agreement, cl 6 (4) (i)

The arbitrator must 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 people holding contracts for use of the infrastructure facilities;

(e) the firm and binding contractual obligations of the access provider and any other people 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.

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4.2 Extension of infrastructure—competition principles agreement, cl 6 (4) (j)

The arbitrator must 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;

(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.

4.3 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) must 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.

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Schedule 5 Civil penalty provisions

(see s 54N (1) and dict, def ***civil penalty provision***)

5.1 Definitions—sch 5

In this schedule:

adjusted turnover—see the *Competition and Consumer Act 2010* (Cwlth), section 4.

Consumer Protection Code means the Consumer Protection Code determined by the *Utilities (Consumer Protection Code) Determination 2020*.

Electricity Feed-in Code means the Electricity Feed-in Code determined by the *Utilities (Electricity Feed-in Code) Determination 2020*.

tier 1 civil penalty—see section 5.2.

tier 2 civil penalty—see section 5.2.

tier 3 civil penalty—see section 5.2.

Transparency and Comparability Code means the ACT Retail Electricity (Transparency and Comparability) Code determined by the *Utilities (ACT Retail Electricity – Transparency and Comparability Code) Determination 2021*.

5.2 Meaning of *tier 1 civil penalty*, *tier 2 civil penalty* and *tier 3 civil penalty*—sch 5

(1) In this schedule:

tier 1 civil penalty means—

(a) for an individual—$553 000; and

(b) for a corporation—the greater of the following:

(i) $11 060 000;

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(ii) if the court can determine the value of the benefit the corporation, and any related corporation, has obtained directly or indirectly and that is reasonably attributable to the contravention—3 times the value of the benefit;

(iii) if the court cannot determine the value of the benefit—10% of the corporation's adjusted turnover during the 12 months ending at the end of the month the contravention occurred.

tier 2 civil penalty means—

(a) for an individual—$317 400 plus $15 900 for each day (after the first day) the contravention continues; and

(b) for a corporation—$1 587 100 plus $79 400 for each day (after the first day) the contravention continues.

tier 3 civil penalty means—

(a) for an individual—$37 500 plus $3 750 for each day (after the first day) the contravention continues; and

(b) for a corporation—$188 000 plus $18 000 for each day (after the first day) the contravention continues.

(2) However, subsection (1), definition of ***tier 1 civil penalty***, paragraph (b) (ii) and (iii) apply in relation to an enforcement order only if the commission requests that the provisions apply in the application for the order.

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5.3 Civil penalty provisions

column 1 item	column 2 provision	column 3 maximum penalty
1	Consumer Protection Code, cl 4.1 (Reporting to the ICRC)	tier 1 civil penalty
2	Consumer Protection Code, cl 5 (2) and (3) (Conduct of utilities)	tier 2 civil penalty
3	Consumer Protection Code, cl 5 (5) (Conduct of utilities)	tier 3 civil penalty
4	Consumer Protection Code, cl 6.1 (Complaints and dispute resolution procedures)	tier 2 civil penalty
5	Consumer Protection Code, cl 6.2 (Practices and procedures to comply with Australian Standards)	tier 2 civil penalty
6	Consumer Protection Code, cl 6.3 (Addressing complaints)	tier 2 civil penalty
7	Consumer Protection Code, cl 6.4 (Utility to keep records)	tier 2 civil penalty
8	Consumer Protection Code, cl 7.1 (Utility to provide information)	tier 3 civil penalty
9	Consumer Protection Code, cl 7.2 (Utility may recover costs of providing information)	tier 2 civil penalty
10	Consumer Protection Code, cl 7.3 (Disclosure of customer or consumer information by a utility to a third party)	tier 2 civil penalty
11	Consumer Protection Code, cl 8.1 (Requirements for effective notice to customer or consumer)	tier 2 civil penalty
12	Consumer Protection Code, cl 9.1 (Utility to publish summary)	tier 2 civil penalty
13	Consumer Protection Code, cl 10.1 (Registration of life support equipment)	tier 1 civil penalty

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column 1 item	column 2 provision	column 3 maximum penalty
14	Consumer Protection Code, cl 10.2 (Disconnection and interruption to services)	tier 1 civil penalty
15	Consumer Protection Code, cl 11.1 (Compliance by utilities with guaranteed service levels)	tier 3 civil penalty
16	Consumer Protection Code, cl 11.2 (Utility to pay rebate for non-compliance)	tier 3 civil penalty
17	Consumer Protection Code, cl 11.3 (Method of payment of rebate)	tier 3 civil penalty
18	Consumer Protection Code, cl 11.5 (Information to be provided to customers)	tier 2 civil penalty
19	Consumer Protection Code, cl 12.1 (Information about charges)	tier 2 civil penalty
20	Consumer Protection Code, cl 12.2 (Variation of charges)	tier 2 civil penalty
21	Consumer Protection Code, cl 13.1 (Utility may issue bills)	tier 2 civil penalty
22	Consumer Protection Code, cl 13.3 (Maximum intervals between bills)	tier 2 civil penalty
23	Consumer Protection Code, cl 13.6 (Historical billing information)	tier 3 civil penalty
24	Consumer Protection Code, cl 13.7 (1) (Payment of bills)	tier 2 civil penalty
25	Consumer Protection Code, cl 13.7 (2) (Payment of bills)	tier 3 civil penalty
26	Consumer Protection Code, cl 13.8 (Review of bills)	tier 2 civil penalty
27	Consumer Protection Code, cl 13.9 (Overcharging)	tier 2 civil penalty
28	Consumer Protection Code, cl 13.10 (Undercharging)	tier 2 civil penalty

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column 1 item	column 2 provision	column 3 maximum penalty
29	Consumer Protection Code, cl 13.12 (How payments to be applied)	tier 2 civil penalty
30	Consumer Protection Code, cl 13.13 (Territory Government-sponsored rebates)	tier 2 civil penalty
31	Consumer Protection Code, cl 13.14 (Payment difficulties)	tier 1 civil penalty
32	Consumer Protection Code, cl 14.2 (Hardship policy requirement)	tier 1 civil penalty
33	Consumer Protection Code, cl 15.1 (Interest charges)	tier 2 civil penalty
34	Consumer Protection Code, cl 16 (1) (New customer contract information)	tier 2 civil penalty
35	Consumer Protection Code, cl 17.1 (Obligations under the Utilities Act)	tier 2 civil penalty
36	Consumer Protection Code, cl 17.2 (Provisions to be contained in standard customer contracts)	tier 2 civil penalty
37	Consumer Protection Code, cl 19.1 (Utility to make contract available to customers)	tier 2 civil penalty
38	Consumer Protection Code, cl 19.3 (Changes to standard customer contracts)	tier 2 civil penalty
39	Consumer Protection Code, cl 20.1 (When a utility must not disconnect or restrict utility services)	tier 1 civil penalty
40	Consumer Protection Code, cl 20.2 (When a utility must disconnect premises from a utility network)	tier 1 civil penalty
41	Consumer Protection Code, cl 20.3 (When a utility may disconnect or restrict supply)	tier 1 civil penalty
42	Consumer Protection Code, cl 20.4 (Restriction of utility services to residential premises for failure to pay a bill)	tier 1 civil penalty
43	Consumer Protection Code, cl 20.5 (Restrictions on water restrictions to residential premises)	tier 2 civil penalty

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column 1 item	column 2 provision	column 3 maximum penalty
44	Consumer Protection Code, cl 20.6 (Content and format of notices)	tier 3 civil penalty
45	Consumer Protection Code, cl 21 (Disconnections and restrictions in emergencies and under restriction schemes)	tier 1 civil penalty
46	Consumer Protection Code, cl 22.1 (When a utility may interrupt supply of a utility service)	tier 1 civil penalty
47	Consumer Protection Code, cl 22.2 (Planned interruptions to the supply of utility services)	tier 1 civil penalty
48	Consumer Protection Code, cl 22.3 (Unplanned interruptions to the supply of a utility service)	tier 1 civil penalty
49	Consumer Protection Code, cl 23.1 (When a security deposit may be required)	tier 2 civil penalty
50	Consumer Protection Code, cl 23.2 (Maximum amount of security deposit)	tier 2 civil penalty
51	Consumer Protection Code, cl 23.3 (Interest on security deposits)	tier 2 civil penalty
52	Consumer Protection Code, cl 23.4 (Repayment of security deposits)	tier 2 civil penalty
53	Consumer Protection Code, cl 23.5 (Purposes for which security deposits must not be used)	tier 2 civil penalty
54	Electricity Feed-in Code, cl 4.1 (Distributor to detail arrangements to NERL retailer)	tier 3 civil penalty
55	Electricity Feed-in Code, cl 4.2 (Distributor to alert NERL retailer and occupier of start dates)	tier 3 civil penalty
56	Transparency and Comparability Code, cl 2.3 (Communication must compare prices to the reference price)	tier 3 civil penalty
57	Transparency and Comparability Code, cl 2.5 (Advertising conditional discounts)	tier 3 civil penalty

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column 1 item	column 2 provision	column 3 maximum penalty
58	Transparency and Comparability Code, cl 2.6 (Records of compliance)	tier 3 civil penalty
59	Transparency and Comparability Code, cl 4.3 (Minimum standards for clear advice)	tier 3 civil penalty
60	Transparency and Comparability Code, cl 4.4 (Records of compliance)	tier 3 civil penalty
61	*Utilities Act 2000*, s 21 (1) (Requirement for licence)	tier 1 civil penalty
62	*Utilities Act 2000*, s 47 (1) (Contravention of licence condition)	tier 1 civil penalty
63	*Utilities Act 2000*, s 75H (1) (Offence—contravention of code, s 75E or s 75GA)	tier 1 civil penalty
64	*Utilities Act 2000*, s 75K (Offence—contravention of s 75F)	tier 3 civil penalty
65	*Utilities Act 2000*, s 100 (1) and (3) (Passing on the cost of water)	tier 3 civil penalty

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Dictionary

(see s 2)

Note The Legislation Act contains definitions relevant to this Act. For example:

- Act
- bankrupt or personally insolvent
- corporation
- director-general (see s 163)
- exercise
- fail
- function
- may (see s 146)
- must (see s 146)
- National Electricity (ACT) Law
- National Electricity (ACT) Regulation
- National Energy Retail Law (ACT)
- National Energy Retail Regulation (ACT)
- National Gas (ACT) Law
- National Gas (ACT) Regulation
- person (see s 160)
- subordinate law (see s 8)
- territory authority
- the Territory.

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 provider, for part 6 (Arbitration of access regime disputes)—see section 30.

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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 relation to third-party access to services provided by means of infrastructure facilities wholly or partly located within the ACT that are wholly or substantially owned, controlled or operated by a single person, being services—

(a) including the use of an infrastructure facility (for example, a road or railway), the handling or transporting of things (for example, 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.

adjusted turnover, for schedule 5 (Civil penalty provisions)—see schedule 5, section 5.1.

associate commissioner means a commissioner appointed under schedule 2, section 2.1A.

chief executive officer means the Chief Executive Officer of the commission.

civil penalty notice—see section 54E (1).

civil penalty provision means a provision mentioned in schedule 5, section 5.3, column 2.

commission means the Independent Competition and Regulatory Commission for the Australian Capital Territory.

commissioner means a commissioner constituting the commission under section 6 (1).

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competition policy considerations means the considerations mentioned in the competition principles agreement, clause 1 (3) (d) to (j), as set out in schedule 1.

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 the competition principles agreement, clause 3 (1) and (4) to (7), as set out in schedule 1.

conduct, for part 9A (Enforcement of civil penalty provisions)—see section 54A.

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) determined to be contrary to the public interest information under the *Freedom of Information Act 2016*.

Consumer Protection Code, for schedule 5 (Civil penalty provisions)—see schedule 5, section 5.1.

corresponding offence, in relation to a contravention of a civil penalty provision, for part 9A (Enforcement of civil penalty provisions)—see section 54A.

court, for part 9A (Enforcement of civil penalty provisions)—see section 54A.

current reset principles—see section 20B (2).

declared fee means a fee declared under section 4C.

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determination means an arbitration determination under section 35.

direction, for part 9 (Enforcement of prior directions and arbitration determinations)— see section 51.

Electricity Feed-in Code, for schedule 5 (Civil penalty provisions)—see schedule 5, section 5.1.

eligible person, for part 4C (Review of price directions)—see section 24J.

energy—see the *National Energy Retail Law (ACT)*, section 2 (1).

enforcement order—see section 54M (1).

enforcement order proceeding means a proceeding under division 9A.4 (Enforcement orders).

evidential burden, in relation to a matter, for division 9A.6 (Other provisions about liability)—see section 54Y.

future reset principles—see section 20B (3).

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.

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industry panel—see section 24M (Industry panel).

industry reference—see section 14A.

investigation means an investigation under part 3.

law of the Territory includes—

(a) the *National Electricity (ACT) Law*; and

(b) the *National Electricity (ACT) Regulation*; and

(c) the national electricity rules; and

(d) the *National Gas (ACT) Law*; and

(e) the *National Gas (ACT) Regulation*; and

(f) the *National Energy Retail Law (ACT) Act 2012*; and

(g) the *National Energy Retail Law (ACT)*; and

(h) the *National Energy Retail Regulation (ACT)*; and

(i) the national energy retail rules.

national electricity rules means the national electricity rules under the *National Electricity (ACT) Law*.

national energy retail rules means the National Energy Retail Rules under the *National Energy Retail Law (ACT)*.

NERL retailer means a person who holds a retailer authorisation under the *National Energy Retail Law (ACT)*.

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

price direction—

(a) for this Act generally, means a direction under section 20 about prices for the provision of regulated services, as varied (if at all) under part 4B (Variation of price directions); and

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(b) for part 4C (Review of price directions)—see section 24J.

price regulation means the regulation of prices in relation to the provision of goods and services within a regulated industry, and includes the variation of a price direction for those prices.

price variation trigger—see section 20A (3) (c)).

reference means a reference to the commission under section 15.

referring authority—

(a) for an industry reference—see section 3A (1); and

(b) for a regulatory reference—see section 3A (2).

regulated industry means—

(a) an industry engaged in the provision in the ACT of a utility service; 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.

related corporation, of another corporation, means a related body corporate under the Corporations Act.

reset principles—see section 20B (1).

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

revenue cap—see section 20A (1) (b).

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

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

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senior commissioner means—

(a) if the commission is constituted by only 1 standing commissioner—the commissioner; or

(b) if the commission is constituted by more than 1 standing commissioner—the commissioner appointed or nominated as senior commissioner under schedule 2, section 2.1AA.

standing commissioner means a commissioner appointed under schedule 2, section 2.1.

third party, for part 6 (Arbitration of access regime disputes)—see section 30.

tier 1 civil penalty, for schedule 5 (Civil penalty provisions)—see schedule 5, section 5.2.

tier 2 civil penalty, for schedule 5 (Civil penalty provisions)—see schedule 5, section 5.2.

tier 3 civil penalty, for schedule 5 (Civil penalty provisions)—see schedule 5, section 5.2.

Transparency and Comparability Code, for schedule 5 (Civil penalty provisions)—see schedule 5, section 5.1.

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

utility means—

(a) a utility within the meaning of the *Utilities Act 2000*, dictionary; or

(b) a NERL retailer.

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utility service means—

(a) a utility service within the meaning of the *Utilities Act 2000*, dictionary; or

(b) the activity of selling energy to small customers within the meaning of the *National Energy Retail Law (ACT)*.

variation, of a price direction, means—

(a) a consent variation under division 4B.1; or

(b) a nonconsent variation under division 4B.2.

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Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

A = Act
AF = Approved form
am = amended
amdt = amendment
AR = Assembly resolution
ch = chapter
CN = Commencement notice
def = definition
DI = Disallowable instrument
dict = dictionary
disallowed = disallowed by the Legislative Assembly
div = division
exp = expires/expired
Gaz = gazette
hdg = heading
IA = Interpretation Act 1967
ins = inserted/added
LA = Legislation Act 2001
LR = legislation register
LRA = Legislation (Republication) Act 1996
mod = modified/modification
NI = Notifiable instrument
o = order
om = omitted/repealed
ord = ordinance
orig = original
par = paragraph/subparagraph
pres = present
prev = previous
(prev...) = previously
pt = part
r = rule/subrule
reloc = relocated
renum = renumbered
R[X] = Republication No
RI = reissue
s = section/subsection
sch = schedule
sdiv = subdivision
SL = Subordinate law
sub = substituted
underlining = whole or part not commenced or to be expired

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3 Legislation history

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* A2000-8 s 5.

Independent Competition and Regulatory Commission Act 1997 A1997-77

notified 25 November 1997 (Gaz 1997 No S360)
commenced 25 November 1997 (s 2)

as amended by

Independent Competition and Regulatory Commission Amendment Act 2000 A2000-8

notified 23 March 2000 (Gaz 2000 No 12)
commenced 23 March 2000 (s 2)

Utilities (Consequential Provisions) Act 2000 A2000-66 sch 1 pt 7

notified 20 December 2000 (Gaz 2000 No S68)
s 1, s 2 commenced 20 December 2000 (IA s 10B)
sch 1 pt 7 commenced 1 January 2001 (Gaz 2000 No S69)

Legislation (Consequential Amendments) Act 2001 A2001-44 pt 188

notified 26 July 2001 (Gaz 2001 No 30)
s 1, s 2 commenced 26 July 2001 (IA s 10B)
pt 188 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

Legislation Amendment Act 2002 A2002-11 pt 2.28

notified LR 27 May 2002
s 1, s 2 commenced 27 May 2002 (LA s 75)
pt 2.28 commenced 28 May 2002 (s 2 (1))

Independent Competition and Regulatory Commission Amendment Act 2003 A2003-50

notified LR 25 November 2003
s 1, s 2 commenced 25 November 2003 (LA s 75 (1))
remainder commenced 26 November 2003 (s 2)

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Annual Reports Legislation Amendment Act 2004 A2004-9 sch 1 pt 1.20

notified LR 19 March 2004
s 1, s 2 commenced 19 March 2004 (LA s 75 (1))
sch 1 pt 1.20 commenced 13 April 2004 (s 2 and see Annual Reports (Government Agencies) Act 2004 A2004-8, s 2 and CN2004-5)

Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004 A2004-15 sch 1 pt 1.23

notified LR 26 March 2004
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))
sch 1 pt 1.23 commenced 9 April 2004 (s 2 (1))

Statute Law Amendment Act 2004 A2004-42 sch 3 pt 3.11

notified LR 11 August 2004
s 1, s 2 commenced 11 August 2004 (LA s 75 (1))
sch 3 pt 3.11 commenced 25 August 2004 (s 2 (1))

Financial Management Legislation Amendment Act 2005 A2005-52 sch 1 pt 1.10

notified LR 26 October 2005
s 1, s 2 commenced 26 October 2005 (LA s 75 (1))
sch 1 pt 1.10 commenced 1 January 2006 (s 2 (2))

Criminal Code (Administration of Justice Offences) Amendment Act 2005 A2005-53 sch 1 pt 1.13

notified LR 26 October 2005
s 1, s 2 commenced 26 October 2005 (LA s 75 (1))
sch 1 pt 1.13 commenced 23 November 2005 (s 2)

Statute Law Amendment Act 2005 (No 2) A2005-62 sch 3 pt 3.12

notified LR 21 December 2005
s 1, s 2 commenced 21 December 2005 (LA s 75 (1))
sch 3 pt 3.12 commenced 11 January 2006 (s 2 (2))

Statute Law Amendment Act 2007 (No 3) A2007-39 sch 3 pt 3.20

notified LR 6 December 2007
s 1, s 2 commenced 6 December 2007 (LA s 75 (1))
sch 3 pt 3.20 commenced 27 December 2007 (s 2)

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National Gas (ACT) Act 2008 A2008-15 sch 2 pt 2.2
notified LR 30 June 2008
s 1, s 2 commenced 30 June 2008 (LA s 75 (1))
sch 2 pt 2.2 commenced 1 July 2008 (s 2 (1) and see National Gas (South Australia) Act 2008 (SA), s 7)

Statute Law Amendment Act 2009 A2009-20 sch 3 pt 3.43
notified LR 1 September 2009
s 1, s 2 commenced 1 September 2009 (LA s 75 (1))
sch 3 pt 3.43 commenced 22 September 2009 (s 2)

Justice and Community Safety Legislation Amendment Act 2009 (No 3) A2009-44 sch 1 pt 1.13
notified LR 24 November 2009
s 1, s 2 commenced 24 November 2009 (LA s 75 (1))
sch 1 pt 1.13 commenced 22 December 2009 (s 2 (3))

Justice and Community Safety Legislation Amendment Act 2010 (No 2) A2010-30 sch 1 pt 1.12
notified LR 31 August 2010
s 1, s 2 commenced 31 August 2010 (LA s 75 (1))
s 3 commenced 1 September 2010 (s 2 (1))
sch 1 pt 1.12 commenced 28 September 2010 (s 2 (2))

Statute Law Amendment Act 2011 A2011-3 sch 3 pt 3.24
notified LR 22 February 2011
s 1, s 2 commenced 22 February 2011 (LA s 75 (1))
sch 3 pt 3.24 commenced 1 March 2011 (s 2)

Statute Law Amendment Act 2011 (No 3) A2011-52 sch 3 pt 3.31
notified LR 28 November 2011
s 1, s 2 commenced 28 November 2011 (LA s 75 (1))
sch 3 pt 3.31 commenced 12 December 2011 (s 2)

National Energy Retail Law (Consequential Amendments) Act 2012 A2012-32 pt 10
notified LR 14 June 2012
s 1, s 2 commenced 14 June 2012 (LA s 75 (1))
pt 10 commenced 1 July 2012 (s 2 (1) and see National Energy Retail Law (ACT) Act 2012 A2012-31, s 2 (1) and CN2012-12)

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Utilities (Technical Regulation) Act 2014 A2014-60 sch 2 pt 2.2
notified LR 8 December 2014
s 1, s 2 commenced 8 December 2014 (LA s 75 (1))
sch 2 pt 2.2 commenced 1 March 2015 (s 2 and CN2015-1)

Red Tape Reduction Legislation Amendment Act 2015 A2015-33 sch 1 pt 1.36
notified LR 30 September 2015
s 1, s 2 commenced 30 September 2015 (LA s 75 (1))
sch 1 pt 1.36 commenced 14 October 2015 (s 2)

Independent Competition and Regulatory Commission Amendment Act 2016 A2016-34
notified LR 21 June 2016
s 1, s 2 commenced 21 June 2016 (LA s 75 (1))
remainder commenced 1 July 2016 (s 2)

Public Sector Management Amendment Act 2016 A2016-52 sch 1 pt 1.38
notified LR 25 August 2016
s 1, s 2 commenced 25 August 2016 (LA s 75 (1))
sch 1 pt 1.38 commenced 1 September 2016 (s 2)

Freedom of Information Act 2016 A2016-55 sch 4 pt 4.17
notified LR 26 August 2016
s 1, s 2 commenced 26 August 2016 (LA s 75 (1))
sch 4 pt 4.17 commenced 1 January 2018 (s 2 as am by A2017-14 s 19)

Commercial Arbitration Act 2017 A2017-7 sch 1 pt 1.4
notified LR 4 April 2017
s 1A, s 1B commenced 4 April 2017 (LA s 75 (1))
sch 1 pt 1.4 commenced 1 July 2017 (s 1B and CN2017-1)

Justice and Community Safety Legislation Amendment Act 2017 (No 2) A2017-14 s 19
notified LR 17 May 2017
s 1, s 2 commenced 17 May 2017 (LA s 75 (1))
s 19 commenced 24 May 2017 (s 2 (1))

Note This Act only amends the Freedom of Information Act 2016 A2016-55.

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Red Tape Reduction Legislation Amendment Act 2018 A2018-33 sch 1 pt 1.22

notified LR 25 September 2018
s 1, s 2 commenced 25 September 2018 (LA s 75 (1))
sch 1 pt 1.22 commenced 23 October 2018 (s 2 (4))

Statute Law Amendment Act 2022 A2022-14 sch 3 pt 3.23

notified LR 10 August 2022
s 1, s 2 commenced 10 August 2022 (LA s 75 (1))
sch 3 pt 3.23 commenced 24 August 2022 (s 2)

Independent Competition and Regulatory Commission Amendment Act 2024 A2024-25

notified LR 19 June 2024
s 1, s 2 commenced 19 June 2024 (LA s 75 (1))
remainder commenced 19 December 2024 (s 2)

Statute Law Amendment Act 2025 A2025-29 sch 4 pt 4.96

notified LR 6 November 2025
s 1, s 2 commenced 6 November 2025 (LA s 75 (1))
sch 4 pt 4.96 commenced 16 December 2025 (s 2 (6))

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4 Amendment history

Title
title — am A2000-8 s 4; A2000-66 sch 1 pt 7

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s 1 — sub A2000-8 s 5

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s 2 — om A2001-44 amdt 1.2131
ins A2005-52 amdt 1.140
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s 2A — ins A2005-52 amdt 1.140

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sub A2005-52 amdt 1.140
def ***commission*** sub A2000-8 s 6
om A2005-52 amdt 1.138
def ***commissioner*** sub A2000-8 s 6
om A2005-52 amdt 1.138
def ***eligible person*** ins A2000-66 sch 1 pt 7
om A2005-52 amdt 1.138
def ***function*** om A2005-52 amdt 1.138

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s 3A — ins A2000-8 s 7
am A2000-66 sch 1 pt 7; pars renum R2 LA

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s 4A hdg — am A2005-62 amdt 3.127
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s 4B — ins A2000-66 sch 1 pt 7
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sub A2004-9 amdt 1.28

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s 10A ins A2005-52 amdt 1.142
am A2011-52 amdt 3.109

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s 10B ins A2005-52 amdt 1.142
am A2011-52 amdt 3.110

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s 11 sub A2016-52 amdt 1.105

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5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	A2000-8	10 April 2000
2	A2001-44	21 January 2002
3	A2002-11	30 May 2002
4	A2003-50	26 November 2003
5	A2004-15	9 April 2004
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12	A2007-39	27 December 2007
13	A2008-15	1 July 2008
14	A2009-20	22 September 2009
15	A2009-44	22 December 2009
16	A2010-30	28 September 2010
17	A2011-3	1 March 2011
18	A2011-52	12 December 2011
19	A2012-32	1 July 2012
20	A2014-60	1 March 2015

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Republication No	Amendments to	Republication date
21	A2015-33	14 October 2015
22	A2016-34	1 July 2016
23	A2016-52	1 September 2016
24	A2017-7	1 July 2017
25	A2017-14	1 January 2018
26	A2018-33	23 October 2018
27	A2022-14	24 August 2022
28	A2024-25	19 December 2024

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